# GENERAL LAWS

OF THE

# STATE OF IDAHO

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

Convened January 6, 2003
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Volume 1

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

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SECRETARY OF STATE

**BEN YSURSA**
Secretary of State
Boise, Idaho

## CHAPTER 1
## (H.B. No. 1)

### AN ACT

RELATING TO THE IDAHO MILLENNIUM INCOME FUND; AMENDING SECTION 67-1803, IDAHO CODE, TO REVISE THE DISTRIBUTION OF FUNDS TO THE IDAHO MILLENNIUM INCOME FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-1803, Idaho Code, be, and the same is hereby amended to read as follows:

67-1803. DISTRIBUTION OF FUNDS. On the first business day of ~~each month~~ July, or as soon thereafter as possible, the state treasurer shall distribute ~~one-twelfth (1/12) of~~ to the Idaho millennium income fund five percent (5%) of the Idaho millennium fund's average monthly fair market value ~~to the Idaho millennium income fund~~ for the first twelve (12) months of the preceding twenty-four (24) months. Provided however, that the distribution shall not exceed the Idaho millennium fund's fair market value on the first business day in July.

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 4, 2003.

## CHAPTER 2
## (H.B. No. 70)

### AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1350, IDAHO CODE, TO PROVIDE THAT THE TAXABLE WAGE BASE FOR CALENDAR YEARS 2003 AND 2004 SHALL BE THE TAXABLE WAGE BASE IN EFFECT FOR CALENDAR YEAR 2002 AND TO PROVIDE THAT TAXABLE WAGE RATE SCHEDULE II SHALL BE EFFECTIVE FOR CALENDAR YEARS 2003 AND 2004; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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. Provided however, and notwithstanding any other provision of the employment security law to the contrary, for calendar years 2003 and 2004 the taxable wage base shall be twenty-seven thousand six hundred dollars ($27,600), which was the taxable wage base in effect for calendar year 2002.

(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 years 2002~~3~~ and 2004 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 | |
| | | | Taxable Wage Rates for Eligible Employers | | | | | | | | |
| Rate Class | More Than (% of Total Taxable Payroll) | Equal to or Less Than (% of Total Taxable Payroll) | | | | | | | | | |
| 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 | | | | | | | | | | | |
| | | | Taxable Wage Rates for Deficit Employers | | | | | | | | |
| Rate Class | More Than (% of Total Taxable Payroll) | Equal to or Less Than (% of Total Taxable Payroll) | | | | | | | | | |
| 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.

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, 2003.

Approved February 4, 2003.

## CHAPTER 3
## (S.B. No. 1014)

AN ACT

RELATING TO THE APPROPRIATION FOR THE DIVISION OF VETERANS SERVICES; AMENDING SECTION 1, CHAPTER 239, LAWS OF 2002, TO REVISE SPENDING AUTHORITY BETWEEN FUND SOURCES FOR FISCAL YEAR 2003; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 239, Laws of 2002, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Division of Veterans Services within the Department of Self-Governing Agencies the following

amount to be expended from the listed funds for the period July 1, 2002, through June 30, 2003:

DIVISION OF VETERANS SERVICES:

FROM:

| | |
|---|---|
| General Fund | $ 2,034,700 |
| Miscellaneous Revenue Fund | ~~6,406,500~~ |
| | 6,740,500 |
| Veterans Services Endowment Income Fund | 678,300 |
| Federal Grant Fund | ~~7,024,300~~ |
| | 6,690,300 |
| TOTAL | $16,143,800 |

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 passage and approval.

Approved February 10, 2003.

## CHAPTER 4
## (H.B. No. 55)

AN ACT

RELATING TO DUTIES OF THE STATE CONTROLLER; AMENDING SECTION 67-1001, IDAHO CODE, TO CLARIFY THE DUTIES OF THE STATE CONTROLLER AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 10, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1001A, IDAHO CODE, TO DEFINE TERMS.

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

SECTION 1. That Section 67-1001, Idaho Code, be, and the same is hereby amended to read as follows:

67-1001. DUTIES OF CONTROLLER. It is the duty of the state controller:

(1~~.~~) To superintend the fiscal concerns of the state, with its accounting, informational, payroll, and related data processing services.

(2~~.~~) To deliver to the governor and the legislative services office on or before the first day of January, a ~~report~~ financial statement, which complies with generally accepted accounting principles, of the funds of the state, its revenues, and of the public expenditures during the preceding fiscal year.

~~3. To report the amount of revenue, if any, chargeable to each county for the preceding fiscal year, the amount paid, and the amount unpaid or due therefrom.~~

~~4.~~(3) When requested, to give information in writing to either house of the legislature relating to the fiscal affairs of the state or the duties of his office.

~~5.~~(4) To suggest plans and provide internal control standards for the improvement and management of the public revenues, assets, expenditures and liabilities.

~~6.~~(5) To keep and state all accounts in which the state is interested.

~~7.~~(6) To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specified appropriation, showing at all times the unexpended balance of such appropriation.

~~8.~~(7) To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

~~9.~~(8) To keep a register of warrants, showing the fund or funds upon which they are drawn, the number, in whose favor, the appropriation applicable to the payment thereof, and when the liability accrued.

~~10.~~(9) To examine and settle the accounts of all persons indebted to the state~~, and to certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor to give such person a discharge and charge the treasurer therewith.~~

(~~11.~~0) In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

(~~12.~~1) To require all persons who have received any moneys belonging to the state and have not accounted therefor to settle their accounts.

(~~13.~~2) To account for the collection of all moneys due the state, not the responsibility of any other agency and institute suits in its name for all official delinquencies in relation to assessment, collection and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the state, of which suits the courts of Ada County have jurisdiction, without regard to the residence of the defendants.

(~~14.~~3) To draw warrants on the treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law.

(~~15.~~4) To furnish the state treasurer with a daily total dollar amount, by fund, and/or account when requested by the state treasurer, of warrants drawn upon the treasury.

(~~16.~~5) To authenticate with ~~his official seal,~~ his signature, his electronic signature, or his facsimile signature all ~~drafts and~~ warrants drawn by him, and all copies of ~~papers~~ official documents issued from his office.

(~~17.~~6) To charge the state treasurer with money and evidences of indebtedness received from and credit him for money drawn by the state board of land commissioners in the moneys or accounts over which said board has control.

(~~18.~~7) To act ex officio as member of the board of canvassers and state board of land commissioners, secretary of the state board of examiners, and participant in other organizations in the performance of such duties as ~~are~~ prescribed by law for such officer.

(~~19.~~8) To create and establish such divisions and other administrative units within the office as necessary.

SECTION 2. That Chapter 10, 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 67-1001A, Idaho Code, and to read as follows:

67-1001A. DEFINITIONS. As used in this chapter and other applicable sections of Idaho Code, each of the terms defined in this section shall have the meaning herein given unless a different meaning is clearly required by the context.

(1) "Certification" means a written or electronic assertion that a statement or report is true or as represented.

(2) "Defaulter" means one who misappropriates public funds held by him in any official or fiduciary capacity; or fails to provide an accounting as specified by the state controller for such funds.

(3) "Examine" means open to inspection; to review or evaluate the books, papers, accounts, bills, vouchers, other documents of state funds and property, or accounts or financial records of all state agencies and entities receiving state funds in accordance with generally accepted accounting practices.

(4) "Financial statement" means a quantitative report summarizing the financial position of an entity as of a particular date and the operating results of that entity for a particular period.

(5) "Internal control" means a coordinated system of methods and measures designed to safeguard assets, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies.

(6) "Offset" means to withhold payment, in full or part, from a recipient of state money whenever that recipient has an outstanding debt to the state.

(7) "Post-audit" means an independent audit of the financial statements of the state of Idaho for purposes of rendering an opinion of such statements in conformity with generally accepted accounting principles.

(8) "Voucher" means a receipt, acquittance or release in writing or electronic transmission that may serve as evidence of payment or discharge of debt; a document that serves to recognize a liability and authorize the disbursement of cash.

(9) "Warrant" means a negotiable instrument payable by the state treasury when funds become available for the stated purpose; a warrant may include, but is not necessarily limited to, a payment mechanism such as direct deposit, electronic fund transfer, paper warrant or other financial instrument.

Approved February 10, 2003.

## CHAPTER 5
## (H.B. No. 68)

### AN ACT

RELATING TO THE IDAHO COLLEGE SAVINGS PROGRAM BOARD; AMENDING SECTION 33-5401, IDAHO CODE, TO REVISE THE DEFINITIONS OF ACCOUNT OWNER AND MEMBER OF THE FAMILY.

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

SECTION 1. That Section 33-5401, Idaho Code, be, and the same is hereby amended to read as follows:

33-5401. DEFINITIONS. As used in this chapter, the following terms have the following meanings unless the context clearly denotes otherwise:

(1) "Account" means an individual trust account or savings account established as prescribed in this chapter.

(2) "Account owner" means the person designated ~~at the time an account is opened~~ in the agreement governing the account as having the right to withdraw moneys from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the state college savings program board created in section 33-5402, Idaho Code.

(4) "Designated beneficiary," except as provided in section 33-5404, Idaho Code, means, with respect to an account, the person designated at the time the account is opened as the person whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 33-5404, Idaho Code, the replacement beneficiary.

(5) "Financial institution" means any state bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm or other similar entity that is authorized to do business in this state.

(6) "Higher education institution" means any of the following:

(a) An institution described in the higher education act of 1965 (P.L. 89-329; 79 Stat. 1219; 20 U.S.C. sections 1001 et seq.);

(b) An area vocational educational school as defined in 20 U.S.C. section 2471(4);

(c) An institution regulated by the state board of education.

(7) "Member of the family" shall have the meaning as provided in 26 U.S.C. section 529. ~~means any of the following:~~

~~(a) A son or daughter of a person or a descendant of the son or daughter of the person;~~

~~(b) A stepson or stepdaughter of a person;~~

~~(c) A brother, sister, stepbrother or stepsister of a person. For purposes of this paragraph, "brother" and "sister" include a brother or sister by the half-blood;~~

~~(d) The father or mother of a person or the ancestor of the father or mother of a person;~~

~~(e) A stepfather or stepmother of a person;~~

~~(f) A son or daughter of a person's brother or sister. For purposes of this paragraph, "brother" and "sister" include a brother or sister by the half-blood;~~

~~(g) A brother or sister of the person's father or mother. For purposes of this paragraph, "brother" and "sister" include a brother or sister by the half-blood;~~

~~(h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law of a person;~~

~~(i) The spouse of a person or the spouse of any individual described in this paragraph;~~

~~(j) The first cousin of a person;~~

~~(k) Any individual who meets the criteria for family membership described in this subsection as a result of legal adoption.~~

(8) "Nonqualified withdrawal" means an account withdrawal that is not one (1) of the following:

(a) A qualified withdrawal;

(b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) A withdrawal that is made on account of a scholarship as defined in 26 U.S.C. section 117 or an educational allowance as defined in 26 U.S.C. section 25A(g)(2);

(d) A rollover or change of the designated beneficiary.

(9) "Program" means the college savings program established under this chapter.

(10) "Qualified higher education expenses" shall have the meaning provided in 26 U.S.C. section 529(e)(3).

(11) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this chapter.

Approved February 10, 2003.

## CHAPTER 6
## (H.B. No. 69)

AN ACT

RELATING TO THE IDAHO COLLEGE SAVINGS PROGRAM; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE THAT FOR STATE INCOME TAX PURPOSES, THE AMOUNT OF A NONQUALIFIED WITHDRAWAL FROM AN INDIVIDUAL TRUST ACCOUNT OR SAVINGS ACCOUNT ESTABLISHED PURSUANT TO CHAPTER 54, TITLE 33, IDAHO CODE, LESS ANY AMOUNT OF SUCH NONQUALIFIED WITHDRAWAL INCLUDED IN THE INDIVIDUAL'S FEDERAL GROSS INCOME PURSUANT TO 26 U.S.C. SECTION 529 WOULD BE ADDED IN COMPUTING IDAHO TAXABLE INCOME; 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 and local taxes, as defined in section 164 of the Internal Revenue Code and, measured by net income, paid or accrued during the taxable year adjusted for state or local 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 succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in 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:

(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section.

(2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter.

(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 combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons, other than corporations, add any capital loss deducted which was incurred in 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 or local taxes measured by net income and as defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. 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.

(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, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to 26 U.S.C. section 529.

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, 2003.

Approved February 10, 2003.

## CHAPTER 7
## (H.B. No. 74)

### AN ACT

RELATING TO THE SALES AND USE TAXES; AMENDING SECTION 63-3627, IDAHO CODE, TO CLARIFY THAT A RESPONSIBLE PERSON CAN BE LIABLE FOR TAXES OF ANY TAXPAYER WHOSE TAX COMPLIANCE IS THAT PERSON'S DUTY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 63-3627, Idaho Code, be, and the same is hereby amended to read as follows:

63-3627. RESPONSIBILITY FOR TAXES. ~~----CORPORATIONS,--PARTNERSHIPS AND--LIMITED--LIABILITY--COMPANIES.~~ (a) Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any ~~corporation,-partnership-or-limited--liability--company~~ taxpayer under this chapter on behalf of such ~~corporation,-partnership or-limited-liability~~ taxpayer as an officer, member or employee of such ~~corporation,-partnership-or-limited-liability-company~~ taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this chapter who ~~wilfully~~ willfully fails to collect such tax, or truthfully account for and pay over such tax, or ~~wilfully~~ willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 63-3046(b), Idaho Code, for any offense to which this subsection (b) is applicable.

Approved February 10, 2003.

## CHAPTER 8
## (H.B. No. 75)

### AN ACT

RELATING TO PROPERTY TAXES; AMENDING SECTION 63-301A, IDAHO CODE, TO PROVIDE THAT ON OR BEFORE THE FOURTH MONDAY IN JULY, COUNTY AUDITORS MUST CERTIFY THE NEW CONSTRUCTION ROLL TO THE STATE TAX COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-602A, IDAHO CODE, TO CHANGE THE REFERENCE FROM THE FARMERS HOME ADMINISTRATION TO THE CONSOLIDATED FARM SERVICE AGENCY; AMENDING SECTION 63-602C, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE RELATING TO TAXATION OF MERCHANDISE HELD FOR SALE; AND AMENDING SECTION 63-803, IDAHO CODE, TO PERMIT ADDITIONAL TIME FOR SCHOOL DISTRICTS TO CERTIFY A BUDGET FOR A SCHOOL EMERGENCY FUND LEVY.

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

SECTION 1. That Section 63-301A, Idaho Code, be, and the same is hereby amended to read as follows:

63-301A. NEW CONSTRUCTION ROLL. (1) The county assessor shall prepare a new construction roll, which shall be in addition to the property roll, which new construction roll shall show:

(a) The name of the taxpayer;

(b) The description of the new construction, suitably detailed to meet the requirements of the individual county;

(c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;

(d) The amount of taxable market value added to the property on the current year's property roll that is directly the result of new construction or a change in use of the land or both.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission on or before the fourth Monday in July. Provided however, the value shown in subsection (3)(f) of this section shall be reported to the appropriate county auditor by the state tax commission by the third Monday in July and the value sent by the county auditor to each taxing district. The value established pursuant to subsection (3)(f) of this section is subject to correction by the state tax commission until the first Monday in September and any such corrections shall be sent to the appropriate county auditor, who shall notify any affected taxing districts.

(3) The value shown on the new construction roll may include the value increase from:

(a) Construction of any new structure that previously did not exist; or

(b) Additions or alterations to existing nonresidential structures; or

(c) Installation of new or used manufactured housing that did not previously exist within the county; or

(d) Change of land use classification; or

(e) Property newly taxable as a result of loss of the exemption provided by section 63-602W, Idaho Code; or

(f) The construction of any improvement or installation of any equipment used for or in conjunction with the generation of electricity and the addition of any improvement or equipment intended to be so used, except property that has a value allocated or apportioned pursuant to section 63-405, Idaho Code, or that is owned by a cooperative or municipality, as those terms are defined in section 61-332A, Idaho Code, or that is owned by a public utility, as that term is defined in section 61-332A, Idaho Code, owning any other property that is allocated or apportioned. No replacement equipment or improvements may be included~~.~~; or

(~~f~~g) Increases in value over the base value of property on the base assessment roll within an urban renewal revenue allocation area that has been terminated pursuant to section 50-2909(4), Idaho Code, to the extent that this increment has not been previously included on any new construction rolls, provided however, the increased value during the existence of the revenue allocation area is due to

changes identified in subsections (a) through (e) of this subsection.

(4) The amount of taxable market value of new construction shall be the change in net taxable market value that is attributable directly to new construction or a change in use of the land or loss of the exemption provided by section 63-602W(3), Idaho Code. It shall not include any change in value of existing property that is due to external market forces such as general or localized inflation.

SECTION 2. That Section 63-602A, Idaho Code, be, and the same is hereby amended to read as follows:

63-602A. PROPERTY EXEMPT FROM TAXATION -- GOVERNMENT PROPERTY. (1) The following property is exempt from taxation: property belonging to the United States, except when taxation thereof is authorized by the congress of the United States, this state, or to any county or municipal corporation or school district within this state.

(2) However, inventory property acquired under agricultural credit programs of the ~~farmers home administration~~ consolidated farm service agency of the United States department of agriculture shall be subject to taxation as other property in the county.

(3) However, unimproved real property of more than ten (10) contiguous acres owned in fee simple by the department of fish and game shall be subject to a fee in lieu of property taxes contingent upon the following conditions and requirements:

(a) The fee in lieu of property taxes shall not exceed the property tax for the property at the time of acquisition by the department of fish and game, unless the property tax rate for the property shall have been increased.

(b) The department shall determine and identify the parcels of property and their current use as qualified under the provisions of this act. The department shall consult with the appropriate county treasurer and determine the fee to be paid on the property and credited continuously to the county current expense fund. The fee shall be an amount equal to the property tax the property would generate if assessed as agricultural property.

(c) Any future increase in the fee paid in lieu of property taxes shall be determined by the amount of property taxes the property would generate if assessed as agricultural property. The increase may be determined by the department working cooperatively with the appropriate county assessor. The method used for determining the fee that would be due on department property is to be used only under this subsection and has no other application in any other section of the Idaho Code.

(d) The department shall then provide to the assessor of the county where the parcels are located on or before the second Monday of March each year, a listing identifying each parcel of unimproved property by legal description, size and amount of the fee for the preceding calendar year. The treasurer shall prepare and submit a billing for payment based on this information to the department. Once the fee has been determined, payment shall be made by June 20 of that year from moneys appropriated for that purpose. However, if the fees exceed the moneys appropriated for that purpose, the director of the department of fish and game shall calculate the percent

reduction that must be made and certify the proportionate reduction to each county treasurer.

(e) For the purpose of this section only, unimproved real property shall mean property on which no homesite or improved site is located, and homesite or improved site shall mean any buildings, structures, or fixtures which have been erected or affixed to the land and the necessary acreage required to utilize the homesite or improved site as determined by the county assessor shall be exempt. For purposes of this subsection only, roads or fences shall not be considered as improvements.

SECTION 3. That Section 63-602C, Idaho Code, be, and the same is hereby amended to read as follows:

63-602C. PROPERTY EXEMPT FROM TAXATION -- FRATERNAL, BENEVOLENT, OR CHARITABLE CORPORATIONS OR SOCIETIES. The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such corporation or society is organized; provided, that if any building or property belonging to any such corporation or society is leased by such owner or if such corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property, and if any such property is leased in part or used in part by such corporation or society for such purposes the assessor shall determine the value of the entire building and the value of the part used or leased for commercial purposes. If the value of the part used for commercial purposes is determined to be three percent (3%) or less than the value of the entirety, the whole of said property shall remain exempt. If the value of the part used for commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such building including the value of the real estate as is so leased or used for such purposes, and shall assess ~~all--merchandise--kept--for-sale,-and~~ the trade fixtures used in connection with the sale of ~~such~~ all merchandise; provided however, that the lease or use of any property by any such corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom.

SECTION 4. That Section 63-803, Idaho Code, be, and the same is hereby amended to read as follows:

63-803. CERTIFICATION OF BUDGETS IN DOLLARS. (1) Whenever any taxing district is required by law to certify to any county treasurer, county auditor, county assessor, county commissioners or to any other county officer, any property tax levy, upon property located within said district, such certification shall, notwithstanding any other provision of the law applicable to any such district, be made at the time and in

the manner hereinafter provided.

(2) The county auditor shall inform each of the taxing districts within his county of the taxable value of that district as soon as such value is known to the auditor, whether the value comes from the appraisal and assessment of real and personal property, or from allocation of the taxable value of operating property, or from other sources.

(3) Using the taxable value of the district, the council, trustees, board or other governing body of any taxing district shall certify the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved. The amount of money so determined shall be certified in dollars to the appropriate county commissioners. Any taxing unit, except regional airport authorities, located in more than one (1) county shall divide its dollar budget for certification to the separate counties by multiplying the amount of such budget by a fraction, the numerator of which shall be the total taxable value of all property in such taxing unit within the county to which such certification is to be made, and the denominator of which shall be the total taxable value of property in such taxing unit in all such counties. Budget certification to the participating counties of regional airport authorities shall be made in the manner prescribed in section 21-807(10), Idaho Code. Taxable value shall be certified by the county auditor of each affected county to such taxing unit and such certification shall be used in this formula. Except as provided in section 33-805, Idaho Code, relating to school emergency fund levies, the certification to the county commissioners required in this section shall be made not later than the Thursday prior to the second Monday in September, unless, upon application therefor, the county commissioners grant an extension of not more than seven (7) working days. After receipt of this certification, the county commissioners shall make a tax levy as a percent of taxable value of all property in the taxing district, which when applied to the tax rolls, will meet the budget requirements certified by such taxing districts.

(4) For the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy. When the county auditor is notified of revenues sufficient to cover expenses as provided in section 50-2903(5), Idaho Code, taxable value shall also include the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area. For each taxing district, taxable value shall include the value from the property and operating property rolls for the current year and subsequent and missed property rolls for the prior year or the best estimate of the subsequent and missed property rolls for the current year.

Approved February 10, 2003.

CHAPTER 9
(H.B. No. 77)

AN ACT

RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3620, IDAHO CODE, TO PROVIDE ADMINISTRATIVE REVIEW OF DENIAL OF AN APPLICATION FOR A SELLER'S PERMIT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3622R, IDAHO CODE, TO PROVIDE THAT THE ANNUAL USE OF CERTAIN INTERSTATE VEHICLES SHALL BE MEASURED BASED ON THE VEHICLE'S ANNUAL REGISTRATION PERIOD UNDER THE INTERNATIONAL PLAN RATHER THAN ON A CALENDAR YEAR AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 63-3622GG, IDAHO CODE, TO DELETE THE REQUIREMENT THAT CERTAIN EXEMPT AIRCRAFT MUST BE REGISTERED UNDER THE LAW OF ANOTHER STATE OR NATION.

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

SECTION 1. That Section 63-3620, Idaho Code, be, and the same is hereby amended to read as follows:

63-3620. PERMITS -- ISSUANCE -- REVOCATION -- PENALTIES. (a) Every retailer engaged in business in this state, before conducting business within this state, shall file with the state tax commission an application for a seller's permit. Every application for a permit shall be made upon a form prescribed by the state tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state tax commission may require. The applications, or any information contained thereon, may be made available by the tax commission to authorized representatives of state or federal agencies. The application shall be signed by the owner if he is a natural person or by an individual authorized by the seller to sign the application. Except as provided in subsection (f) of this section, permits shall be issued without charge.

(b) The state tax commission, for the efficient administration of this chapter, may issue:

(1) Temporary seller's permits. No retailer shall be issued more than three (3) temporary permits in one (1) calendar year. A temporary permit shall be valid only for the period of time shown on the face thereof.

(2) Wholesaler's permits to persons who are not retailers but who purchase tangible personal property for resale. A wholesaler's permit shall be valid for no more than twelve (12) consecutive months and may be renewed by the commission.

(c) The person signing the application shall certify that the applicant will actively engage in or conduct a business making sales subject to tax under this chapter.

(d) After compliance by the applicant with the requirements set out above and in section 63-3625, Idaho Code, the state tax commission shall grant and issue to each applicant a permit. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued. The permit or a copy thereof shall at all times be conspicuously displayed at each place where the person to whom it is issued conducts

business.

(e) A seller whose permit has been previously suspended or revoked shall pay the state tax commission a fee of ten dollars ($10.00) for the renewal or issuance of a permit in the event of a first revocation and twenty-five dollars ($25.00) for renewal after each successive revocation unless the suspension or revocation is for inactivity pursuant to section 63-3620A, Idaho Code.

(f) Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any rules of the state tax commission relating to the sales tax prescribed and adopted under this chapter, the state tax commission may revoke or suspend any one (1) or more of the permits held by the person or may deny a new permit to such person. Notice of revocation or denial shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code. The state tax commission shall not issue a new permit after the revocation of a permit unless the commission is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the rules of the state tax commission.

(g) A person who engages in business as a seller in this state without a permit or permits, or after a permit has been suspended, and each officer of any corporation which so engages in business is guilty of a misdemeanor punishable by a fine not in excess of one hundred dollars ($100), and each day shall constitute a separate offense.

SECTION 2. That Section 63-3622R, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622R. MOTOR VEHICLES, USED MANUFACTURED HOMES, VESSELS, ALL-TERRAIN VEHICLES, TRAILERS, OFF-ROAD MOTORCYCLES AND SNOWMOBILES. There are exempted from the taxes imposed by this chapter:

(a) Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), motorcycles intended for off-road use and snowmobiles, for use outside of this state even though delivery be made within this state, but only when:

(1) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles or trailers will be taken from the point of delivery in this state directly to a point outside this state; and

(2) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles and trailers will be registered immediately under the laws of another state, will be titled in another state if required to be titled in that state, will not be used in this state more than sixty (60) days in any twelve (12) month period, and will not be required to be titled under the laws of this state.

(3) For the purpose of this subsection (a), the term "all-terrain vehicle" or "ATV" means any recreational vehicle with two (2) or more tires, weighing under six hundred fifty (650) pounds, less than forty-eight (48) inches in width, traveling on low-pressure tires of less than seven (7) psi, and designed to be ridden by one (1) person.

(4) For the purpose of this section, the term "vessel" means any boat intended to carry one (1) or more persons upon the water which

is either:

(i) Sold together with a motor, or

(ii) Eleven (11) feet in length or more, but shall not include canoes, kayaks or inflatable boats, unless such canoes, kayaks or inflatable boats are sold together with a motor.

(b) Sale of used manufactured homes, whether or not such used manufactured homes are sold for use outside this state, and whether or not such used manufactured homes are sold by a dealer. Every manufactured home sale after its sale as a "new manufactured home," as defined in section 63-3606, Idaho Code, is a sale as a used manufactured home.

(c) Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan or similar proportional or pro rata registration system, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under such proportional or pro rata registration system when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any ~~calendar year~~ annual registration period under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any ~~calendar year~~ annual registration period under the international registration plan.

(d) The use or other consumption of a motor vehicle temporarily donated to a driver's education program sponsored by a nonprofit educational institution as defined in section 63-3622O, Idaho Code.

SECTION 3. 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 includes repair and replacement materials and parts installed in or 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 February 10, 2003.

CHAPTER 10
(H.B. No. 79)

AN ACT

RELATING TO CORRECTIONS TO THE IDAHO INCOME TAX ACT; AMENDING SECTION 63-3022, IDAHO CODE, TO REVISE A CROSS REFERENCE; AMENDING SECTION 63-3022P, IDAHO CODE, TO DELETE A REFERENCE TO CREDIT INSURANCE; AMENDING SECTION 63-3024, IDAHO CODE, TO PROVIDE THAT THE PROVISIONS OF THE INTERNAL REVENUE CODE RELATING TO ELECTING SMALL BUSINESS TRUSTS SHALL APPLY FOR IDAHO INCOME TAX PURPOSES AND TO PROVIDE THAT THE MAXIMUM IDAHO RATE FOR INDIVIDUALS SHALL APPLY TO THOSE TRUSTS; AMENDING SECTION 63-3029E, IDAHO CODE, TO REVISE THE DEFINITION OF "NEW EMPLOYEE"; AMENDING SECTION 63-3029F, IDAHO CODE, TO PROVIDE THAT THE CREDIT SHALL NOT EXCEED FIFTY PERCENT OF THE TAX LIABILITY OF THE TAXPAYER AND TO PROVIDE THAT THE TAX LIABILITY OF THE TAXPAYER SHALL BE THE TAX AFTER DEDUCTING THE CREDIT FOR INCOME TAXES PAID IN OTHER STATES; AMENDING SECTION 63-3042, IDAHO CODE, TO PROVIDE FOR A COPY OF A SUMMONS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

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

63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022MQ, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code and, measured by net income, paid or accrued during the taxable year adjusted for state or local 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 succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section

63-3021(b)(2), (3) and (4), Idaho Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in 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:

(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section.

(2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter.

(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 combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons, other than corporations, add any capital loss deducted which was incurred in 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 or local taxes measured by net income and as defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. 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.

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

63-3022P. HEALTH INSURANCE COSTS. With respect to an individual taxpayer, an amount equal to the amount paid by the taxpayer during the taxable year for insurance which constitutes medical care for the taxpayer, the spouse or dependents of the taxpayer which is not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes shall be allowed as a deduction for Idaho taxable income. As used in this section, "insurance which constitutes medical care" includes any hospital or medical policy or certificate, any subscriber contract, policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, ~~credit,~~ dental, vision, single employer self-funded coverage, meaning that portion of health insurance which is the retained risk of the employer, student health benefits only or coverage for medical care or treatment issued as a supplement to liability insurance. Employers shall provide to the employee a statement as to whether an employee's contribution for health insurance has been excluded from taxable income.

SECTION 3. That Section 63-3024, Idaho Code, be, and the same is

hereby amended to read as follows:

63-3024. INDIVIDUALS' TAX AND TAX ON ESTATES AND TRUSTS. For taxable year 2001, and each taxable year thereafter, a tax measured by Idaho taxable income as defined in this chapter is hereby imposed upon every individual, trust, or estate required by this chapter to file a return.

(a) The tax imposed upon individuals, trusts and estates shall be computed at the following rates:

| When Idaho taxable income is: | The rate is: |
|---|---|
| Less than $1,000 | One and six-tenths percent (1.6%) |
| $1,000 but less than $2,000 | $16, plus three and six-tenths percent (3.6%) of the amount over $1,000 |
| $2,000 but less than $3,000 | $52, plus four and one-tenth percent (4.1%) of the amount over $2,000 |
| $3,000 but less than $4,000 | $93, plus five and one-tenth percent (5.1%) of the amount over $3,000 |
| $4,000 but less than $5,000 | $144, plus six and one-tenth percent (6.1%) of the amount over $4,000 |
| $5,000 but less than $7,500 | $205, plus seven and one-tenth percent (7.1%) of the amount over $5,000 |
| $7,500 but less than $20,000 | $383, plus seven and four-tenths percent (7.4%) of the amount over $7,500 |
| Over $20,000 | $1,308, plus seven and eight-tenths percent (7.8%) of the amount over $20,000 |

For taxable year 2000 and each year thereafter, the state tax commission shall prescribe a factor which shall be used to compute the Idaho income tax brackets provided in subsection (a) of this section. The factor shall provide an adjustment to the Idaho tax brackets so that inflation will not result in a tax increase. The Idaho tax brackets shall be adjusted as follows: multiply the bracket amounts by the percentage (the consumer price index for the calendar year immediately preceding the calendar year to which the adjusted brackets will apply divided by the consumer price index for calendar year 1998). For the purpose of this computation, the consumer price index for any calendar year is the average of the consumer price index as of the close of the twelve (12) month period for the immediately preceding calendar year as adopted by the state tax commission. This adoption shall be exempt from the provisions of chapter 52, title 67, Idaho Code. The consumer price index shall mean the consumer price index for all U.S. urban consumers published by the United States department of labor. The state tax commission shall annually include the factor as provided in this subsection to multiply against Idaho taxable income in the brackets above to arrive at that year's Idaho taxable income for tax bracket purposes.

(b) In case a joint return is filed by husband and wife pursuant to the provisions of section 63-3031, Idaho Code, the tax imposed by this section shall be twice the tax which would be imposed on one-half (1/2) of the aggregate Idaho taxable income. For the purposes of this section, a return of a surviving spouse, as defined in section 2(a) of the Internal Revenue Code, and a head of household, as defined in section 2(b) of the Internal Revenue Code, shall be treated as a joint return and the tax imposed shall be twice the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

(c) In the case of a trust that is an electing small business trust as defined in section 1361 of the Internal Revenue Code, the special rules for taxation of such trusts contained in section 641 of the Internal Revenue Code shall apply except that the maximum individual rate provided in this section shall apply in computing tax due under this chapter.

(d) The state tax commission shall compute and publish Idaho income tax liability for taxpayers at the midpoint of each bracket of Idaho taxable income in fifty dollar ($50.00) steps to fifty thousand dollars ($50,000), rounding such calculations to the nearest dollar. Taxpayers having income within such brackets shall file returns based upon and pay taxes according to the schedule thus established. The state tax commission shall promulgate rules defining the conditions upon which such returns shall be filed.

SECTION 4. That Section 63-3029E, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029E. DEFINITIONS -- CONSTRUCTION OF TERMS. As used in this section and in section 63-3029F, Idaho Code:

(1) (a) "New employee" means a person ~~from whom~~ subject to Idaho income tax ~~has been~~ withholding whether or not any amounts are required to be withheld, employed by the taxpayer, and covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, during the taxable year for which the credit allowed by section 63-3029F, Idaho Code, is claimed. A person shall be deemed to be so engaged if such person performs duties on:

(i) A regular full-time basis; or

(ii) A part-time basis if such person is customarily performing such duties at least twenty (20) hours per week.

No credit shall be earned unless the new employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(b) The provisions of paragraph (a) of this subsection notwithstanding, no credit shall be allowed for employment of persons by a taxpayer who acquires a business from another taxpayer or who operates in a place of business the same or a substantially identical business as operated by another taxpayer within the prior twelve (12) months, except as the prior taxpayer would have qualified under the provisions of paragraph (c) of this subsection. Employees transferred from a related taxpayer shall not be included in the computation of the credit.

(c) The number of employees during any taxable year for any taxpayer shall be the mathematical average of the number of employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year which qualified under paragraph (a) of this subsection. In the event the business is in operation for less than the entire taxable year, the number of employees of the business for the year shall be the average number actually employed during the months of operation, providing that the qualifications of paragraph (a) of this subsection are met.

(2) "Same or a substantially identical business" means a business in which the products produced or sold, or the activities conducted are

the same in character and use and are produced, sold or conducted in the same manner as, or for the same types of customers as, the products or activities produced, sold or conducted in another business.

SECTION 5. That Section 63-3029F, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029F. SPECIAL CREDIT AVAILABLE -- NEW EMPLOYEES. (1) Any taxpayer shall be allowed a credit, in an amount determined under subsection (2) of this section, against the tax imposed by this chapter, other than the tax imposed by section 63-3082, Idaho Code, for any taxable year during which the taxpayer's employment of new employees, as defined under section 63-3029E(1), Idaho Code, increases above the taxpayer's average employment for either: (a) the prior taxable year, or (b) the average of three (3) prior taxable years, whichever is higher. No credit shall be allowed under this section unless the number of new employees equals or exceeds one (1) person.

(2) The credit authorized in subsection (1) of this section shall be five hundred dollars ($500) per new employee, but the total credit allowed shall not exceed three and one-quarter percent (3.25%) of net income from the taxpayer's corporate, proprietorship, partnership, small business corporation or limited liability company revenue-producing enterprise in which the employment occurred. Additionally, the total amount of this and all other credits allowed under this chapter except for the credits allowed under section~~s 63-3024A, 63-3025B and~~ 63-3029, Idaho Code, ~~taken--during any taxable year~~ shall not exceed ~~forty-five~~ fifty percent (45~~0~~%) of the tax ~~otherwise imposed on~~ liability of the taxpayer. ~~for--the taxable year for which such~~ The tax liability of the taxpayer shall be the tax after deducting the credit ~~is~~ allowed by section 63-3029, Idaho Code.

(3) If the sum of the credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (2) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be a credit carryover to the three (3) succeeding taxable years. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the employment level for which the credit was granted is still maintained.

SECTION 6. That Section 63-3042, Idaho Code, be, and the same is hereby amended to read as follows:

63-3042. EXAMINATION OF BOOKS AND WITNESSES. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax payable under this act or the liability at law or in equity of any person in respect to any tax provided in this act or collecting any such liability, the state tax commission or its duly authorized deputy is authorized--

(a) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(b) To summon the person liable for tax or required to perform the

act, or any officer or employee of such person, or any person having possession, custody or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the commission or its deputy may deem proper, to appear before the commission or its delegate at a time and place named in the summons and to produce such books, papers, records or other data and/or give such testimony, under oath, as may be relevant or material to such inquiry; and taxpayers whose pertinent records are kept outside of the state must bring such records to Idaho for examination by the state tax commission upon request by it or a deputy, or, by agreement with the state tax commission, permit an auditor designated by the state tax commission to visit the place where the records are kept and there audit such records; and

(c) To take such testimony of the person concerned or summoned, under oath, as may be relevant or material to such inquiry.

A summons issued under the provisions of this section may be served by the state tax commission or its deputy or by any other person authorized to serve process under the laws of this state by ~~an attested~~ a copy delivered in and to a person to whom it is directed; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

The time and place of examination pursuant to the provisions of this section shall be such time and place as may be fixed by the state tax commission or its deputy and as are reasonable under the circumstances, provided that in the case of a summons the date fixed for appearance before the state tax commission or its deputy shall not be less than twenty (20) days from the time of service of the summons.

No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2003.

Approved February 10, 2003.

## CHAPTER 11
## (H.B. No. 80)

### AN ACT

RELATING TO THE UNCLAIMED PROPERTY LAW; AMENDING SECTION 14-524, IDAHO CODE, TO PERMIT THE TIME PERIOD WITHIN WHICH THE ADMINISTRATOR OF UNCLAIMED PROPERTY MUST GRANT OR DENY A CLAIM TO BE EXTENDED TO A DATE CERTAIN BY A WRITTEN AGREEMENT OF THE CLAIMANT AND THE ADMINISTRATOR; AND AMENDING SECTION 14-526, IDAHO CODE, TO PROVIDE FOR ADMINISTRATIVE REVIEW OF A DENIED CLAIM UNDER SECTION 63-3045, IDAHO CODE, PRIOR TO A JUDICIAL APPEAL.

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

SECTION 1. That Section 14-524, Idaho Code, be, and the same is hereby amended to read as follows:

14-524. FILING OF CLAIM WITH ADMINISTRATOR. (1) A person, excluding another state, claiming an interest in any property paid or delivered to the administrator, may file a claim on a form prescribed by the administrator and verified by the claimant.

(2) The administrator shall consider each claim within ninety (90) days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The ninety (90) day time period may be extended by the claimant and the administrator upon their written agreement. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds, if it has been sold by the administrator, together with any additional amount required by section 14-521, Idaho Code. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the administrator also shall pay interest at a rate of five percent (5%) a year or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten (10) years after delivery or the date on which payment is made to the owner.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator, would be subject to the provisions of subsection (3) of this section, shall add interest as provided in subsection (3). The added interest must be repaid to the holder by the administrator in the same manner as the principal.

(5) A person claiming an abandoned utility deposit under section 14-508(1), Idaho Code, who is entitled thereto under this section, which was not deposited with the administrator under section 14-508(2), Idaho Code, may file a claim on a form prescribed by the administrator and verified by the claimant. The administrator will forward the claim to the utility company, who shall remit such payment to the claimant upon receipt of the claim.

SECTION 2. That Section 14-526, Idaho Code, be, and the same is hereby amended to read as follows:

14-526. ACTION TO ESTABLISH CLAIM. A person aggrieved by a ~~decision of~~ denial of a claim by the administrator or whose claim has not been acted upon within ~~ninety (90) days after its filing~~ the time provided in subsection (2) of section 14-524, Idaho Code, may obtain ~~review~~ a redetermination as provided in section ~~63-3049(a) and (c)~~ 63-3045, Idaho Code, by filing a written protest with the administrator within sixty-

three (63) days after the denial was mailed or after the time period for issuing the denial has lapsed. Judicial review of any redetermination shall be as provided in section 63-3049, Idaho Code.

Approved February 10, 2003.

## CHAPTER 12
## (S.B. No. 1022)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 2003; PROVIDING TRANSFERS TO THE PEST CONTROL DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 165, Laws of 2002, there is hereby appropriated to the Department of Lands 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, 2002, through June 30, 2003:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| I. FOREST RESOURCES MANAGEMENT: | | | |
| FROM: | | | |
| Pest Control Deficiency Fund | $148,900 | $ 496,100 | $ 645,000 |
| Federal Grant Fund | | 600,000 | 600,000 |
| TOTAL | $148,900 | $1,096,100 | $1,245,000 |

SECTION 2. The State Controller shall make cash transfers from the General Fund to the Pest Control Deficiency Fund, at the request of the Director of the Department of Lands, not to exceed $485,000 for the period July 1, 2002, through June 30, 2003.

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 11, 2003.

## CHAPTER 13
## (H.B. No. 6)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-706, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF CERTAIN LIVE FISH TRANSPORTATION PERMITS WITHOUT FEE.

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

SECTION 1. 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 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. No fee shall be charged for a department benefit permit.

Approved February 12, 2003.

## CHAPTER 14
## (H.B. No. 31)

AN ACT

RELATING TO THE IDAHO ACCOUNTANCY ACT; AMENDING SECTION 54-206, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 54-210, IDAHO CODE, TO REVISE PROVISIONS RELATING TO QUALIFICATIONS FOR RECIPROCITY, TO REQUIRE CERTAIN APPLICANTS FOR CERTIFICATE AND LICENSE TO COMPLETE A

BOARD APPROVED ETHICS EXAMINATION AND TO REQUIRE HOLDERS OF DESIGNATIONS ISSUED BY FOREIGN COUNTRIES TO BE OF GOOD MORAL CHARACTER; AMENDING SECTION 54-211, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE REFERENCE TO COMPILATION REPORTS, TO PROVIDE FOR NONRENEWAL OF LICENSES, TO REVISE PROVISIONS RELATING TO REINSTATEMENT OF LICENSES, TO PROVIDE FOR REENTRY INTO ACTIVE STATUS AND TO REQUIRE DISCLOSURE BY APPLICANTS AND LICENSEES OF DISCIPLINARY ACTIONS AND CONVICTIONS OF OR GUILTY PLEAS TO A FELONY; AMENDING SECTION 54-214, IDAHO CODE, TO PROVIDE REFERENCE TO COMPILATION REPORTS, TO MAKE A GRAMMATICAL CHANGE AND TO REVISE REQUIREMENTS RELATING TO FIRM PEER REVIEWS; AMENDING SECTION 54-219, IDAHO CODE, TO REVISE GROUNDS FOR WHICH THE BOARD MAY ACT UPON LICENSES TO INCLUDE CONVICTIONS UNDER THE LAWS OF ANY STATE OR COUNTRY AND TO REMOVE LANGUAGE RELATING TO NONPAYMENT OF ANNUAL LICENSE FEES; AMENDING SECTION 54-220, IDAHO CODE, TO PROVIDE REFERENCE TO COMPILATION REPORTS; AMENDING SECTION 54-226, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 54-227, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SUBSTANTIAL EQUIVALENCY.

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

SECTION 1. That Section 54-206, Idaho Code, be, and the same is hereby amended to read as follows:

54-206. DEFINITIONS. As used in this section:

(1) "AICPA" means the American institute of certified public accountants.

(2) "Applicant" means any person having the requisite qualifications who makes application to the board for examination, or for initial issuance or renewal or reinstatement of a license under the provisions of this chapter.

(3) "Attest" means providing the following financial statement services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be performed in accordance with the statements on standards for accounting and review services; and

(c) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements.

(4) "Board" means the Idaho state board of accountancy.

(5) "Certificate" means that document issued by the board upon original approval of licensure. The original certificate does not constitute licensure and a person cannot represent himself or herself as a licensee unless a current and valid annual license has been issued by the board.

(6) "Certified public accountant" means any person who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, or an equivalent provision of the laws of another state designating said person as a certified public accountant.

(7) "Client" means the person or entity that agrees with a licensee or licensee's employer to receive any professional services with or without compensation and shall include all affiliates and related enti-

ties in the financial statements of an attest or compilation engagement.

(8) "Compilation" means a service performed in accordance with statements on standards for accounting and review services which presents, in the form of historical or prospective financial statements, information that is the representation of management or owners without undertaking to express any assurance on the statements. The term "compilation" does not include financial statements accompanied by the language set forth in section 54-226(3), Idaho Code, (whether used by a licensee or by a person not licensed under this chapter) so long as the financial statements are not accompanied by any other language of assurance or disclaimer.

(9) "Financial statements" means a presentation of historical or prospective financial data, which may include accompanying notes, intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with a comprehensive basis of accounting.

(10) "Firm" means a proprietorship, partnership, professional corporation, professional limited liability company, or any other form of professional organization permitted by Idaho law, registered under the requirements of section 54-214, Idaho Code.

(11) "Good moral character" means lack of a history of dishonest dealings or a felonious act.

(12) "License" means that authorization issued by the board upon original approval and on an annual basis permitting a qualified person to practice as a certified public accountant or licensed public accountant in the state of Idaho.

(13) "Licensed public accountant" or "LPA" means any person who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, designating said person as a licensed public accountant.

(14) "Licensee" means the holder of a current valid license.

(15) "Member" means a person who has been admitted to membership in a firm which is organized as a limited liability company.

(16) "Peer review" means a board approved study, appraisal or review of one (1) or more aspects of the professional work of a licensee or firm that performs attest ~~or compilation~~ services or issues compilation reports, by a person or persons licensed under this chapter or by another state and who are independent of the licensee or firm being reviewed.

(17) "Permit" means a permit to practice as a firm issued under corresponding provisions of the laws of other states.

(18) "Person" means any natural living person.

(19) "Professional services" means services arising out of or related to the specialized knowledge or skills associated with certified public accountants or licensed public accountants.

(20) "Report," when used with reference to financial statements, means an opinion or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term "report" includes

any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or special knowledge or competence.

(21) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam; except that "this state" means the state of Idaho.

(22) "Substantial equivalency" or "substantially equivalent" means a determination by the board that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed the education, examination and experience requirements for CPAs contained in this chapter or that an individual licensee's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements for CPAs contained in this chapter.

SECTION 2. That Section 54-210, Idaho Code, be, and the same is hereby amended to read as follows:

54-210. RECIPROCITY -- TRANSFER OF EXAMINATION GRADES -- FOREIGN RECIPROCITY -- QUALIFICATIONS. (1) A person whose certificate and license have been granted by another state, whose principal place of business is located in this state, shall obtain a license by reciprocity from the board before providing professional services in this state.

(2) (a) An applicant for certificate and license by reciprocity to practice as a certified public accountant in Idaho must:

(~~a~~i) Be eighteen (18) years of age or older;

(~~b~~ii) Be of good moral character;

(~~c~~iii) Have obtained the education and passed the uniform CPA examination with standards no less than those required in Idaho~~;--The--requirements--of-education-and-the-Idaho-standards relating-to-passage-of-the-uniform--CPA--examination--shall--be waived--if-the-applicant-has-no-less-than-four-(4)-years'-experience-as-determined-by-the-board;-provided-that-the-experience or-its-equivalent-was-obtained-after-original--licensure--as--a certified-public-accountant-and-within-the-ten-(10)-years-immediately-preceding-the-reciprocity-application~~; and

(~~d~~iv) Have completed the necessary experience, continuing professional education, and board approved ethics examination ~~required~~ for issuance of a license in Idaho and hold a current license in good standing in another licensing jurisdiction.

(b) The requirements of subsection (2)(a) of this section relating to education, Idaho standards relating to passage of the uniform CPA examination, experience, continuing professional education and ethics examination shall be waived if the applicant has no less than four (4) years' experience as determined by the board, provided that the experience or its equivalent was obtained after original licensure as a certified public accountant and within the ten (10) years immediately preceding the reciprocity application.

(3) (a) A person holding an inactive or retired certificate and license granted by another state, whose principal place of business is located in this state, may apply for an equivalent license by

reciprocity from the board, provided the applicant must:

(i) Meet the requirements for an inactive license as set forth in section 54-211(1)(c), Idaho Code, or the requirements for a retired license as set forth in section 54-211(1)(d), Idaho Code;

(ii) Be of good moral character;

(iii) Have obtained the education and passed the uniform CPA examination with standards no less than those required in Idaho; and

(iv) Have completed the necessary experience and board approved ethics examination required for issuance of a license in Idaho.

(b) The requirements of subsection (3)(a) of this section relating to education, Idaho standards relating to passage of the uniform CPA examination, experience and ethics examination shall be waived if the applicant has no less than four (4) years' experience as determined by the board, provided that the experience or its equivalent was obtained after original licensure as a certified public accountant and within the ten (10) years immediately preceding the reciprocity application.

(4) An applicant for certificate and license to practice as a certified public accountant in Idaho by transfer of examination grades from another licensing jurisdiction must:

(a) Be eighteen (18) years of age or older;

(b) Be of good moral character;

(c) Have obtained the necessary education and have passed the uniform CPA examination with standards no less than those prescribed by the board's rules for examination candidates in Idaho; and

(d) Possess experience qualifications as required under section 54-209, Idaho Code, and complete a board approved ethics examination required for issuance of a license in Idaho.

(~~4~~5) The board shall issue a certificate and license to a holder of a substantially equivalent designation issued by a foreign country, provided that:

(a) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate and license issued by this state to obtain such foreign authority's comparable designation; and

(b) The designation:

(i) Was duly issued by an authority of a foreign country which regulates the practice of public accountancy and has not expired or been revoked or suspended;

(ii) Entitles the holder to issue reports upon financial statements; and

(iii) Was issued upon the basis of substantially equivalent educational, examination and experience requirements established by the foreign authority or by law; and

(c) The applicant:

(i) Received the designation, based on educational and examination standards substantially equivalent to those in effect in this state, at the time the foreign designation was granted;

(ii) Completed an experience requirement, substantially equivalent to the requirements set out in this chapter, in the jurisdiction which granted the foreign designation or has com-

pleted four (4) years of professional experience in this state; or meets equivalent requirements prescribed by the board by rule, within the ten (10) years immediately preceding the application; ~~and~~

(iii) Passed a uniform qualifying examination in national standards acceptable to the board; and

(iv) Is of good moral character.

SECTION 3. That Section 54-211, Idaho Code, be, and the same is hereby amended to read as follows:

54-211. LICENSES -- LICENSING PERIOD -- NONRENEWAL -- REINSTATEMENT -- INACTIVE LICENSES -- RETIREMENT -- FEES. (1) The board shall issue ~~original~~ initial certificates and licenses, and renewal and reinstatement licenses to practice as a certified public accountant, and renewal and reinstatement licenses to practice as a licensed public accountant to persons who have qualified therefor in accordance with the provisions of this chapter and the rules of the board. A certificate and license, once issued, shall continue in effect so long as the holder thereof complies with the provisions of this chapter and the rules and orders of the board.

(a) ~~Original~~ Initial. The board shall collect an ~~original~~ initial license fee upon board approval of an ~~original~~ initial license to practice as a certified public accountant in the state of Idaho as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Those individuals meeting the requirements for ~~original~~ initial licensure in Idaho, pursuant to the provisions of this chapter and the rules of the board, shall be issued a license effective for no more than twelve (12) months. The license shall then be subject to annual renewal.

(b) Renewal. The board shall collect an annual license fee from all licensees each year as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Those persons meeting the requirements of this subsection for license renewal shall be issued a license effective for a period of one (1) year after its issuance. Requirements include:

(i) Good moral character;

(ii) Completion of continuing professional education as specified by the board's rules;

(iii) Identification, in the renewal application, of the firm with which the licensee is affiliated; and

(iv) Where applicable, verification of satisfactory completion of a peer review program by the firm with which the licensee is affiliated, pursuant to section 54-214, Idaho Code, and the rules prescribed by the board. Any licensee who ~~performs~~ issues compilation ~~services~~ reports for the public other than through a firm must undergo no more frequently than once every three (3) years, a peer review conducted in accordance with rules prescribed by the board, and such review shall include verification that such licensee has met the competency requirements set out in professional standards for such service.

(c) Inactive status. Any licensee in current compliance with the provisions of this chapter who chooses not to perform or offer to perform for the public one (1) or more kinds of attest or compila-

tion services may apply to place his or her license in inactive status. The annual renewal fee for inactive status shall be as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Licensees with inactive status must place the word "inactive" adjacent to their CPA or LPA title on any business card, letterhead or any other document or device when using the title, with the exception of their certificate on which their title appears.

(d) Retired. After a person reaches the age of sixty (60) years, or in the event of a disability preventing continued practice, the certificate of a certified public accountant or licensed public accountant, upon application to the board by the holder, may be placed by the board in retired status. Retired status shall allow the holder to retain the wall certificate and remain on the board's mailing list. The annual renewal fee for retired status shall be as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. Licensees with retired status must place the word "retired" adjacent to their CPA or LPA title on any business card, letterhead or any other document or device when using the title, with the exception of their certificate on which their title appears. An individual who performs or offers to perform for the public attest or compilation services shall not qualify for retired status.

(e) Nonrenewal. A licensee may place the license into lapsed status as prescribed by the rules of the board rather than renew the license. Any license not renewed or placed into lapsed status within thirty (30) days after the expiration of the previous license shall be automatically placed into lapsed status.

(f) Reinstatement. Any certificate and license ~~suspended--for--non-payment--of--the--annual-renewal-fee,-or-a-certificate-in-retired-or inactive~~ placed in lapsed status~~,~~ may be reinstated upon completion of an application supplied by the board along with payment of a reinstatement fee as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board. In addition, the board shall require the applicant to meet the qualifications of subsection (b) of this section. Reinstatement following involuntary suspension shall be governed by the terms of the board's order of involuntary suspension.

(g) Reentry. A license in inactive or retired status may reenter active status upon completion of an application supplied by the board along with payment of a reentry fee as prescribed by the rules of the board. In addition. the board shall require the applicant to meet the qualifications set forth in subsection (1)(b) of this section.

(2) Applicants for initial issuance or reinstatement of licenses under this section shall in their application list all states in which they have applied for or hold a license and list any past disciplinary action against or denial, revocation or suspension of a certificate, license or permit.

(3) Applicants and licensees shall notify the board in writing, within thirty (30) days after its occurrence of:

(a) Any ~~felony~~ charges or convictions of, or guilty pleas to, a felony; or

( ) ~~The-issuance,~~ Any disciplinary action against or the denial,

restriction, revocation or suspension of a certificate, license or permit by another state or by any federal agency.

SECTION 4. That Section 54-214, Idaho Code, be, and the same is hereby amended to read as follows:

54-214. FIRM REGISTRATION -- PEER REVIEW. (1) The board shall register firms that make application and demonstrate their qualifications therefor in accordance with the following subsections of this section or to firms originally licensed in another state that establish an office in this state. A firm must be registered with the board in order to provide attest ~~or compilation~~ services or compilation reports or in order to use the titles "CPAs," "CPA firm," "LPAs" or "LPA firm." Firms must register with the board annually ~~in~~ on such form ~~and~~ between such dates as the board may specify by rule. The board may charge a fee for each registration for initial issuance or renewal of a registration under this section as set forth in section 54-212, Idaho Code, and as prescribed by the rules of the board.

(2) An applicant for initial registration or renewal of a registration to practice under this section shall demonstrate that:

(a) Notwithstanding any other provision of law, a simple majority of the beneficial ownership of the firm belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in this state, and who perform professional services in this state, hold a valid certificate and license issued by this state. Although a firm may include nonlicensee owners the firm and its ownership must comply with rules promulgated by the board.

(b) Any firm may include nonlicensee owners provided that:

(i) The firm designates a licensee of this state, who is responsible for the proper registration of the firm and identifies that individual to the board.

(ii) All nonlicensees are active individual participants in the firm or affiliated entities.

(iii) The firm complies with such other requirements as the board may impose by rule.

(c) Any licensee who is responsible for supervising attest ~~or compilation~~ services or compilation reports or who signs or authorizes someone to sign a report on financial statements on behalf of the firm, shall meet the competency requirements of the professional standards for such services.

(3) Firms registered to practice under this section shall be required to register each office of the firm within this state with the board and to show that all attest and compilation ~~services~~ reports rendered in this state are under the charge of a person holding a valid certificate and license issued by this state or some other state.

(4) A firm registering under this section shall list all states in which it has applied for or holds permits as a firm and list any past denial, revocation or suspension of a permit by any other state. Each firm registered under this section shall notify the board in writing, within thirty (30) days following any change in the identities of partners, officers, shareholders or members whose principal place of business is in this state, any change in the number or location of offices within this state, any change in the identity of the persons in charge

of such offices, and any issuance, denial, revocation or suspension of a permit by any other state.

(5) Firms which fall out of compliance with the provisions of this section due to changes in firm ownership or personnel, after registration, shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as defined by the board may result in penalties as prescribed by board rule.

(6) As a condition of registration renewal under this section, the board, by rule, shall require firms to ~~undergo, no more frequently than once every three (3) years, peer reviews conducted~~ comply with peer review requirements as specified by rule. Such review shall include a verification that individuals in the firm who are responsible for supervising attest and compilation ~~services~~ reports and who sign or authorize someone to sign a report on financial statements on the behalf of the firm meet the competency requirements set out in the professional standards for such services. The rules concerning peer review shall require:

(a) Peer reviews to be subject to oversight by an oversight body established by board rule which will periodically report to the board on the effectiveness of the review program under its charge, and provide to the board a listing of firms that have participated in a peer review program that is satisfactory to the board; and

(b) The peer review processes to be operated and documents maintained in a manner designed to preserve confidentiality, and that neither the board nor any third party, other than the oversight body, shall have access to documents furnished or generated in the course of the review.

(7) Information discovered solely as a result of a firm's peer review shall not be grounds for suspension or revocation of a license.

SECTION 5. That Section 54-219, Idaho Code, be, and the same is hereby amended to read as follows:

54-219. LICENSE -- RESTRICTION, REVOCATION, SUSPENSION OR DENIAL -- CAUSES -- COST RECOVERY -- ADMINISTRATIVE PENALTIES. (1) After notice and opportunity for hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, for cause shown, the board may revoke, suspend, refuse to renew, administratively penalize, reprimand, restrict or place on probation the holder of a certificate or license, or refuse to issue any certificate or any license to an applicant, for any one (1) of the following causes:

(a) Any false statement with the intent to mislead or deceive the board or its members in connection with any application; or, cheating or any attempt to cheat in an examination.

(b) Fraud or deceit in obtaining or renewing a certificate or license to practice as a certified public accountant or licensed public accountant under the provisions of this chapter.

(c) Dishonesty, fraud or gross negligence in the performance of professional services as a licensee or individual granted privileges under section 54-227, Idaho Code, or in the filing or failure to file his own income tax returns.

(d) Violation of any provision of this chapter, or any rule adopted by the board under authority granted by this chapter, or an order of

the board directed specifically to the licensee.

(e) Conviction of or a guilty plea to a felony under the laws of any state or ~~of the United States~~ country.

(f) Conviction of or a guilty plea to any crime involving moral turpitude, an element of which is dishonesty or fraud, under the laws of any state or ~~of the United States~~ country.

(g) Representing oneself as a certified public accountant or licensed public accountant during any period in which the license of the person so practicing has been suspended or revoked by the board.

(h) Cancellation, revocation, suspension or refusal to renew or grant a license or privileges under section 54-227, Idaho Code, for disciplinary reasons by any other state for any cause.

(i) Practicing as a certified public accountant or licensed public accountant under a false or assumed name; provided, however, this subsection shall have no application to practicing as a certified public accountant or licensed public accountant under the name of a firm, when such style or name is in conformity with a type or form approved by the rules of the board.

(j) Habitual use of drugs or intoxicants to such a degree as to render the licensee unreliable and unfit to practice as a certified public accountant or licensed public accountant.

(k) Suspension or revocation of the right to practice before any agency of the United States government or of the state of Idaho, for any cause other than failure to pay a registration or similar fee.

(l) Having been declared mentally incompetent by a court of competent jurisdiction; provided, however, that when a person's license shall have been revoked or suspended for this cause, such license shall be reinstated by the board when said disability is judicially removed.

(m) ~~Nonpayment of the annual license fee required by this chapter, said nonpayment having continued for a period of thirty (30) days after the expiration of the previous license.~~

~~(n)~~ Representing oneself as qualified or authorized to practice as a certified public accountant or licensed public accountant in this state without holding a current, valid, unrevoked and unsuspended certificate and license or privileges under section 54-227, Idaho Code.

(~~o~~n) Performance of any fraudulent act while holding a certificate, license, permit or privileges under this chapter.

(~~p~~o) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under section 54-227, Idaho Code.

(2) The expenses, including attorney's fees, incurred by the board for any or all proceedings initiated against a person for violation of any of the provisions of this chapter may be charged against such person by the board, upon the finding of a violation of this chapter, in addition to any administrative penalties which may be levied by the board against such person. Administrative penalties levied by the board shall not exceed two thousand five hundred dollars ($2,500) per violation.

(3) In lieu of or in addition to any remedy specifically provided, the board may require of a licensee or a firm:

(a) A peer review conducted in such fashion as the board may specify;

(b) Preissuance review;

(c) Satisfactory completion of such continuing professional education programs or examinations as the board may specify; and

(d) Other similar remedies.

(4) In any action brought under the provisions of this chapter, evidence of the commission of a single act prohibited in this chapter shall be sufficient to justify a suspension, revocation, fine, administrative penalty, restriction, reprimand, injunction, restraining order, conviction or any other remedy authorized in this chapter. Evidence of a general course of conduct shall not be required.

SECTION 6. That Section 54-220, Idaho Code, be, and the same is hereby amended to read as follows:

54-220. USE OF TITLE -- VALID LICENSE TO PRACTICE. (1) No person shall assume or use the title or designation "certified public accountant" or "licensed public accountant" or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate that such person is a certified public accountant or licensed public accountant unless such person holds a license or is granted privileges as a certified public accountant or licensed public accountant pursuant to chapter 2, title 54, Idaho Code.

(2) No person or firm not licensed, granted privileges or registered pursuant to this chapter shall assume or use the title or designation "certified accountant," "chartered accountant," "public accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant," or other titles or designation likely to be confused with the titles "certified public accountant" or "licensed public accountant" or use any of the abbreviations "CA," "LA," "LPA," "CPA," "RA," "AA," or similar abbreviation likely to be confused with the abbreviations "CPA" or "LPA." The title "enrolled agent" or "EA" may only be used by individuals so designated by the internal revenue service. Notwithstanding the provisions of this section, the board may adopt rules authorizing and limiting the use of specific titles and designations granted by recognized professional societies or associations.

(3) No person, proprietorship, partnership or corporation not licensed or registered pursuant to this chapter shall assume or use any title or designation that includes the words "accountant," "auditor" or "accounting" in connection with any other language, including the language of a report, that implies that such person, proprietorship, partnership or corporation is so licensed or registered or has special competence as an accountant or auditor; provided however, that this subsection does not prohibit any officer, partner, member or employee of any organization from affixing his signature to any statement in reference to the financial affairs of such organization with any wording designating the position, title or office that he holds therein nor prohibit any act of a public official or employee in the performance of his duties as such.

(4) No business entity shall provide attest ~~or compilation~~ services <u>or compilation reports</u> or assume or use the title "certified public <u>accountants"</u> or "licensed public accountants" or the abbreviation "CPAs," "LPAs" or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate that such business entity is a firm unless: (a) the business entity is a firm registered pursuant to this chapter, and (b) ownership of the firm is in accord

with this chapter and rules promulgated by the board.

SECTION 7. That Section 54-226, Idaho Code, be, and the same is hereby amended to read as follows:

54-226. INAPPLICABILITY OF CHAPTER. (1) This chapter shall not be construed to prevent any person from rendering tax services, management advisory or consulting services, or from preparing financial statements without the expression of an opinion or an assurance.

(2) This chapter shall not be construed to prevent any person from stating that he has prepared, assembled or drafted a financial statement, provided he does not use any additional language which comprises an assurance.

(3) The prohibitions of section 54-221, Idaho Code, and the other provisions of this chapter shall not be construed to preclude the use of the following language by any person: "I (We) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them."

SECTION 8. That Section 54-227, Idaho Code, be, and the same is hereby amended to read as follows:

54-227. SUBSTANTIAL EQUIVALENCY. (1) A person whose principal place of business is not in this state and who has an ~~valid~~ active certificate and license as a certified public accountant from any state which the board has determined to be substantially equivalent to this chapter shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license. However, such persons shall notify the board of their intent to enter the state under this provision. The board may charge a fee for such notification as set forth in section 54-212, Idaho Code, and as prescribed by rules of the board.

(2) A person whose principal place of business is not in this state and who has an ~~valid~~ active certificate and license as a certified public accountant from any state which the board has not determined to be substantially equivalent to this chapter shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license only if such person demonstrates that his or her qualifications are substantially equivalent to the licensure requirements of this chapter. The requirement to demonstrate substantially equivalent qualifications shall be waived if the applicant has no less than four (4) years' experience as determined by the board, provided that the experience or its equivalent was obtained after original licensure as a certified public accountant and within the ten (10) years immediately preceding the practice privilege application. Such persons shall notify the board of their intent to enter the state under this provision in the manner provided by rules of the board. The board may charge a fee for such notification as set forth in section 54-212, Idaho

Code, and as prescribed by rules of the board.

(3) Licensees of other states exercising the privilege afforded under this section hereby consent, as a condition of the grant of this privilege:

(a) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) To comply with this chapter and the board's rules; and

(c) To the appointment of the state boards which issued their licenses as their agents upon whom process may be served in any action or proceeding by this state's board against such licensees.

(4) A licensee of this state offering or rendering services or using the CPA title in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in another state. Notwithstanding the board's enforcement authority granted by this chapter, the board shall investigate any complaint made by the board of accountancy of another state.

Approved February 12, 2003.

## CHAPTER 15
## (H.B. No. 53)

### AN ACT

RELATING TO PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; AMENDING SECTION 54-1212, IDAHO CODE, TO REVISE REQUIREMENTS FOR EXAMINATIONS; AMENDING SECTION 54-1212, IDAHO CODE, AS AMENDED BY SECTION 1, CHAPTER 125, LAWS OF 2002, TO REVISE REQUIREMENTS FOR EXAMINATIONS; AND AMENDING SECTION 54-1219, IDAHO CODE, TO CLARIFY THAT THE LICENSING BOARD MAY EVALUATE CREDENTIALS OF APPLICANTS FOR EQUIVALENCY LICENSURE.

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

SECTION 1. That Section 54-1212, Idaho Code, be, and the same is hereby amended to read as follows:

54-1212. GENERAL REQUIREMENTS FOR EXAMINATION AND LICENSE. Except as herein otherwise expressly provided, no license as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, shall be issued until an applicant has successfully passed an examination given by or under the supervision of the board, nor shall a license as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, be issued to an applicant having habits or character that would justify revocation or suspension of certificate, as provided in section 54-1220, Idaho Code. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for assignment to an examination:

(1) As a professional engineer:

(a) Graduation from an approved engineering curriculum of four (4) years or more in a school or college approved by the board as being

of satisfactory standing, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record of an additional four (4) years or more of progressive experience in engineering work of a grade and character satisfactory to the board, and indicating that the applicant is competent to practice professional engineering; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board, and e~~E~~vidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, ~~graduation--with a bachelor degree in a related science from a school or college approved by the board;~~ passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record of ~~eight~~ an additional four (8~~4~~) years or more of progressive experience in engineering work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional engineering.

(2) As a professional land surveyor:

(a) Graduation from an approved surveying curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing, passage of an examination on the fundamentals of land surveying acceptable to the board, and a specific record of an additional four (4) years or more of progressive combined office and field experience in land surveying work, ~~with--a minimum of two (2) years of progressive experience in land surveying work~~ of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional land surveying; or

(b) At least sixty (60) semester hours of college level academic education beyond high school, with a minimum of fifteen (15) credits in land surveying, engineering, mathematics or related science, passage of an examination on the fundamentals of land surveying acceptable to the board, and a specific record of an additional six (6) years of progressive combined office and field experience in land surveying work~~; with a minimum of two (2) years of progressive experience--in land surveying work~~ of a grade and character satisfactory to the board and indicating that the applicant is competent to practice land surveying; or

(c) Evidence that the applicant possesses knowledge and skill, satisfactory to the board, similar to that attained upon completion of an approved college level academic curriculum, passage of an examination on the fundamentals of land surveying acceptable to the board, and evidence of a specific record of ~~at least~~ an additional eight (8) years of progressive combined office and field experience in land surveying work ~~with a minimum of three (3) years of progressive experience in land surveying work~~ of a grade and character satisfactory to the board and indicating that the applicant is competent to practice land surveying.

(3) As an engineer-in-training:

(a) Graduation from or in the last two (2) semesters of an approved engineering curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to enroll as an engineer-in-training; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board as being of satisfactory standing, and eEvidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, ~~graduation with a bachelor degree in a related science from a school or college approved by the board, and a specific record of one (1) year or more of progressive experience in engineering work of a character satisfactory to the board~~ and indicating that the applicant is competent to be enrolled as an engineer-in-training.

(c) In the event the applicant qualifies for assignment to the examination during the last two (2) semesters of college under the provisions of section 54-1212(3)(a), Idaho Code, and a passing grade is attained, a certificate will be issued only after the applicant graduates.

(4) As a land surveyor-in-training:

(a) Graduation from, or in the last two (2) semesters of, an approved surveying curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to be enrolled as a land surveyor-in-training; or

(b) At least sixty (60) semester hours of college level academic education beyond high school, with a minimum of fifteen (15) credits in land surveying, engineering, mathematics or related science, and in addition, a specific record of three (3) years or more of progressive combined office and field experience in land surveying work of a grade and character satisfactory to the board that the applicant is competent to be enrolled as a land surveyor-in-training; or

(c) Possesses knowledge and skill, satisfactory to the board, similar to that attained upon completion of an approved college level academic curriculum and evidence of a specific record of at least four (4) years experience of progressive combined office and field experience of a grade and character satisfactory to the board that the applicant is competent to be enrolled as a land surveyor-in-training.

In counting years of experience for assignment to the professional engineer or professional land surveyor examination, the board may, at its discretion, give credit, not in excess of one (1) year, for satisfactory graduate study.

In considering the combined education and experience qualifications of applicants, the board shall consider engineering teaching, land surveying teaching, each year of satisfactory completion of undergraduate college education, advanced degrees in engineering and advanced degrees in land surveying in establishing the applicants' minimum composite knowledge and skill.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent, shall not be deemed to be the practice of engineering, but if such experience, in the opinion of the board, has involved responsible supervision of a character that will tend to expand the engineering knowledge and skill of the applicant the board may in its discretion give such credit therefor as it may deem proper.

Any person having the necessary qualifications prescribed in this chapter to entitle him to registration shall be eligible for such regis-

tration although he may not be practicing his profession at the time of making his application.

SECTION 2. That Section 54-1212, Idaho Code, as amended by Section 1, Chapter 125, Laws of 2002, be, and the same is hereby amended to read as follows:

54-1212. GENERAL REQUIREMENTS FOR EXAMINATION AND LICENSE. Except as herein otherwise expressly provided, no license as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, shall be issued until an applicant has successfully passed an examination given by or under the supervision of the board, nor shall a license as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, be issued to an applicant having habits or character that would justify revocation or suspension of certificate, as provided in section 54-1220, Idaho Code. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for assignment to an examination:

(1) As a professional engineer:

(a) Graduation from an approved engineering curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record of an additional four (4) years or more of progressive experience in engineering work of a grade and character satisfactory to the board, and indicating that the applicant is competent to practice professional engineering; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board, and e~~E~~vidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, ~~graduation--with-a-bachelor--degree in-a-related-science-from-a-school-or-college-approved-by-the-board,~~ passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record of ~~eight~~ four (8~~4~~) years or more of progressive experience in engineering work of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional engineering.

(2) As a professional land surveyor:

(a) Graduation from an approved surveying curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing, passage of an examination on the fundamentals of land surveying acceptable to the board, and a specific record of an additional four (4) years or more of progressive combined office and field experience in land surveying work~~,-with-a minimum-of-two-(2)-years-of-progressive-experience-in-land-surveying work~~ of a grade and character satisfactory to the board and indicating that the applicant is competent to practice professional land surveying; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board as being of satisfactory standing, and e~~E~~vidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through

graduation from an approved four (4) year surveying curriculum, ~~graduation with a bachelor degree in a related science from a school or college approved by the board;~~ passage of an examination on the fundamentals of land surveying acceptable to the board, and a specific record of ~~eight~~ an additional four (~~8~~4) years or more of progressive ~~experience in surveying work, constituting six (6) years of~~ combined office and field experience in land surveying work~~, with a minimum of two (2) years of progressive experience in land surveying work~~ of a grade and character satisfactory to the board and indicating that the applicant is competent to practice land surveying.

(3) As an engineer-in-training:

(a) Graduation from or in the last two (2) semesters of an approved engineering curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to enroll as an engineer-in-training; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board, and e~~E~~vidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, ~~graduation with a bachelor degree in a related science from a school or college approved by the board; and a specific record of one (1) year or more of progressive experience in engineering work of a character satisfactory to the board~~ and indicating that the applicant is competent to be enrolled as an engineer-in-training.

(c) In the event the applicant qualifies for assignment to the examination during the last two (2) semesters of college under the provisions of section 54-1212(3)(a), Idaho Code, and a passing grade is attained, a certificate will be issued only after the applicant graduates.

(4) As a land surveyor-in-training:

(a) Graduation from, or in the last two (2) semesters of, an approved surveying curriculum of four (4) years or more in a school or college approved by the board as being of satisfactory standing and indicating that the applicant is competent to be enrolled as a land surveyor-in-training; or

(b) Graduation with a bachelor's degree in a related science from a school or college approved by the board, e~~E~~vidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum, ~~graduation with a bachelor degree in a related science from a school or college approved by the board; and in addition, a specific record of one (1) year or more of combined office and field experience in land surveying work of a character satisfactory to the board~~ and indicating that the applicant is competent to be enrolled as a land surveyor-in-training.

(c) In the event the applicant qualifies for assignment to the examination during the last two (2) semesters of college under the provisions of subsection (4)(a) of this section, and attains a passing grade, a certificate shall be issued only after the applicant graduates.

In counting years of experience for assignment to the professional engineer or professional land surveyor examination, the board may, at

its discretion, give credit, not in excess of one (1) year, for satisfactory graduate study.

In considering the combined education and experience qualifications of applicants, the board shall consider engineering teaching, land surveying teaching, each year of satisfactory completion of undergraduate college education, advanced degrees in engineering and advanced degrees in land surveying in establishing the applicants' minimum composite knowledge and skill.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent, shall not be deemed to be the practice of engineering, but if such experience, in the opinion of the board, has involved responsible supervision of a character that will tend to expand the engineering knowledge and skill of the applicant the board may in its discretion give such credit therefor as it may deem proper.

Any person having the necessary qualifications prescribed in this chapter to entitle him to registration shall be eligible for such registration although he may not be practicing his profession at the time of making his application.

SECTION 3. That Section 54-1219, Idaho Code, be, and the same is hereby amended to read as follows:

54-1219. COMITY CERTIFICATION -- FEE. The board, upon application therefor and the payment of a fee of not to exceed a maximum of one hundred fifty dollars ($150), may issue a certificate of registration as a professional engineer or professional land surveyor to any person who holds a certificate of registration issued to the applicant by the proper authority of any state, territory or possession of the United States, the District of Columbia, or of a foreign country, provided that, in the opinion of the board, the applicant possesses the education, experience and examination credentials, or their equivalents, that were specified in the applicable registration chapter in effect in this state at the time such certificate was issued, provided that a professional land surveyor applicant must successfully pass a land surveying examination as prepared and administered by the board, and provided such state, territory, possession or country will license or issue certificates of registration, without examination and upon substantially the same condition, to applicants holding licenses or certificates of registration issued by the board under this chapter.

Approved February 12, 2003.

## CHAPTER 16
## (H.B. No. 54)

### AN ACT

RELATING TO IDAHO CODE CODIFIER CORRECTIONS; AMENDING SECTION 9-340C, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION AND TO MAKE A TECHNICAL CORRECTION; AMENDING THE HEADING FOR CHAPTER 51, TITLE 22, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 365, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-5101, IDAHO CODE, AS ADDED BY

SECTION 1, CHAPTER 365, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-5102, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 365, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-5103, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 365, LAWS OF 2002, TO REDESIGNATE THE SECTION AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 22-5104, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 365, LAWS OF 2002, TO REDESIGNATE THE SECTION AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 22-5105, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 365, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 22-5106, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 365, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-6303, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-8008, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS; AMENDING SECTION 49-420C, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 254, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 49-420C, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 226, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 54-2004, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-301A, IDAHO CODE, TO PROVIDE TECHNICAL CORRECTIONS; AMENDING SECTION 63-602FF, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 162, LAWS OF 2002, TO REDESIGNATE THE SECTION; AMENDING SECTION 63-3622O, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery

for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency or independent public body corporate and politic pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under section 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

(a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;

(b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;

(c) Mortgage portfolio loan documents;

(d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer's assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-~~4801~~4901, Idaho Code.

(2~~2~~3) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

SECTION 2. That the Heading for Chapter 51, Title 22, Idaho Code, as added by Section 1, Chapter 365, Laws of 2002, be, and the same is hereby amended to read as follows:

CHAPTER 5~~1~~2
CARBON SEQUESTRATION ADVISORY COMMITTEE

SECTION 3. That Section 22-5101, Idaho Code, as added by Section 1, Chapter 365, Laws of 2002, be, and the same is hereby amended to read as follows:

22-~~5101~~5201. LEGISLATIVE INTENT. Increasing levels of carbon dioxide and other greenhouse gases in the atmosphere have led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. Such measures may potentially include the establishment of systems of trading in credits for adoption of practices, technologies or other measures which decrease net emissions of carbon dioxide. Improved agricultural and timber production methods, soil and forest conservation practices and other methods of stewardship of soil and other land resources have great potential to increase carbon sequestration on agricultural and private forest lands and help offset carbon dioxide emissions from other sectors of the economy. It is in the interest of agricultural producers, nonindustrial private forest landowners and the public in general that

the soil conservation commission document and quantify carbon sequestration and greenhouse emissions reductions associated with agricultural and forestry practices, management systems and land uses occurring on cropland, forest land and rangeland in Idaho. It is the intent of the legislature that efforts to quantify and verify carbon sequestration on agricultural and forest lands will enhance the ability of the state's agricultural and nonindustrial private forest landowners to participate in any system of carbon sequestration marketing or trading.

SECTION 4. That Section 22-5102, Idaho Code, as added by Section 1, Chapter 365, Laws of 2002, be, and the same is hereby amended to read as follows:

22-~~5102~~5202. CARBON SEQUESTRATION ADVISORY COMMITTEE CREATED -- MEMBERSHIP -- COMPENSATION -- ADMINISTRATIVE ASSISTANCE. (1) The carbon sequestration advisory committee is hereby created. The committee shall consist of the following sixteen (16) members, to be appointed by and serve at the pleasure of the governor:

(a) The chairman of the soil conservation commission or his designee;

(b) The director of the department of agriculture or his designee;

(c) The director of the department of environmental quality or his designee;

(d) The director of the department of lands or his designee;

(e) One (1) member representing the University of Idaho college of agriculture;

(f) One (1) member representing an entity which generates electrical energy;

(g) Two (2) members who are producers of field crops, at least one (1) of whom actively employs a minimum tillage management system in his farming operation;

(h) Two (2) members who are producers of livestock, at least one (1) of whom is actively involved in implementing a rangeland improvement plan;

(i) One (1) member with expertise in carbon sequestration marketing or trading;

(j) One (1) member representing soil conservation districts, as defined in section 22-2717, Idaho Code;

(k) One (1) member representing the biofuels industry;

(l) One (1) member representing the transportation industry;

(m) One (1) member representing an environmental protection or conservation organization; and

(n) One (1) member representing nonindustrial private forest landowners.

(2) Members of the committee shall be compensated as provided in section 59-509(b), Idaho Code.

(3) The soil conservation commission shall assist the committee with administrative support as reasonably requested by the committee.

SECTION 5. That Section 22-5103, Idaho Code, as added by Section 1, Chapter 365, Laws of 2002, be, and the same is hereby amended to read as follows:

22-~~5103~~5203. POWERS AND DUTIES OF THE CARBON SEQUESTRATION ADVISORY COMMITTEE. The carbon sequestration advisory committee may:

(1) Advise and assist the chairman of the soil conservation commission in preparing the reports required by this chapter and in conducting the assessment pursuant to section 22-~~5105~~5205, Idaho Code;

(2) Recommend policies or programs to enhance the ability of Idaho agricultural and nonindustrial private forest landowners to participate in systems of carbon trading. Such recommendations shall include potential policies or programs designed to optimize economic benefits to agricultural producers and nonindustrial private forest landowners participating in carbon trading transactions. Such policies or programs may include, but are not limited to, identifying existing or the potential of creating nonprofit organizations or other public or private entities capable of serving as assemblers of carbon credits or as intermediaries on behalf of producers in carbon trading systems;

(3) Encourage the production of educational and advisory materials regarding carbon sequestration on agricultural and forest lands and participation in systems of carbon or greenhouse emissions trading;

(4) Identify and recommend areas of research needed to better understand and quantify the processes of carbon sequestration on agricultural and forest lands; and

(5) Review the carbon sequestration programs and policies of other states.

SECTION 6. That Section 22-5104, Idaho Code, as added by Section 1, Chapter 365, Laws of 2002, be, and the same is hereby amended to read as follows:

22-~~5104~~5204. REPORTS -- CONTENTS. On or before February 1, 2003, the chairman of the soil conservation commission, in consultation with the ~~carbon se~~questration advisory committee, shall prepare a report to the legislature. The report shall include, but not be limited to:

(1) The potential for development of a system or systems of carbon emissions trading or markets for carbon sequestered on agricultural and forest land;

(2) Agricultural and forestry practices, management systems or land uses which increase stored soil carbon;

(3) Methods for measuring and modeling net carbon sequestration associated with various agricultural and forestry practices, management systems or land uses occurring on agricultural and forest lands and legislation, if any, to define and protect property rights in and attendant to carbon sequestration;

(4) Areas of scientific uncertainty with respect to quantifying and understanding carbon sequestration associated with agricultural and forestry activities; and

(5) Any recommendations of the carbon sequestration advisory committee developed pursuant to section 22-~~5103~~5203, Idaho Code.

SECTION 7. That Section 22-5105, Idaho Code, as added by Section 1, Chapter 365, Laws of 2002, be, and the same is hereby amended to read as follows:

22-~~5105~~5205. POWERS AND DUTIES OF THE CHAIRMAN. (1) In consultation with the carbon sequestration advisory committee, the chairman of the

soil conservation commission shall assess agricultural and private forest lands in Idaho for past carbon sequestration and future carbon sequestration potential. The assessment shall seek to quantify carbon sequestration associated with various agricultural and forestry practices, management systems and land uses occurring on agricultural and forest lands in this state. On or before March 1, 2003, the chairman shall publish a report of the findings. From time to time, the chairman may update the findings as advancements in understanding of the processes of carbon sequestration and new data become available.

(2) The assessment shall be conducted in a manner that shall provide a means for owners of agricultural and forest land to estimate past and future net carbon sequestration resulting from agricultural and forestry practices, conservation measures, management systems and land uses occurring on their property. The chairman of the soil conservation commission may contract and cooperate with the natural resources conservation service of the United States department of agriculture to conduct assessment activities provided for in this section.

(3) The soil conservation commission may apply for and accept grants, gifts or other sources of public and private funds to carry out the purposes of this chapter.

SECTION 8. That Section 22-5106, Idaho Code, as added by Section 1, Chapter 365, Laws of 2002, be, and the same is hereby amended to read as follows:

22-~~5106~~5206. CARBON SEQUESTRATION ASSESSMENT FUND CREATED. There is hereby created and established in the state treasury a fund to be known as the "Carbon Sequestration Assessment Fund," which shall consist of such funds, grants, donations or moneys from other sources. The fund shall be administered by the soil conservation commission in order to carry out the purposes of this chapter. Moneys in the fund may be expended pursuant to appropriation. Any interest earned on the investment of idle moneys in the fund shall be returned to the fund.

SECTION 9. That Section 39-6303, Idaho Code, be, and the same is hereby amended to read as follows:

39-6303. DEFINITIONS. (1) "Domestic violence" means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship.

(2) "Dating relationship," for the purposes of this chapter, is defined as a social relationship of a romantic nature. Factors that the court may consider in making this determination include:

(a) The nature of the relationship;

(b) The length of time the relationship has existed;

(c) The frequency of interaction between the parties; and

(d) The time since termination of the relationship, if applicable.

(3) "Family member" means spouses, former spouses and persons related by blood, adoption or marriage.

(4) "Family dwelling" is any premises in which the petitioner resides.

(5) "Foreign protection order" means a protection order issued by a tribunal of another state.

(5~~6~~) "Household member" means persons who reside or have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(6~~7~~) "Judicial day" means any day upon which court business may be transacted as provided in sections 1-1606 and 1-1607, Idaho Code.

(7~~8~~) "Protection order" means any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued:

(a) Pursuant to this chapter;

(b) In another jurisdiction pursuant to a provision similar to section 39-6306, Idaho Code; or

(c) In any criminal or civil action, as a temporary or final order (other than a support or child custody order), and where the order was issued in a response to a criminal complaint, petition or motion filed by or on behalf of a person seeking protection, and issued after giving notice and an opportunity to respond to the person being restrained.

(8~~9~~) "Respondent" means the individual against whom enforcement of a protection order is sought.

SECTION 10. That Section 39-8008, Idaho Code, be, and the same is hereby amended to read as follows:

39-8008. ADDITIONAL DUTIES OF ADMINISTRATOR -- RIGHT OF INSPECTION -- POSTING. (1) The administrator shall have authority under this section to enter all public school facilities covered by this chapter at reasonable times to inspect, on an annual basis, such facilities for compliance with the Idaho uniform school building safety code; provided however, that inspections shall take into account the age of the school facilities and the appropriate codes that would have been in effect at the time of the construction of such facilities; provided further, that regardless of the codes in effect at the time of construction, imminent safety hazards found in public school facilities shall be identified and the provisions of this chapter relating to such imminent safety hazards shall apply.

(2) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes does not constitute an imminent safety hazard or serious safety hazard, he shall notify in writing the school district superintendent, principal, board member, or other person in charge. Such notification shall state, in bold print, that the citations for violations or nonconformances constitute recommendations only.

(3) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes constitutes a serious safety hazard, he shall immediately issue a written order or notice requiring the school superintendent, principal, board of trustees or other person in charge to eliminate the condition without delay and within the time specified by the administrator in the notice or order, but not exceeding one (1) year.

(4) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes constitutes an imminent

safety hazard, he shall immediately notify the department of administration and request that the department of administration designate a licensed professional to independently evaluate the condition prior to issuing any report under this chapter. The department of administration shall, within two (2) working days, designate a licensed professional to independently evaluate the condition identified. That licensed professional shall, within fourteen (14) days, complete its independent evaluation of the condition identified by the administrator and notify the director of the department of administration of its conclusions. If the administrator determines that the condition constituting an imminent safety hazard could reasonably be expected to cause death or serious physical harm before the evaluation of the department of administration can be completed and before the condition can be eliminated, he shall determine the extent of the area where such condition exists and thereupon shall issue a written order or notice requiring the school district superintendent, principal, board of trustees or other person in charge to cause all persons, except those necessary to eliminate the condition, to be withdrawn from, and to be restrained from entering, such area pending the evaluation of the department of administration. This order shall be withdrawn if the evaluation of the department of administration does not concur with the administrator that the condition constitutes an imminent safety hazard as could reasonably be expected to cause death or serious physical harm before the condition can be eliminated.

(5) If the department of administration agrees with the determination of the administrator that a condition identified constitutes an imminent safety hazard, the department of administration shall, within three (3) working days, so notify the administrator in writing.

(6) Upon receipt of such notification in writing, the administrator shall immediately serve, or cause to be served, written notice or order upon the school district superintendent, principal, board of trustees or other person in charge describing the imminent safety hazard. The administrator shall also notify in writing the state superintendent of public instruction of such imminent safety hazard. Upon receipt of such written notice or order, the school district superintendent, principal, board of trustees, or other person in charge shall require all changes necessary to eliminate the imminent safety hazard be made, without delay and within the time specified by the administrator in the notice or order. If the condition presenting an imminent safety hazard is not corrected within the specified time, or if the administrator determines that the condition constituting such imminent safety hazard could reasonably be expected to cause death or serious physical harm before the condition can be eliminated, if he has not previously done so he shall determine the extent of the area where such condition exists and thereupon shall issue an order or notice requiring the school district superintendent, principal, board member, or other person in charge to cause all persons, except those necessary to eliminate the condition, to be withdrawn from, and to be restrained from entering, such area. The school district superintendent, principal, board member, or other person in charge shall assist the administrator as necessary to post such areas to prevent injury.

(7) If the administrator finds a violation of the Idaho uniform school building safety code that he concludes constitutes a serious safety hazard and issues a written order or notice requiring the conditions to be eliminated in not more than one (1) year, and the school

superintendent, principal, board of trustees, or other person in charge contests the administrator's finding that the condition is a serious safety hazard, then the school superintendent, principal, board of trustees, or other person in charge shall have fourteen (14) days from the date of the issuance of the administrator's written order or notice to request a hearing to initiate a contested case under chapter 52, title 67, Idaho Code. If a hearing is requested, the superintendent of public instruction shall appoint a hearing officer to consider the contested case. All administrative proceedings under this subsection shall be expedited as necessary to assure that serious safety hazards are eliminated as required by this section if the administrator's initial determination that there was a serious safety hazard is confirmed in the contested case proceedings.

(8) The administrator shall monitor the school district's progress in addressing any identified imminent safety hazard or serious safety hazard to ensure that appropriate corrective action was taken. The administrator may extend the time for completing corrective action if he deems necessary.

(9) Upon completion of corrective action and verification of such completion by the division of building safety and the department of administration, the administrator shall provide a report to the state superintendent of public instruction, the local superintendent of schools and the chair of the local school board.

(~~8~~10) Annual inspections of public school facilities conducted by the administrator under the provisions of this section shall be funded pursuant to legislative appropriation.

SECTION 11. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month

period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twenty-four dollars ($24.00).

(3) For all motorcycles and all-terrain vehicles operated upon the public highways the annual fee shall be nine dollars ($9.00). For operation of an all-terrain vehicle or motorcycle off the public highways, the fee specified in section 67-7122, Idaho Code, shall be paid. Registration exemptions provided in section 49-426(2) and (3), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in subsections (2) and (3) of section 49-426, Idaho Code.

(4) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

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

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

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

SECTION 12. That Section 49-420C, Idaho Code, as added by Section 2, Chapter 254, Laws of 2002, be, and the same is hereby amended to read as follows:

49-420~~C~~D. APPALOOSA LICENSE PLATES. (1) On and after January 1, 2003, any person who is the owner of a vehicle registered under the pro-

visions of section 49-402, Idaho Code, or registered under any other provision of law for which the purchase of a special license plate is allowed, may apply for and, upon department approval, receive special Appaloosa license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. Availability of Appaloosa license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer for deposit to the Appaloosa horse club, and shall be used exclusively for the purpose of funding youth horse programs within 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 Appaloosa 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 an Appaloosa shall be acceptable to the Appaloosa horse club, and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Appaloosa horse club.

(5) Sample Appaloosa license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Appaloosa horse club. No additional fee shall be charged for personalizing sample plates.

SECTION 13. That Section 49-420C, Idaho Code, as added by Section 2, Chapter 226, Laws of 2002, be, and the same is hereby amended to read as follows:

49-420~~C~~E. IDAHO CORVETTE PLATES. (1) On and after January 1, 2003, 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 corvette license plates in lieu of regular license plates.

(2) 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 corvette license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(3) In addition to the regular registration fee required in chapter

4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the valley corvettes charitable support fund, and shall be used exclusively for the purpose of supporting charitable activities within the state of Idaho.

(4) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(5) The Idaho corvette 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 valley corvettes of Idaho, 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 valley corvettes of Idaho.

(6) Sample Idaho corvette license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the valley corvettes charitable support fund. Initial costs of the plate program, including costs of plate design, shall be paid by the valley corvettes charitable support fund.

SECTION 14. 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) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(2) "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 act described in subsection (26<u>9</u>) of this section.

(3) "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.

(4) "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.

(5) "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.

(6) "Business name" means the name in which the brokerage company is licensed by the commission.

(7) "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.

(8) "Commission" means the Idaho real estate commission, unless the context clearly indicates a different meaning.

(9) "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.

(10) "Cooperative sale" means a transaction involving two (2) or more brokers.

(11) "Core course" means, in reference to a real estate course offering, a course containing curriculum, identified by the commission, that stresses current trends in real estate practices and changes in laws in real estate related industries. A core course must contain no more than four (4) classroom hours of instruction.

(1~~1~~2) "Council" means the Idaho real estate education council.

(1~~2~~3) "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.

(1~~3~~4) "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.

(1~~4~~5) "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.

(1~~5~~6) "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.

(1~~6~~7) "Executive director" means the executive director of the Idaho real estate commission.

(1~~7~~8) "Expired license" means the status of a license when the license period has expired and the license is not renewed or provisional license granted, and before the license is terminated.

~~(18)(17)~~(19) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

~~(19)~~(20) "Inactive license" means the status of a license that is not expired, terminated, suspended or revoked, and during which inactive period the license holder is not authorized to act as or associate with a designated broker.

~~(20)(18)~~(21) "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.

~~(21)(19)~~(22) "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.

~~(22)(20)~~(23) "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.

~~(23)(21)~~(24) "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.

~~(24)(22)~~(25) "Main office" means the principal location where the real estate broker is licensed to transact business.

~~(25)(23)~~(26) "Person" means and includes an individual, or any legal business entity.

~~(26)(24)~~(27) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or ~~jurisdi~~ction.

~~(27)(25)~~(28) "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.

~~(28)(26)~~(29) "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.

~~(29)(27)~~(30) "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 act described

in subsection ~~(28)(26)~~(29) of this section.

~~(30)~~(31) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 2001.

~~(31)(28)~~(32) "Reciprocal license" means an Idaho real estate license that is issued pursuant to the terms of a specific, written reciprocal agreement between Idaho and another state or jurisdiction, and that is contingent upon the licensee's maintaining a license in the other state or jurisdiction.

~~(32)(29)~~(33) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

~~(33)(30)~~(34) "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.

(3~~4~~5) "Revoked license" means a license that has been permanently revoked by the issuing authority.

~~(35)(31)~~(36) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

~~(36)(32)~~(37) "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.

~~(37)(33)~~(38) "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.

(38~~9~~) "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

~~(39)(34)~~(40) "Suspended license" means a license that has been temporarily suspended by the issuing authority.

SECTION 15. That Section 63-301A, Idaho Code, be, and the same is hereby amended to read as follows:

63-301A. NEW CONSTRUCTION ROLL. (1) The county assessor shall prepare a new construction roll, which shall be in addition to the property roll, which new construction roll shall show:

(a) The name of the taxpayer;

(b) The description of the new construction, suitably detailed to meet the requirements of the individual county;

(c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;

(d) The amount of taxable market value added to the property on the current year's property roll that is directly the result of new construction or a change in use of the land or both.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission. Provided however, the value shown in subsection

(3)(f) of this section shall be reported to the appropriate county auditor by the state tax commission by the third Monday in July and the value sent by the county auditor to each taxing district. The value established pursuant to subsection (3)(f) of this section is subject to correction by the state tax commission until the first Monday in September and any such corrections shall be sent to the appropriate county auditor, who shall notify any affected taxing districts.

(3) The value shown on the new construction roll may include the value increase from:

(a) Construction of any new structure that previously did not exist; or

(b) Additions or alterations to existing nonresidential structures; or

(c) Installation of new or used manufactured housing that did not previously exist within the county; or

(d) Change of land use classification; or

(e) Property newly taxable as a result of loss of the exemption provided by section 63-602W, Idaho Code; or

(f) The construction of any improvement or installation of any equipment used for or in conjunction with the generation of electricity and the addition of any improvement or equipment intended to be so used, except property that has a value allocated or apportioned pursuant to section 63-405, Idaho Code, or that is owned by a cooperative or municipality, as those terms are defined in section 61-332A, Idaho Code, or that is owned by a public utility, as that term is defined in section 61-332A, Idaho Code, owning any other property that is allocated or apportioned. No replacement equipment or improvements may be included~~.~~; or

(~~f~~g) Increases in value over the base value of property on the base assessment roll within an urban renewal revenue allocation area that has been terminated pursuant to section 50-2909(4), Idaho Code, to the extent that this increment has not been previously included on any new construction rolls, provided however, the increased value during the existence of the revenue allocation area is due to changes identified in subsections (a) through (e) of this subsection.

(4) The amount of taxable market value of new construction shall be the change in net taxable market value that is attributable directly to new construction or a change in use of the land or loss of the exemption provided by section 63-602W(3), Idaho Code. It shall not include any change in value of existing property that is due to external market forces such as general or localized inflation.

SECTION 16. That Section 63-602FF, Idaho Code, as added by Section 1, Chapter 162, Laws of 2002, be, and the same is hereby amended to read as follows:

63-602~~FF~~GG. PROPERTY EXEMPT FROM TAXATION -- LOW-INCOME HOUSING OWNED BY NONPROFIT ORGANIZATIONS. (1) As provided in this section, low-income housing owned by nonprofit organizations shall be exempt from taxation.

(2) In order to qualify as a nonprofit organization under this section, an organization must demonstrate that:

(a) It is organized as a nonprofit corporation pursuant to chapter

3, title 30, Idaho Code, or pursuant to equivalent laws in the applicable state of incorporation; and

(b) It has received an exemption from taxation from the internal revenue service pursuant to section 501(c)(3) of the Internal Revenue Code; and

(c) No proceeds or tax benefits of the organization or from the low-income housing property owned by the organization shall inure to any individual or for-profit entity other than normal employee compensation.

(3) In order to qualify for the exemption provided in this section, the low-income housing property shall meet the following qualifications:

(a) Both legal and equitable title to the property is solely owned by the nonprofit organization seeking the exemption and is managed by the owner or a related nonprofit organization qualifying for the exemption set forth in section 63-602C, Idaho Code; and

(b) Tenants shall not be evicted based upon their inability to pay for a period of three (3) months if such inability is due to a catastrophic event that is not under the tenant's control. For purposes of this subsection, "catastrophic event" means a medical condition or injury in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to render the tenant unable to participate in employment and such illness or injury has been certified by one (1) or more licensed physicians and/or psychiatrists or psychologists. The term "catastrophic event" does not apply to individuals who voluntarily remove themselves from the workforce; and

(c) Except for a manager's unit, all of the housing units in the low-income housing property are dedicated to low-income housing in the following manner: Fifty-five percent (55%) of the units shall be rented to those earning sixty percent (60%) or less of the median income for the county in which the housing is located; twenty percent (20%) of the units shall be rented to those earning fifty percent (50%) or less of the median income of the county in which the housing is located; and twenty-five percent (25%) of the units shall be rented to those earning thirty percent (30%) or less of the median income for the county in which the housing is located.

(4) The exemption provided in this section shall not apply:

(a) If the project is financed after the effective date of this act and applicable law permits the payment of property taxes with federal or state funds, grants, loans or subsidies; or

(b) If the property is receiving federal project-based assistance, as provided by 42 U.S.C. sections 1437f(d)(2), 1437f(f)(6) and 1437f(o)(13); or

(c) To any property used by a taxpayer to qualify for tax credits under the provisions of 26 U.S.C. chapter 42 or any successor programs until such time as the property is solely owned by a nonprofit organization as defined in this section and is no longer utilized to receive federal tax credits.

(5) Notwithstanding any other provision of this section, a low-income housing property shall be exempt from taxation due to undue hardship if:

(a) The property was financed prior to the effective date of this act; and

(b) Such financing was dependent upon the tax-exempt status of the

property; and

(c) The law does not allow additional federal or state revenues to be available for the payment of property taxes.

(6) Nothing in this section shall affect the qualification of properties for tax-exempt status under other provisions of title 63, Idaho Code.

SECTION 17. That Section 63-3622O, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622O. EXEMPT PRIVATE AND PUBLIC ORGANIZATIONS. (1) There are exempted from the taxes imposed by this chapter:

(a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest protective associations and canal companies which are nonprofit organizations; and

(b) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and

(c) Donations to, sales to, and purchases by food banks or soup kitchens of food or other tangible personal property used by food banks or soup kitchens in the growing, storage, preparation or service of food, but not including motor vehicles or trailers; and

(d) Sales of clothes to, donations of clothes to, and purchases of clothes by nonsale clothiers; and

(e) Sales to or purchases by centers for independent living; and

(f) Sales to or purchases by the state of Idaho and its agencies and its political subdivisions; and

(g) Sales to or purchases by volunteer fire departments or licensed emergency medical service agencies~~.~~; and

(~~g~~h) Sales to or purchases by a qualifying senior citizen center.

(2) As used in this section, these words shall have the following meanings:

(a) "Educational institution" shall mean nonprofit colleges, universities, public charter schools organized pursuant to chapter 52, title 33, Idaho Code, and other primary and secondary schools, the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educational function of an institution or collective group of institutions.

(b) "Hospital" shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions.

(c) "Health-related entities" shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, The Arc, The Children's Home Society of Idaho, American Heart Association, Idaho Ronald McDonald House, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, Easter Seals, Idaho Community Action Agencies, Idaho Primary Care Association and community health centers who are members

of the Idaho Primary Care Association, the Idaho Diabetes Youth Programs, Special Olympics Idaho, the Idaho Women's and Children's Alliance, and the Family Services Alliance of Southeast Idaho, together with said entities' local or regional chapters or divisions.

(d) "Canal companies" shall include nonprofit corporations which are incorporated solely for the purpose of operating and maintaining and are engaged solely in operation and maintenance of dams, reservoirs, canals, lateral and drainage ditches, pumps or pumping plants.

(e) "Forest protective associations" shall mean associations whose purpose is the furnishing, operating and maintaining of a protective system for the detection, prevention and suppression of forest or range fires. Forest protective associations shall include only those associations with which the state of Idaho has contracted or become a member of pursuant to chapter 1, title 38, Idaho Code.

(f) "Food banks or soup kitchens" shall mean any nonprofit corporation or association, other than the Idaho Foodbank Warehouse, Inc., one of whose regular activities is the furnishing or providing of food or food products to others without charge.

(g) "Nonsale clothier" shall mean any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of clothes to others without charge.

(h) "Clothes" shall mean garments in general, designed or intended to be worn by humans and shall include footwear in addition to wearing apparel.

(i) "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:

(i) Is designed and operated within a local community by individuals with disabilities;

(ii) Provides an array of independent living services and programs; and

(iii) Is cross-disability.

(j) "Political subdivision" means:

(i) A governmental organization which:

1. Embraces a certain territory,

2. Is organized for public advantage and not in the interest of private individuals or classes,

3. Has been delegated functions of government, and

4. Has the statutory power to levy taxes; or

(ii) A public health district created by section 39-408, Idaho Code; or

(iii) A soil conservation district as defined in section 22-2717, Idaho Code; or

(iv) A drainage district created pursuant to chapter 29, title 42, Idaho Code; or

(v) An irrigation district created pursuant to title 43, Idaho Code; or

(vi) A state grazing board created by section 57-1204, Idaho Code; or

(vii) A water measurement district created pursuant to section 42-705 or 42-706, Idaho Code; or

(viii) A ground water management district created pursuant to chapter 51, title 42, Idaho Code.

(k) "Agency of the state of Idaho" shall mean an office or organization created by the constitution or statutes of this state and constituting a component part of the executive, judicial or legislative branch of the government of this state.

(l) "Volunteer fire department" means an entity exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code and which primarily provides fire protection, or fire prevention on a not-for-profit basis to surrounding residents.

(m) "Licensed emergency medical service agency (EMS)" means an emergency medical service licensed by the EMS bureau of the department of health and welfare and which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code and which provides emergency medical services on a not-for-profit basis to surrounding residents.

(~~l~~n) "Qualifying senior citizen center" means an entity exempt from income tax pursuant to section 501(c)(3) of the Internal Revenue Code and which is a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

(3) The exemption granted by subsection (1)(f) of this section does not include any association or other organization whose members are political subdivisions or state agencies unless the organization is expressly created under the joint powers provision of sections 67-2328 through 67-2333, Idaho Code.

(4) The exemptions granted by subsection (1) of this section do not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract.

(5) There is exempted from the taxes imposed in this chapter, the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

SECTION 18. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 12, 2003.

## CHAPTER 17
## (S.B. No. 1025)

### AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2003; PROVIDING TRANSFERS TO THE PEST CONTROL DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 270, Laws of 2002, 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, 2002, through June 30, 2003:

PLANT INDUSTRIES:

| | |
|---|---|
| FOR: | |
| Personnel Costs | $ 27,100 |
| Operating Expenditures | 102,400 |
| TOTAL | $129,500 |
| FROM: | |
| Pest Control Deficiency Fund | $129,500 |

SECTION 2. Notwithstanding Section 22-3415, Idaho Code, the State Controller shall make cash transfers from the Agricultural Fees - Pesticides Fund to the Pest Control Deficiency Fund, at the request of the Director of the Department of Agriculture, not to exceed $129,500, for the period July 1, 2002, through June 30, 2003.

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.

Law Without Signature.

## CHAPTER 18
## (H.B. No. 87)

AN ACT

RELATING TO THE IDAHO COMMISSION ON THE ARTS; AMENDING SECTION 67-5602, IDAHO CODE, TO PROVIDE THAT THE IDAHO COMMISSION ON THE ARTS SHALL BE ORGANIZATIONALLY SITUATED WITHIN THE OFFICE OF THE GOVERNOR.

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

SECTION 1. That Section 67-5602, Idaho Code, be, and the same is hereby amended to read as follows:

67-5602. COMMISSION ON ARTS -- CREATION -- MEMBERSHIP. There is hereby created and established within the office of the ~~secretary of state~~ governor a state commission, to be known as the Idaho commission on the arts, to consist of thirteen (13) members, representative of the public, Idaho's ethnic and cultural diversity, the various fields of the performing and fine arts, and all geographic areas of our state. Each member shall be appointed by the governor from among citizens of the state who are widely known for their interest, competence, and experience in the performing and fine arts. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational and professional associations and groups concerned with or engaged in production or presentation of the performing and fine arts generally.

Approved February 13, 2003.

CHAPTER 19
(S.B. No. 1001)

AN ACT

RELATING TO MURDER; AMENDING SECTION 18-4004, IDAHO CODE, TO REVISE THE PUNISHMENT FOR MURDER; AMENDING SECTION 18-4004A, IDAHO CODE, TO PROVIDE THAT A NOTICE OF INTENT TO SEEK THE DEATH PENALTY SHALL INCLUDE A LISTING OF STATUTORY AGGRAVATING CIRCUMSTANCES, TO PROVIDE THAT THE STATE MAY AMEND THE NOTICE OF INTENT PRIOR TO TRIAL UPON A SHOWING OF GOOD CAUSE AND TO PROVIDE THAT THE COURT SHALL INFORM POTENTIAL JURORS AT THE OUTSET OF JURY SELECTION IF THE DEATH PENALTY IS NOT A SENTENCING OPTION; AMENDING SECTION 19-2126, IDAHO CODE, TO PROVIDE THAT IN FIRST-DEGREE MURDER CASES THE JURY SHALL NOT SEPARATE UNTIL COMPLETION OF THE SPECIAL SENTENCING PROCEEDING AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-2515, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SENTENCING IN CAPITAL CASES; PROVIDING SEVERABILITY; PROVIDING FOR APPLICATION OF THE ACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-4004, Idaho Code, be, and the same is hereby amended to read as follows:

18-4004. PUNISHMENT FOR MURDER. Subject to the provisions of section 19-2515, Idaho Code, every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A, Idaho Code, and provided further that whenever the death penalty is not imposed the court shall impose a sentence. ~~of life imprisonment, the court shall set forth in its judgment and~~ If a jury, or the court if a jury is waived, finds a statutory aggravating circumstance beyond a reasonable doubt but finds that the imposition of the death penalty would be unjust, the court shall impose a fixed life sentence. If a jury, or the court if a jury is waived, does not find a statutory aggravating circumstance beyond a reasonable doubt or if the death penalty is not sought, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years during which period of confinement the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service. Every person guilty of murder of the second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life.

SECTION 2. That Section 18-4004A, Idaho Code, be, and the same is hereby amended to read as follows:

18-4004A. NOTICE OF INTENT TO SEEK DEATH PENALTY. (1) A sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty with the court and served the notice upon the defendant or his attorney of record no later than thirty (30) days after entry of a plea. Any notice of intent to seek the death

penalty shall include a listing of the statutory aggravating circumstances that the state will rely on in seeking the death penalty. The state may amend its notice upon a showing of good cause at any time prior to trial. A notice of intent to seek the death penalty may be withdrawn at any time prior to the imposition of sentence.

(2) In the event that the prosecuting attorney does not file a notice of intent to seek the death penalty or otherwise puts the court on notice that the state does not intend to seek the death penalty, the court shall inform potential jurors at the outset of jury selection that the death penalty is not a sentencing option for the court or the jury.

SECTION 3. That Section 19-2126, Idaho Code, be, and the same is hereby amended to read as follows:

19-2126. CUSTODY OF JURY DURING TRIAL. The jury sworn to try any felony may, at any time during the trial, and after the submission of the cause, in the discretion of the court, be permitted to separate, or they may be kept together, in the charge of a proper officer. Provided however, that in causes where the defendant has been charged with first-degree murder, the jury may not be permitted to separate after submission of the cause and completion of the special sentencing proceeding held pursuant to section 19-2515, Idaho Code. Before permitting the jury to separate after the cause has been submitted, the court shall permit counsel to place objections, if any, on the record outside the presence of the jury. In case the court orders the jury to be kept together the county must provide a suitable place for the board and lodging of the jury, at the expense of the county, and when first given custody of the jury the officer or bailiff must be sworn to keep the jury together during each recess and adjournment during the trial; to allow no person to speak to or communicate with them, or any of them, nor to do so himself, on any subject connected with the trial, and to return them into court as ordered by the court.

SECTION 4. That Section 19-2515, Idaho Code, be, and the same is hereby amended to read as follows:

19-2515. ~~INQUIRY INTO MITIGATING OR AGGRAVATING CIRCUMSTANCES~~ ---- SENTENCE IN CAPITAL CASES — SPECIAL SENTENCING PROCEEDING -- STATUTORY AGGRAVATING CIRCUMSTANCES -- ~~JUDICIAL~~ SPECIAL VERDICT OR WRITTEN FINDINGS. ~~(a) After a plea or verdict of guilty the court shall convene a hearing to receive evidence and argument in aggravation and mitigation of the punishment.~~ (1) A person convicted of murder in the first degree shall be liable for the imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death.

(~~b~~2) Where a person is sentenced to serve a term in the penitentiary, after conviction of a crime which falls within the provisions of section 20-223, Idaho Code, except in cases where the court retains jurisdiction, the comments and arguments of the counsel for the state and the defendant relative to the sentencing and the comments of the judge relative to the sentencing shall be recorded. If the comments are recorded electronically, they need not be transcribed. Otherwise, they shall be transcribed by the court reporter.

(~~c~~3) Where a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless:

(a) A~~a~~ notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code~~,~~; and

(b) T~~t~~he jury, or the court if a jury is waived, finds beyond a reasonable doubt at least one (1) statutory aggravating circumstance. Where ~~the court finds~~ a statutory aggravating circumstance is found, the ~~court shall sentence the~~ defendant shall be sentenced to death unless ~~the court finds that~~ mitigating circumstances which may be presented are found to be sufficiently compelling that the death penalty would be unjust. The jury shall not direct imposition of a sentence of death unless it unanimously finds at least one (1) statutory aggravating circumstance and unanimously determines that the penalty of death should be imposed.

~~(d) One convicted of murder in the first degree shall be liable to imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death.~~

(~~e~~4) ~~In all cases in which the death penalty may be imposed, the court shall, after conviction, order a~~ Notwithstanding any court rule to the contrary, when a defendant is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, no presentence investigation ~~to~~ shall be conducted~~; according to such procedures as are prescribed by law and shall thereafter convene a sentencing hearing~~ provided however, that if a special sentencing proceeding is not held or if a special sentencing proceeding is held but no statutory aggravating circumstance has been proven beyond a reasonable doubt, the court may order that a presentence investigation be conducted.

(5) (a) If a person is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

(b) If the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding; provided however, that if it is impracticable to reconvene the same jury to hear the special sentencing proceeding due to an insufficient number of jurors, the trial court may dismiss that jury and convene a new jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code.

(c) If the defendant's guilt was determined by a plea of guilty or by a decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including, but not limited to, a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code, unless such jury is waived.

(d) If a special sentencing proceeding is conducted before a newly impaneled jury pursuant to the provisions of subsection (5)(b) or (5)(c) of this section, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder and that the jury's purpose is limited to making findings relevant for sentencing.

(6) At ~~such--hearing~~ the special sentencing proceeding, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. ~~Should-any-party-present-aggravating-or-mitigating-evidence-which-has-not-previously-been-disclosed-to-the-opposing party--or--parties,--the--court-shall,-upon-request,-adjourn-the-hearing until-the-party-desiring-to-do-so-has-had-a--reasonable--opportunity--to respond--to--such-evidence~~ Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing. ~~Evidence-offered-at--trial--but--not admitted--may--be--repeated--or--amplified--if-necessary-to-complete-the record.~~

(7) The jury shall be informed as follows:

(a) If the jury finds that a statutory aggravating circumstance exists and no mitigating circumstances exist which would make the imposition of the death penalty unjust, the defendant will be sentenced to death by the court.

(b) If the jury finds the existence of a statutory aggravating circumstance but finds that the existence of mitigating circumstances makes the imposition of the death penalty unjust or the jury cannot unanimously agree on whether the existence of mitigating circumstances makes the imposition of the death penalty unjust, the defendant will be sentenced to a term of life imprisonment without the possibility of parole; and

(c) If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years.

(~~f~~8) Upon the conclusion of the evidence and arguments in mitigation and aggravation:

(a) With regard to each statutory aggravating circumstance alleged by the state, the jury shall return a special verdict stating:

(i) Whether the statutory aggravating circumstance has been proven beyond a reasonable doubt; and

(ii) If the statutory aggravating circumstance has been proven beyond a reasonable doubt, whether all mitigating circumstances, when weighed against the aggravating circumstance, are sufficiently compelling that the death penalty would be unjust.

(b) If a jury has been waived, the court shall:

(i) ~~M~~make written findings setting forth any statutory aggravating circumstance found~~,~~ beyond a reasonable doubt;

(ii) ~~Further,-the-court-shall-s~~Set forth in writing any mitigating ~~factors~~ circumstances considered; and~~,~~

(iii) ~~if--the--court--finds--that~~ Upon weighing all mitigating circumstances against each statutory aggravating circumstance

separately, determine whether mitigating circumstances are found to be sufficiently compelling that the death penalty would be unjust~~, the court shall~~ and detail in writing its reasons for so finding.

~~(g) Upon making the prescribed findings, the court shall impose sentence within the limits fixed by law.~~

(~~h~~9) The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt before a sentence of death can be imposed:

(~~1~~a) The defendant was previously convicted of another murder.

(~~2~~b) At the time the murder was committed the defendant also committed another murder.

(~~3~~c) The defendant knowingly created a great risk of death to many persons.

(~~4~~d) The murder was committed for remuneration or the promise of remuneration or the defendant employed another to commit the murder for remuneration or the promise of remuneration.

(~~5~~e) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(~~6~~f) By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

(~~7~~g) The murder was committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(~~8~~h) The defendant, by prior conduct or conduct in the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

(~~9~~i) The murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty or because of the victim's former or present official status.

(~~10~~j) The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding.

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.

SECTION 6. This act shall apply to any capital sentencing proceeding occurring after the effective date of this act, including those cases where the murder for which sentence is to be imposed occurred before the effective date of this act and including those cases where a first-degree murder conviction or death sentence occurring before the effective date of this act has been set aside and the case is before the court for retrial or resentencing; provided however, that the provisions of this act relating to mandatory fixed life sentences based upon the finding of a statutory aggravating circumstance apply only to crimes occurring after the effective date of this act and provided further that the provisions of this act relating to notices of intent to seek the death penalty apply only to cases where the entry of a plea occurs after

the effective date of this act. No provision of this act shall be construed to invalidate a death sentence that has been imposed prior to the effective date of this act.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 13, 2003.

## CHAPTER 20
## (S.B. No. 1009)

AN ACT

RELATING TO INDEPENDENT EXPENDITURES; AMENDING SECTION 67-6611, IDAHO CODE, TO PROVIDE CERTAIN REPORTING REQUIREMENTS FOR PERSONS MAKING DESIGNATED INDEPENDENT EXPENDITURES.

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

SECTION 1. That Section 67-6611, Idaho Code, be, and the same is hereby amended to read as follows:

67-6611. INDEPENDENT EXPENDITURES. (1) Each person who makes independent expenditures in an aggregate amount exceeding one hundred dollars ($100) in support of or in opposition to any one (1) candidate, political committee or measure, shall file a statement of the expenditure with the secretary of state.

(2) Statements shall be filed with the secretary of state, not less than seven (7) days prior to the primary and general election and thirty (30) days after the primary and general election.

(3) The statement shall contain the following information: (a) the name and address of any person to whom an expenditure in excess of fifty dollars ($50.00) has been made by any such person in support of or in opposition to any such candidate or issue during the reporting period, together with the amount, date and purpose of each such expenditure; and (b) the total sum of all expenditures made in support of or in opposition to any such candidate or measure.

(4) In addition to the requirements set forth in subsections (1) and (2) of this section, each person who makes independent expenditures in an aggregate amount of one thousand dollars ($1,000) or more after the sixteenth day before, but more than forty-eight (48) hours before, any primary or general election, shall file a written statement of the expenditure with the secretary of state not less than forty-eight (48) hours from the time of such expenditure. The statement shall include the information required in subsection (3) of this section.

Approved February 18, 2003.

CHAPTER 21
(H.B. No. 33)

AN ACT

RELATING TO PROFESSIONAL LICENSES; AMENDING SECTION 54-304, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-507, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING FOR A JULY RENEWAL DATE; AMENDING SECTION 54-515, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE AND TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS; AMENDING SECTION 54-518, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING FOR LICENSE EXPIRATION IN JUNE AND TO ALLOW FEES TO BE PRORATED OR REFUNDED; AMENDING SECTION 54-607, IDAHO CODE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS AND TO MAKE A GRAMMATICAL CHANGE; AMENDING SECTIONS 54-708 AND 54-815, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE AND TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS; AMENDING SECTION 54-1115A, IDAHO CODE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS; AMENDING SECTION 54-1522, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-1608, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS AND TO MAKE A GRAMMATICAL CHANGE; AMENDING SECTION 54-2315, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-2906, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING EFFECTIVE DATES FOR LICENSES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2911, IDAHO CODE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS, TO REMOVE DESCRIPTIVE LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-3003, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE AND TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS; AMENDING SECTION 54-3209, IDAHO CODE, TO REVISE PROVISIONS RELATING TO LICENSING FEES AND LICENSE RENEWAL; AMENDING SECTION 54-3313, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING EFFECTIVE DATES FOR LICENSES; AMENDING SECTIONS 54-3316 AND 54-3415, IDAHO CODE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS; AMENDING SECTION 54-4114, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE AND TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS; AMENDING SECTION 54-4209, IDAHO CODE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4710, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE AND TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS; AND AMENDING SECTION 67-2614, IDAHO CODE, TO REVISE LICENSE RENEWAL AND REINSTATEMENT PROVISIONS AND TO MAKE GRAMMATICAL CHANGES.

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

SECTION 1. That Section 54-304, Idaho Code, be, and the same is hereby amended to read as follows:

54-304. FEES -- ISSUANCE OF LICENSES -- RENEWAL AND REINSTATEMENT. Every person applying for examination for a license under this chapter shall pay a fee equal to that charged by the national examining entity

plus a processing fee of twenty-five dollars ($25.00) to the bureau of occupational licenses. In case the applicant fails to qualify, said fee shall be retained by the bureau to cover the necessary expenses of said examination. If the result of the examination of any applicant shall be satisfactory to the board, under its rules, it shall issue to such applicant a certificate setting forth the fact that he is a licensed architect and authorized to practice his profession in this state. The fee for reexamination shall be equal to that charged by the national examining entity plus a processing fee of twenty-five dollars ($25.00). The fee for obtaining a license under ~~the provisions of subsection 1 of~~ section 54-302A 1., Idaho Code, shall be an amount not to exceed two hundred dollars ($200). The fee for permission under ~~subsection 2 of~~ section 54-302A 2., Idaho Code, shall be an amount not to exceed two hundred dollars ($200). The annual fee for renewal of a license shall be an amount not to exceed one hundred dollars ($100), which shall be paid to the bureau. ~~The fee for reinstatement of any license shall be as provided in section 67-2614, Idaho Code.~~ The board shall adopt fees by rule. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

SECTION 2. 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 operate or be licensed as a school of barbering, unless the entrance requirements are equal to those which are required under section 54-506, Idaho Code. An approved college may teach special courses, but as a prerequisite to graduation the college must provide:

(1) A course of instruction for barber-stylists of not less than one thousand eight hundred (1,800) 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, 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 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, certified, or licensed unless said college is 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.

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 license to the effect that the college is approved by the board.

A license issued to a college must be renewed annually. ~~on--July first--of--each-year.~~ Should a college fail or refuse to renew a 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 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 3. That Section 54-515, Idaho Code, be, and the same is hereby amended to read as follows:

54-515. RENEWAL AND REINSTATEMENT OF LICENSES. All persons required to procure licenses from the board of barber examiners as a prerequisite for engaging in a trade, occupation or profession, or for the operation of a barber shop, must annually renew the same in accordance with the provisions of section 67-2614, Idaho Code. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

SECTION 4. 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, and examinations as required under this chapter shall be fixed by rules of the board in amounts not to exceed the following:

(1) Original licenses and annual renewals thereof:
approved barber college within the state, original license/annual renewals.....$200.00
approved barber college located outside the state, original license/annual renewals.....100.00
barbershop original license/annual renewals.....50.00
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:
barber.....$ 75.00
teacher 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 licenses expire on June 30.~~

SECTION 5. 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~~ issued under the provisions of this chapter shall be subject to annual renewal and 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~~ unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. ~~A~~an annual renewal license fee established by board rule shall not ~~to~~ exceed four hundred dollars ($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 6. That Section 54-708, Idaho Code, be, and the same is hereby amended to read as follows:

54-708. BOARD TO ISSUE LICENSES -- RENEWAL AND REINSTATEMENT. (1) The board shall issue licenses to practice chiropractic to persons who have qualified therefor in accordance with the provisions of this chapter. The board may refuse licensure if it finds that the applicant has engaged in conduct prohibited by sections 54-704 and 54-712, Idaho Code, provided, that the board shall take into consideration the rehabilitation of the applicant and other mitigating circumstances. Such licenses shall be issued after payment of the licensing fee in an amount to be fixed by the board~~, and such licenses shall be issued for a period of one (1) year. Licenses to practice chiropractic shall be renewed on their expiration upon completion of a renewal application and upon payment of a renewal fee, the amount of which shall be fixed by the board, which fee shall~~ not to exceed one hundred dollars ($100). All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) The board may renew, on an inactive basis, the license of a physician who is not practicing chiropractic in this state. The board shall fix and collect an inactive license fee for such an inactive license renewal in an amount not to exceed one hundred dollars ($100) and each inactive license shall be issued for a period of one (1) year. A physician holding an inactive license may not engage in the practice of chiropractic in this state. If a physician wishes to convert his inactive license to an active license, he must account to the board for that period of time in which he held an inactive license. All fees authorized by subsections (1) and (2) of this section shall be paid to the bureau of occupational licenses.

(3) Whenever the board determines that an applicant for a license to practice chiropractic is not qualified for such a license pursuant to the provisions of this chapter, the board shall notify the applicant by certified mail of its denial of licensure and the reasons for denial.

SECTION 7. That Section 54-815, Idaho Code, be, and the same is hereby amended to read as follows:

54-815. RENEWAL AND REINSTATEMENT OF LICENSES. ~~Upon the renewal date of June 30, 1965, every license or certificate of registration required by this chapter must be renewed for a period of eighteen (18) months, thereby making such renewed license or certificate of registration valid until December 31, 1966. A fee of one and one half (1 1/2) times the ordinary renewal fee shall be charged for such eighteen (18) month renewal. Commencing with the year 1966, e~~Every license or certificate of registration required by this chapter must be renewed annually,

at the prescribed annual fee, ~~on or before December 31~~ in accordance with section 67-2614, Idaho Code. An expired license or certificate may be reinstated. ~~within five (5) years of the date of expiration upon payment of the reinstatement fees and the furnishing of said person's qualifications to resume practice~~ All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. The reinstatement fee shall be the sum of the accumulated annual renewal fees for the lapsed period, plus the current renewal fee and a twenty-five dollar ($25.00) penalty.

SECTION 8. That Section 54-1115A, Idaho Code, be, and the same is hereby amended to read as follows:

54-1115A. ANNUAL RENEWAL ~~--- CANCELLATION~~ -- REINSTATEMENT. All licenses issued ~~pursuant to this act~~ under the provisions of this chapter shall be subject to annual renewal and shall expire ~~on June 30 of each year; all licensees shall renew their licenses on or before July 1 of each year~~ unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. 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~~ reinstatement fee shall be 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.~~

SECTION 9. That Section 54-1522, Idaho Code, be, and the same is hereby amended to read as follows:

54-1522. LICENSES -- ISSUANCE -- RENEWAL AND REINSTATEMENT -- RECORDING AND DISPLAY. If the applicant shall pass a satisfactory examination and shall show that he is a person of good moral character and that he possesses the qualifications required in this chapter to entitle him to be licensed as an optometrist, then, upon request, such applicant

shall be entitled to a license authorizing the applicant to practice optometry in the state of Idaho. All licenses to practice optometry shall be issued in the name of the Idaho state board of optometry with the seal thereof attached. ~~All licenses so issued shall expire on the thirtieth day of June following the issuance of the license and all persons who practice optometry within the meaning of this chapter are entitled to renew and shall renew their licenses on the first day of July each calendar year~~ All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code. The failure to timely renew a license under this section shall require the payment of a fee of one hundred fifty dollars ($150) for a license renewal in addition to other fees which may be required, or other sanctions which may be imposed under this ~~act~~ chapter. Every person to whom a license is granted shall display the same, or a copy of the same certified to by the board in a conspicuous part of his office wherein the practice of optometry is conducted. It shall be unlawful for any person to practice optometry in the state of Idaho before complying with these requirements.

~~Any person licensed to practice optometry in the state of Idaho on the effective date of this act shall be eligible to renew his license on the first day of July following the effective date of this act.~~

SECTION 10. 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~~ AND REINSTATEMENT. (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~~ All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) Upon making an application for a renewal of license, ~~such~~ each individual shall pay an annual ~~license~~ renewal 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~~ documenting the attendance and completion of 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 one hundred dollar ($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 11. That Section 54-2315, Idaho Code, be, and the same is hereby amended to read as follows:

54-2315. ADMINISTRATION BY BUREAU OF OCCUPATIONAL LICENSES -- FEE FOR RENEWAL OF LICENSE -- RENEWAL AND REINSTATEMENT. This ~~act~~ chapter shall be administered by the bureau of occupational licenses. The fee for renewal of license shall be a fee as established by board rule not to exceed two hundred twenty-five dollars ($225) per annum. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

SECTION 12. That Section 54-2906, Idaho Code, be, and the same is hereby amended to read as follows:

54-2906. LICENSING OF APPLICANTS -- FEE -- RECIPROCAL LICENSING -- FEE. (~~a~~1) The board shall issue a license to each applicant without discrimination who passes an examination as provided in section 54-2907, Idaho Code, meets the other requirements of this chapter, and remits a license fee. The license fee and renewal fees shall be established by board rule and shall be at least twenty dollars ($20.00) but not more than two hundred fifty dollars ($250). ~~The license shall be effective until June 30 of the year following the year in which it was issued.~~

(~~b~~2) Whenever the board determines that another state has requirements substantially equivalent to or higher than those in effect pursuant to this chapter and that such state has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to engage in the practice of fitting of and dealing in hearing aids, and provided such other state will license without examination and upon substantially the same conditions an applicant holding a license issued under this chapter pursuant to sections 54-2906 and 54-2911, Idaho Code, the board may issue licenses to applicants who hold current, unsuspended and unrevoked licenses to fit and sell hearing aids in such other state and pay the license fee as established by board rule.

SECTION 13. That Section 54-2911, Idaho Code, be, and the same is hereby amended to read as follows:

54-2911. ANNUAL RENEWAL OF LICENSES -- CONTINUING EDUCATION -- FEE -- ~~GRACE PERIOD~~-- REINSTATEMENT FEE. (a1) ~~A license issued--under--this chapter--shall expire on June 30 of the year following the year in which it was issued~~ All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(~~b~~2) Each person who engages in the practice of fitting of and dealing in hearing aids shall, on or before ~~June 30~~ the expiration of his license, submit an application and pay to the board a license fee for a renewal of his license and shall keep such license posted in his office or established place of business at all times.

~~(c)--A thirty (30) day grace period shall be allowed after June--30, during which time licenses may be renewed on payment of the required fee to--the board. After expiration of the grace period, the board may renew such license upon payment of a reinstatement fee of twenty five--dollars ($25.00)--together--with all delinquent renewal fees and the person providing evidence of satisfactory completion of all--continuing--education requirements. The grace period shall only be applicable to the obtaining of a license renewal and shall not constitute authorization to engage in the--practice of fitting of and dealing in hearing aids. If a license is not renewed within three (3) years--of--its--expiration,--the--applicant shall--apply--for--a--license--pursuant to sections 54-2906, 54-2907 and 54-2909, Idaho Code.~~

(~~d~~3) Each person who engages in the practice of fitting of and dealing in hearing aids shall annually comply with the continuing education requirements not to exceed ten (10) hours annually, in courses approved by the board for continuing education hours.

SECTION 14. That Section 54-3003, Idaho Code, be, and the same is hereby amended to read as follows:

54-3003. QUALIFICATIONS -- EXAMINATIONS -- BOARD -- CERTIFICATES OF REGISTRATION -- FEES -- RECIPROCITY -- EXEMPTIONS -- INDIVIDUALS, PARTNERSHIPS AND CORPORATIONS -- RESTRICTION ON USE OF NAME -- SEAL. (a) Application and practice. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this act.

(b) Qualifications. For license as a landscape architect, evidence must be submitted to the board that the applicant:

(1) is eighteen (18) years of age or older;

(2) has, before admission to the examination, completed the course of study in and been graduated from a college or school of landscape architecture approved by the board. He shall also submit, before admission to the examination, evidence of actual practical experience in landscape architectural work of grade and character satisfactory to the board. Each complete year of study in such approved college or school of landscape architecture may be accepted in lieu of one (1) year of such experience, and the applicant must submit evidence of sufficient additional acceptable experience to total four (4) years of combined education and experience. In lieu of

graduation from an accredited college or school of landscape architecture, and the practical experience in addition thereto, an applicant may be admitted to the examination upon presenting evidence of at least four (4) years of actual, practical experience in landscape architectural work of a grade and character satisfactory to the board.

(c) Examinations. Examinations for the license shall be held by the board at least once each year, provided that applications shall have been received during the time announced. The board shall adopt rules covering the subjects and scope of the examinations at the times designated. Every applicant for license as a landscape architect shall be required, in addition to all other requirements, to establish by written examination his competency to plan, design, specify, and supervise the installation of landscape projects. Each written examination may be supplemented by such oral examinations as the board may determine.

(d) The board. There is hereby created in the department of self-governing agencies an Idaho state board of landscape architects. The board shall consist of three (3) landscape architects. Members of the board shall be appointed by the governor and must be residents of this state, have the qualifications of landscape architects required by this act, and after the initial board is organized be licensed hereunder. The terms of the members of the board first appointed shall expire as follows:

Two (2) members two (2) years later, one (1) member three (3) years later. Thereafter, appointments shall be for four (4) year terms. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment in like manner for the unexpired term. The board may by written agreement authorize the bureau of occupational licenses to act as agent in its interest, and shall have the power to make such rules as shall be necessary in the performance of its duties. The board shall elect, at its first meeting of every calendar year, from its members, a president, and a secretary who may or may not be a member of the board. The secretary shall hold such office at the pleasure of the board and shall receive a salary fixed by the board. In carrying out the provisions of this act, all members of the board shall be compensated as provided by section 59-509(m), Idaho Code. Payment of travel and other expenses shall be made from the occupational licenses fund.

(e) Revenue -- renewal and reinstatement. ~~Certificates of registration shall expire on the last day of June following--their--issuance--or renewal.--Renewal may be effected during the month of June by payment to the board of the required fee.~~

(1) ~~In case any registrant fails to--pay--the--renewal--fee--before thirty--(30)--days--after the due date, the renewal fee shall be the current fee plus an amount set by the board; provided, that any registrant in good standing, upon fully retiring from landscape--architectural--practice,--may--withdraw--from--practice by giving written notice to the board and may thereafter resume practice at--any--time upon--payment of the then current renewal fee. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration for a period of one (1) year may be reinstated only on reexamination as is required for new registrants, or reciprocity. The board shall issue a receipt to each landscape architect promptly upon payment of the annual license fee.~~ All licenses issued under the provi-

sions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) Amounts. The amount of fees shall be as determined by the board within the following stated limits:

(A) The application fee not to exceed one hundred dollars ($100).

(B) The fee for examination to be established by board rule not to exceed that charged by the council of landscape architectural registration board plus a twenty-five dollar ($25.00) processing fee.

(C) The fee for an original certificate and the annual license fee not to exceed one hundred twenty-five dollars ($125).

(3) Refund. Fees shall be nonrefundable.

(4) Deposit. All fees received under the provisions of this act shall be deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred by the board under the provisions of this act shall be a charge against and paid from said fund for such purposes, and the funds collected hereunder shall be immediately available for the administration of this act, the provisions of any other law notwithstanding. In no instance 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 act.

(5) Appropriation. The money paid into the occupational licenses fund is continuously appropriated to the board for expenditure in the manner prescribed herein to defray the expenses of the board and in carrying out and enforcing the provisions of this act.

(f) Reciprocal provisions. The board may certify for registration with limited examination an applicant who is legally registered as a landscape architect in any other state or country whose requirements for registration are at least substantially equivalent to the requirements of this state.

(g) Exemptions.

(1) None of the provisions of this act shall prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control or supervision of their employers.

(2) None of the provisions of this act shall apply to the business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, gardener, landscape gardener, landscape designer, or landscape contractor, as these terms are generally used, or any other person, including, but not limited to, their right to plan and supervise in connection therewith, except that no such person shall use the designation "landscape architect," "landscape architecture," or any description tending to convey the impression that he is a registered landscape architect unless he is registered as provided in this act.

(3) This act shall not apply to architects, professional engineers, geologists, and land surveyors, licensed to practice their respective professions.

(h) Act applies to natural persons only.

(1) All certificates of registration shall be issued to natural persons only but nothing contained in this act shall prevent a duly registered landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Partners. Each partner in a partnership of landscape architects shall be registered to practice. Subject to this requirement, a partnership of landscape architects may use a partnership name if such name consists of:

(A) The names of two (2) or more landscape architects.

(B) The names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) Any person applying to the licensing official of any county or city for a business license to practice landscape architecture shall at the time of such application exhibit to such licensing official satisfactory evidence under the seal of the board and the hand of its secretary that such applicant possesses a current registration. The license shall not be granted until such evidence is presented, any contrary provision of any special act or general act notwithstanding.

(i) Qualifications for practice -- seal:

(1) No person shall use the designation "landscape architect" or "landscape architecture," or advertise any title or description tending to convey the impression that he is a landscape architect, or practicing landscape architecture, unless such person is a registered landscape architect. Every holder of a registration certificate shall display it in his principal office, place of business, or place of employment.

(2) Every landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Registered Landscape Architect, State of Idaho," and such other words or figures as the board may deem necessary and prescribe. All drawings and title pages of specifications, prepared by such landscape architect or under the supervision of such landscape architect, shall be stamped with the aforesaid seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer or a licensed land surveyor.

SECTION 15. 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 bureau of occupational licenses~~ a license fee, not to exceed seventy-five dollars ($75.00) as determined by the rules of 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~~. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. Renewal ~~may~~ shall be ~~effected~~ in accordance with the requirements of section 67-2614, Idaho Code.

SECTION 16. That Section 54-3313, Idaho Code, be, and the same is hereby amended to read as follows:

54-3313. LICENSING. A denturist license shall be valid for a period of one (1) year, whereupon a renewal license will be issued upon payment of the renewal fee and the submission of proof of the completion of not less than twelve (12) hours continuing education accredited by the board during the one (1) year immediately preceding the date of application for renewal. ~~A license issued effective as of a date other than July 1 will be valid until midnight June 30 next following the date it was issued.~~ The license shall bear on its face the address where the licensee's denturist services will be performed.

SECTION 17. That Section 54-3316, Idaho Code, be, and the same is hereby amended to read as follows:

54-3316. RENEWAL OR REINSTATEMENT OF LICENSE. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. ~~Renewal or~~ License renewal and reinstatement ~~of a license~~ shall be ~~governed by the provisions of~~ in accordance with section 67-2614, Idaho Code.

SECTION 18. That Section 54-3415, Idaho Code, be, and the same is hereby amended to read as follows:

54-3415. RENEWAL OR REINSTATEMENT OF LICENSE. ~~Renewal or reinstatement of licenses shall be governed by the provisions of~~ All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

SECTION 19. That Section 54-4114, Idaho Code, be, and the same is hereby amended to read as follows:

54-4114. TERM OF LICENSE OR CERTIFICATE -- RENEWAL AND REINSTATEMENT. ~~Any license or certificate for the practice of residential and/or general real estate appraisal shall expire on June 30, and shall become invalid on July 1 unless renewed prior to the expiration date~~ All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

SECTION 20. That Section 54-4209, Idaho Code, be, and the same is hereby amended to read as follows:

54-4209. ~~CERTIFICATE OF REGISTRATION~~ LICENSURE -- ATTENDANCE AT CONTINUING EDUCATION PROGRAM ~~--- REVOCATION OR SUSPENSION~~ -- RENEWAL OF ~~LAPSED REGISTRATIONS~~ LICENSES. ~~--- REGISTER OF APPLICATIONS.~~ (1) Every

individual who ~~holds a valid license as a residential or assisted living facility administrator issued~~ qualifies for licensure by the board under section 54-4208(1), Idaho Code, shall ~~immediately upon issuance thereof be deemed registered with the board and~~ be issued a ~~certificate of registration~~ license. Thereafter, such individual shall annually be required to apply to the board for a ~~recertification of registration~~ license renewal and report any facts requested by the board on forms provided for such purpose. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) Upon making an application for ~~a recertification of registration, such~~ license renewal, each individual shall pay an annual ~~registration~~ renewal fee, and ~~at the same time shall~~ submit ~~evidence~~ proof of the satisfactory ~~to the board that during the twelve (12) month period immediately preceding such application for recertification of registration he has successfully attended a~~ completion of the required continuing education ~~program or course of study~~ as may be provided in the rules of the board.

(3) Upon receipt of ~~such~~ the renewal application, ~~for recertification of registration,~~ the ~~registration~~ required fee, and the ~~evidence required with respect to~~ proof of continuing education, the board shall issue a ~~recertification of registration to such residential or assisted living facility administrator~~ current license.

(4) ~~The license of a residential or assisted living facility administrator who fails to comply with the provisions of this section, and who continues to act as a residential or assisted living facility administrator, shall be suspended or revoked by the board, in accordance with the provisions of this chapter.~~

~~(5)~~ A residential ~~or assisted living~~ care facility administrator who has been duly licensed ~~and registered~~ in this state and whose license ~~shall~~ has not ~~have~~ been revoked or suspended, and whose ~~registration~~ license has expired for a period of not longer than five (5) years, may ~~reregister within the state upon complying with the provisions of this section for recertification of registration and also~~ apply for the reinstatement of his license by filing with the board an ~~affidavit~~ application together with proof of having met the continuing education requirement within the previous twelve (12) months in accordance with the rules of the board, and payment of a twenty-five dollar ($25.00) reinstatement fee together with the renewal fees for ~~back~~ all lapsed years.

~~(6) A residential or assisted living facility administrator whose license has been expired for five (5) or more years, must reapply for licensure under the provisions of section 54-4206, Idaho Code.~~

(~~7~~5) The board shall maintain a register of all applications for licensing ~~and registration~~ of residential ~~or assisted living~~ care facility administrators, which register shall show: The ~~place of residence,~~ name and address of each applicant, the name and address of employer or business connection of each applicant, the date of application, complete information of educational and experiential qualifications, the ~~action taken by the board~~ license issue date, the ~~serial~~ license number, ~~of the license and of registration certificates issued to the applicant~~ the certificate issue date, the date on which the board reviewed and acted

upon the application, and such other pertinent information as the board may deem necessary.

SECTION 21. That Section 54-4710, Idaho Code, be, and the same is hereby amended to read as follows:

54-4710. EXPIRATION AND RENEWAL -- REINSTATEMENT. (1) All licenses ~~or~~ and certifications issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the ~~rules of the~~ board~~,--upon--payment--of--a--renewal~~ regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) The board shall establish the following fees relating to licensing, which fees shall be established in an amount that is sufficient to defray all costs necessary for the administration of this chapter:

(a) Initial license;
(b) Renewal of license fee;
(c) Initial fee for certification;
(d) Initial acupuncture technician certificate;
(e) Renewal acupuncture technician certificate;
(f) Inactive license and certification fees;
(g) Late renewal fees.

SECTION 22. That Section 67-2614, Idaho Code, be, and the same is hereby amended to read as follows:

67-2614. RENEWAL OR REINSTATEMENT OF LICENSE. All persons required to procure licenses from the bureau of occupational licenses as a prerequisite for engaging in a trade, occupation~~,~~ or profession must annually renew the same ~~by--July first of each year~~ prior to the license holder's birthday. No less than thirty (30) days prior to the renewal date of a license the bureau shall send to the mailing address of record a bureau approved application for renewal that shall be completed by the licensee and submitted to the bureau with the required fee and confirmation of the completion of any continuing education that may be required. For the renewal period beginning July 1, 2003, the required license renewal fee shall be 1/365 of the annual renewal license fee as determined by the board for each day until the next birthday of the licensee. The required fee for all subsequent annual renewals shall be the amount set forth in the laws and rules of the governing board. All persons required to procure facility licenses from the bureau of occupational licenses as a prerequisite for operating a place of business in which a trade, occupation or profession is practiced shall annually renew the same prior to the anniversary of the original issue date of the license. For the renewal period beginning July 1, 2003, the required facility license renewal fee shall be 1/365 of the annual renewal fee determined by the board for each day until the next anniversary date of the license issue date. The required fee for all subsequent annual renewals shall be the amount set forth in the laws and rules of the governing board. In case of failure ~~so~~ to renew a license prior to the expiration date, the bureau shall immediately cancel the same following the date of ~~delinquency~~ expiration: provided, however, that the bureau may reinstate any

license canceled for failure to renew ~~the same~~ on payment of no less than twenty-five dollars ($25.00) as may be determined by law or board rule, together with all fees delinquent and documentation of the completion of any continuing education required 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 bureau, 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 bureau at any regular or special meeting for an examination, the nature of which shall be determined by the bureau. If after an examination, the bureau 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 February 18, 2003.

## CHAPTER 22
## (H.B. No. 86)

### AN ACT

RELATING TO THE IDAHO ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5226, IDAHO CODE, TO REQUIRE AGENCIES THAT ADOPT A TEMPORARY RULE TO SEND A COPY OF THE RULE TO THE DIRECTOR OF LEGISLATIVE SERVICES AT THE SAME TIME THE AGENCY SENDS THE RULE TO THE OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR FOR PUBLICATION IN THE BULLETIN; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-5226, Idaho Code, be, and the same is hereby amended to read as follows:

67-5226. TEMPORARY RULES. (1) If the governor finds that:

(a) protection of the public health, safety, or welfare; or

(b) compliance with deadlines in amendments to governing law or federal programs; or

(c) conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule, except as otherwise provided in section 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

(2) A rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved, amended or modified by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective as provided in section 67-5224(5), Idaho Code.

(4) Temporary rules shall be published in the first available issue of the bulletin.

(5) Temporary rules are not subject to the requirements of section 67-5223, Idaho Code, provided that the agency adopting the temporary rule sends to the director of legislative services a copy of the temporary rule at the same time the agency sends the temporary rule to the office of the administrative rules coordinator for publication in the bulletin.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

SECTION 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 18, 2003.

## CHAPTER 23
## (H.B. No. 90)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 2003; PROVIDING TRANSFERS TO THE FIRE SUPPRESSION DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 165, Laws of 2002, there is hereby appropriated to the Department of Lands $5,085,000 from the Fire Suppression Deficiency Fund to be expended for the Forest and Range Fire Protection Program for the period July 1, 2002, through June 30, 2003.

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 $3,835,000 for the period July 1, 2002, through June 30, 2003.

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 18, 2003.

## CHAPTER 24
## (H.B. No. 91)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DIVISION OF VOCATIONAL REHABILITATION FOR FISCAL YEAR 2003; 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 195, Laws of 2002, there is hereby appropriated to the State Board of Education for the Division of Vocational Rehabilitation 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, 2002, through June 30, 2003:

INDEPENDENT LIVING COUNCIL:

| | |
|---|---|
| FOR: | |
| Operating Expenditures | $4,500 |
| FROM: | |
| Miscellaneous Revenue Fund | $4,500 |

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 18, 2003.

## CHAPTER 25
## (H.B. No. 50)

AN ACT

RELATING TO INTERSTATE COMPACT APPLICATIONS; AMENDING CHAPTER 2, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-225A, IDAHO CODE, TO REQUIRE PAYMENT OF AN INTERSTATE COMPACT APPLICATION FEE, TO CREATE THE PROBATION AND PAROLE RECEIPTS ACCOUNT, TO PROVIDE THAT MONEYS SHALL BE UTILIZED TO PROVIDE SUPERVISION FOR OFFENDERS AND TO PROVIDE THAT MONEYS MAY BE EXPENDED ONLY AFTER LEGISLATIVE APPROPRIATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 2, 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 20-225A, Idaho Code, and to read as follows:

20-225A. PAYMENT FOR INTERSTATE COMPACT APPLICATION. (1) Any person under state probation or parole supervision who applies for a transfer of supervision to another state shall be required to post an application fee not to exceed one hundred dollars ($100).

(2) Money collected as a fee for services and compact administration shall be placed in the probation and parole receipts account, which is hereby created in the dedicated fund in the state treasury, and shall be utilized to provide supervision for offenders. Moneys in the probation and parole receipts account may be expended only after appropriation by the legislature.

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

Approved February 20, 2003.

## CHAPTER 26
## (H.B. No. 84)

AN ACT

RELATING TO MILITARY VETERANS; AMENDING SECTION 65-301, IDAHO CODE, TO AUTHORIZE ANY VETERAN TO RECORD HIS OR HER DISCHARGE PAPERS AND TO PROVIDE THAT THE NAME OF THE VETERAN MAY NOT BE REDACTED FROM THE DOCUMENT, TO AUTHORIZE A VETERAN OR SURVIVING SPOUSE OF A VETERAN OR OTHER LEGAL REPRESENTATIVE TO REQUEST THAT A COUNTY RECORDER REMOVE FROM THE OFFICIAL RECORDS CERTAIN FORMS AND TO PROVIDE PROCEDURES FOR SUCH REQUEST, TO PROVIDE THAT CERTAIN FORMS WHICH ARE RECORDED AT THE REQUEST OF ANY VETERAN, HIS OR HER SURVIVING SPOUSE OR OTHER LEGAL REPRESENTATIVE SHALL NOT BE A PUBLIC RECORD SUBJECT TO RELEASE WITHOUT WRITTEN CONSENT OF THE VETERAN, SURVIVING SPOUSE OR OTHER LEGAL REPRESENTATIVE AND TO PROVIDE FOR NO CAUSE OF ACTION AGAINST A COUNTY, COUNTY EMPLOYEE OR THE STATE OF IDAHO BASED UPON HARM CAUSED BY INFORMATION RELEASED FROM THE RECORDS OF THE COUNTY; AND AMENDING SECTION 9-340C, IDAHO CODE, TO PROVIDE THAT CERTAIN MILITARY RECORDS SHALL BE EXEMPT FROM DISCLOSURE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 65-301, Idaho Code, be, and the same is hereby amended to read as follows:

65-301. PERFORMANCE WITHOUT FEE -- SERVICES ENUMERATED. (1) Any state, county, city or public officer, or board, or body, acting in his or her or its official capacity on behalf of the state, county, or city, including notaries public, shall not collect, demand or receive any fee or compensation for recording or indexing the discharge papers of any male or female veteran who had active service in any war or conflict officially engaged in by the government of the United States; or for issuing certified copies thereof, or for any service whatever rendered by any such officer or officers, in the matter of a pension claim, application, affidavit, voucher, or in the matter of any claim to be

presented to the United States department of veterans affairs or for the purposes of securing any benefits under acts of congress providing pension benefits for honorably discharged veterans of any war, and all acts or parts of acts amendatory thereto, or for furnishing a certified copy of the public record of a marriage, death, birth, divorce, deed of trust, mortgage, or property assessment, or making a reasonable search for the same, wherein the same is to be used in a claim for pension, or a claim for allotment, allowance, compensation, insurance, automatic insurance, or otherwise provided for by any and all legislation by congress providing pension benefits for honorably discharged veterans of any war.

(2) Any veteran wishing to record his or her discharge papers may do so with personal identifying information such as date of birth, social security number, home address(es), blood type and other personal identifying information redacted from the document. The name of the veteran may not be redacted from the document.

(3) Any veteran or surviving spouse of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian has the right to request that a county recorder remove from the official records any of the following forms recorded before, on or after July 1, 2003, by or on behalf of the requesting veteran: DD-214; DD-215; WD AGO 53; WD AGO 55; WD AGO 53-55; NAVMC 78-PD; and NAVPERS 553. The request must specify the identification page number of the form to be removed. The request shall be made in person and with appropriate identification to allow determination of identity. The county recorder has no duty to inquire beyond the requestor to verify the identity of the person requesting removal. No fee shall be charged for the removal. Any paper and reasonably retrievable electronic likeness, the removal of which will not affect other recorded documents, shall be removed from the record.

(4) No DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553, which is recorded at the request of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian shall be a public record subject to release by the provisions of sections 9-337 through 9-350, Idaho Code, without the express written consent of one (1) of the above enumerated individuals.

(5) Nothing in this section shall create or permit any cause of action against a county, county employee or the state of Idaho based upon harm caused by information released from the records of the county.

SECTION 2. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone

number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency or independent public body corporate and politic pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records; and

(f) Military records as described in and pursuant to section 65-301, Idaho Code.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information and unemployment insurance ben-

efit information, except that all interested parties may agree to waive the exemption.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under section 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided

however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

(a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;

(b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;

(c) Mortgage portfolio loan documents;

(d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer's assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4801, Idaho Code.

(~~22~~23) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

Approved February 20, 2003.

## CHAPTER 27
## (H.B. No. 85)

AN ACT

RELATING TO THE DUTIES OF PROSECUTING ATTORNEYS AND THE ATTORNEY GENERAL; AMENDING SECTION 38-128, IDAHO CODE, TO PROVIDE THAT, AT THE DISCRETION OF THE DIRECTOR OF THE DEPARTMENT OF LANDS, IT SHALL BE THE DUTY OF EITHER THE ATTORNEY GENERAL OR THE PROSECUTING ATTORNEY OF THE COUNTY WHERE THE ACTION LIES TO PROSECUTE ALL ACTIONS FOR THE RECOVERY OF PENALTIES AND COSTS INCURRED BY THE DIRECTOR OF THE DEPARTMENT OF LANDS OR THE FIRE WARDEN OF ANY FOREST PROTECTIVE DISTRICT UNDER THE IDAHO FOREST PROTECTIVE ACT AND TO PROVIDE FOR DETERMINATION OF VENUE OF SUCH ACTIONS.

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

SECTION 1. That Section 38-128, Idaho Code, be, and the same is hereby amended to read as follows:

38-128. DUTIES OF PROSECUTING ATTORNEYS AND ATTORNEY GENERAL. At the discretion of the director of the department of lands, i~~I~~t shall be the duty of the attorney general or the prosecuting attorney of the county within which such action lies, to prepare, upon information furnished by the director of the department of lands or the fire warden of any forest protective district, and foreclose all liens, other than those provided for in sections 38-111, 38-112 and 38-113, Idaho Code, and to prosecute in the name of the state of Idaho all actions for the recovery of penalties and costs and expenses incurred by the director of the department of lands, his deputy or fire warden of the district in carrying out the provisions of this chapter. For the purposes of this section, ~~the situs of civil actions, other than for the foreclosure of liens, shall be the county within which the cause of action arose~~ venue shall be determined subject to the terms of applicable Idaho law at the time of the incident. Civil actions against nonresidents of the state shall be prosecuted by the attorney general.

Whenever any arrest shall have been made for the violation of any provisions of this chapter, or whenever any evidence, which shows with reasonable certainty any such violation, shall have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed must prosecute the offender with all diligence and energy.

Approved February 20, 2003.

## CHAPTER 28
## (H.B. No. 3, As Amended)

AN ACT

RELATING TO DISSEMINATION OF SEXUAL OFFENDER REGISTRY INFORMATION; AMENDING SECTION 18-8324, IDAHO CODE, TO REQUIRE PUBLICATION IN A NEWSPAPER BY THE SHERIFF OF REGISTRATION OF CERTAIN HIGH RISK VIOLENT SEXUAL PREDATORS WITHIN THE COUNTY.

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

SECTION 1. That Section 18-8324, Idaho Code, be, and the same is hereby amended to read as follows:

18-8324. DISSEMINATION OF REGISTRY INFORMATION. (1) The department shall disseminate any registration information collected under this chapter, including change of address notification, to criminal justice agencies through the telecommunications system established in section 19-5202, Idaho Code. Registry information provided under this section shall be used only for the administration of criminal justice or for the protection of the public as permitted by this chapter.

(2) The department shall provide quarterly to the superintendent of public instruction and to the director of the department of health and welfare a list of all sexual offenders required to register with the central registry together with the address, date of birth and crime of conviction for each offender listed. The superintendent may further distribute the list or portions thereof to school districts or to schools.

(3) The department shall release quarterly to the public a list of offenders thirty (30) days or more delinquent in maintaining registration or address verification. Offenders subject to being listed include those who have failed:

(a) To register with a sheriff after initial registration under section 18-8307, Idaho Code;

(b) To register annually as required in section 18-8307, Idaho Code; and

(c) To respond to an address verification notice as required in section 18-8308, Idaho Code.

(4) 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.

(5) Information released pursuant to this section may be used only for the protection of the public.

(6) Further dissemination of registry information by any person or entity shall include the cautionary statements required in subsection (4) of this section.

(7) Upon registration in a county of a person classified as a violent sexual predator presenting a high risk of reoffense by the Idaho sex offender classification board, or an equivalent classification in another state, the sheriff shall publish in a newspaper in general circulation within the county once a week for three (3) consecutive weeks, the name, address, photograph of said person and offense the offender has committed within thirty (30) days of registration. The sheriff shall charge a fee of fifty dollars ($50.00) in addition to any other fees authorized by this chapter to be paid by the sex offender to offset the cost of publication.

Approved February 27, 2003.

CHAPTER 29
(H.B. No. 72)

AN ACT

RELATING TO SMALL LAWSUIT RESOLUTION; AMENDING SECTION 7-1503, IDAHO CODE, TO REVISE NOTICE PROVISIONS, TO STRIKE REFERENCE TO CERTAIN COURT ISSUED SCHEDULING ORDERS AND SCHEDULING CONFERENCES, TO CLARIFY THAT COURTS MAY ORDER THAT CERTAIN CASES PROCEED TO TRIAL PURSUANT TO THE IDAHO RULES OF CIVIL PROCEDURE AND TO REVISE PROVISIONS RELATING TO REMOVAL OF CASES FROM THE EVALUATION PROCESS; AMENDING SECTION 7-1504, IDAHO CODE, TO CLARIFY JUDICIAL REFERENCES, TO CLARIFY THAT ASSIGNMENT OF CERTAIN JUDGES AS EVALUATORS SHALL BE MADE BY THE SUPREME COURT OR ADMINISTRATIVE JUDGE AND TO REVISE PROVISIONS RELATING TO THE SELECTION OF AN EVALUATOR; AMENDING SECTION 7-1505, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REQUESTS BY POTENTIAL EVALUATORS, TO REVISE PROVISIONS RELATING TO THE QUALIFICATION AND APPOINTMENT OF EVALUATORS, TO REVISE PROVISIONS RELATING TO THE DECLINATION OF AN APPOINTMENT, TO PROVIDE FOR RELEASE FROM APPOINTMENT AND TO PROVIDE FOR THE COMPENSATION OF CERTAIN SITTING OR SENIOR JUDGES; AMENDING SECTION 7-1506, IDAHO CODE, TO CLARIFY AND REVISE PROCEDURES RELATING TO EVALUATOR AUTHORITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 7-1507, IDAHO CODE, TO CLARIFY CERTAIN DOCUMENTS TO WHICH A CLAIMANT IS ENTITLED; AMENDING SECTION 7-1508, IDAHO CODE, TO REVISE PREHEARING AND HEARING PROCEDURES; AMENDING SECTION 7-1509, IDAHO CODE, TO STRIKE REFERENCE TO AWARDS AND APPEALS, TO CLARIFY CERTAIN LIMITATIONS ON EVALUATOR DECISIONS, TO PROVIDE THAT CERTAIN COSTS AND ATTORNEY'S FEES SHALL BE AWARDED BY THE COURT, TO REVISE PROCEDURES FOR REQUESTS FOR TRIAL DE NOVO, TO STRIKE REFERENCE TO WRITTEN NOTICES OF APPEAL, TO STRIKE REFERENCE TO CERTAIN COURT ISSUED SCHEDULING ORDERS AND SCHEDULING CONFERENCES, TO PROVIDE FOR THE USE OF CERTAIN RECORDED STATEMENTS AT TRIALS DE NOVO, TO PROVIDE FOR CERTAIN VIOLATIONS BY ATTORNEYS OF PARTIES, TO PROVIDE FOR THE ASSESSMENT OF EVALUATOR FEES, TO PROVIDE FOR THE ASSESSMENT OF DESIGNATED COSTS AND FEES AGAINST CERTAIN PARTIES THAT REQUEST TRIALS DE NOVO, TO DEFINE "COSTS AND REASONABLE ATTORNEY'S FEES," TO PROVIDE FOR THE AWARD OF OTHER EXPERT WITNESS FEES AND EXPENSES, TO REVISE PROVISIONS AND PROCEDURES RELATING TO OFFERS OF COMPROMISE, TO REVISE CRITERIA RELATING TO THE DETERMINATION OF WHETHER A PARTY REQUESTING A TRIAL DE NOVO HAS IMPROVED ITS POSITION, TO REVISE PROVISIONS AND PROCEDURES RELATING TO PRESENTATION TO THE COURT OF A JUDGMENT AND ENTERING OF THE JUDGMENT, TO STRIKE REFERENCE TO THE AWARD OF CERTAIN WITNESS FEES AND OTHER COSTS AND TO CLARIFY PROVISIONS RELATING TO THE APPLICATION OF OTHER STATUTES OR RULES REGARDING FEES OR COSTS; AMENDING SECTION 7-1510, IDAHO CODE, TO REVISE AND CLARIFY PROVISIONS RELATING TO THE RIGHT TO TRIAL; AMENDING SECTION 7-1512, IDAHO CODE, TO PROVIDE FOR CERTAIN STATISTICAL RECORDS, TO STRIKE REFERENCE TO APPEALS FROM EVALUATION AWARDS AND TO MAKE A TECHNICAL CORRECTION; DECLARING AN EMERGENCY, TO PROVIDE FOR APPLICATION AND TO PROVIDE A SUNSET CLAUSE.

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

SECTION 1. That Section 7-1503, Idaho Code, be, and the same is hereby amended to read as follows:

7-1503. ACTIONS TO WHICH THE IDAHO CIVIL EVALUATION OPTION APPLIES -- INITIATION OF PROCESS -- OPTION TO MEDIATE -- MOTIONS FOR REMOVAL FROM EVALUATION. (1) Civil actions in which the sole relief sought is a money judgment in which the parties agree that the total claims for all damages sought by a party do not exceed twenty-five thousand dollars ($25,000) shall be subject to the provisions of this chapter. This chapter shall not apply to appeals from the magistrates division, disputes subject to arbitration under chapter 9, title 7, Idaho Code, proceedings in the small claims division of the district court, cases seeking a punitive damages award, or cases in which this chapter has been previously invoked.

(2) The provisions of this chapter may be initiated by any party by the filing of a notice with the court. The notice shall be filed at least one hundred fifty (150) days prior to a scheduled trial but, without the consent of all parties, may not be filed within forty-five (45) days following the service of a complaint. For actions pending in the magistrates division, however, notice shall be filed at least one hundred (100) days prior to a scheduled trial but, without consent of all the parties, may not be filed within thirty (30) days following the service of a complaint. The trial court shall retain jurisdiction over a case proceeding under this chapter and the case shall remain on the court's active calendar.

(3) The parties shall confer after the filing of the notice to determine if they wish to undertake evaluation or mediation. If they agree to mediate, the parties may agree upon a mediator or utilize as mediator an individual selected pursuant to the evaluator selection provisions of this chapter. If a mediation has been conducted under this chapter, and the mediation has not resulted in the settlement of all claims, within fourteen (14) days following such mediation, the parties shall file a notice with the clerk of the court that a mediation has been completed, that all claims have not been settled and specifying the claims which remain. ~~Within twenty-eight (28) days after the notice is filed, the court shall issue a scheduling order or hold a scheduling conference pursuant to the Idaho rules of civil procedure.~~

(4) If the parties are not able to agree whether to undertake a mediation or an evaluation under this chapter, a party has seven (7) days after the filing of the notice of the initiation of the provisions of this chapter to file a motion seeking the court to order which form of alternative dispute resolution will be used. The moving party has a right to a hearing pursuant to the Idaho rules of civil procedure. In making its determination on the motion, the court shall consider, among other factors it deems relevant, the nature of the claim(s) and the defense(s), the prior experience, if any, of the parties or their counsel with mediation or evaluation, in this or other cases, the potential likelihood that the facts alleged in a claim, if proven, will lead to liability of one party to another, and the complexity of the case. If the court does not determine that mediation is a preferable means of alternative dispute resolution for the particular case, it shall order the parties to conduct an evaluation under the provisions of this chapter. However, if the court determines that neither mediation nor evaluation is appropriate in the case, it may order that the case proceed to

trial in accordance with the Idaho rules of civil procedure.

(5) Any party may move the court for removal from the evaluation at any stage for good cause~~. The court shall grant such motion upon its determination that there has been~~ including, but not limited to, a substantial change in circumstances or ~~that there is~~ a reasonable potential for the moving party to later seek amendment to its pleadings to allow that party to pursue punitive damages, making the evaluation option an inappropriate method to obtain resolution of the particular dispute.

SECTION 2. That Section 7-1504, Idaho Code, be, and the same is hereby amended to read as follows:

7-1504. SELECTION OF EVALUATOR -- COURT ADMINISTRATION OF PROCEDURE -- RULES, STANDARDS AND PROCEDURES -- EXEMPTION FROM OPERATION OF THE CHAPTER. (1) All ~~senior and sitting~~ magistrate judges, district judges and appellate court judges and justices, whether classified as sitting, senior or retired, are authorized to act as civil litigation evaluators. The supreme court may establish by rule, procedures for the appointment and use, where available, of such judges as evaluators for the purposes of this chapter.

(2) The supreme court shall maintain a list of private civil litigation evaluators who are approved to serve in each district pursuant to this chapter and any rules adopted by the supreme court. Each county's clerk of the court shall from time to time be provided by the supreme court a list of evaluators who are approved to serve in that county pursuant to this chapter and any rules adopted by the supreme court.

(3) Unless a sitting or senior judge is assigned by the supreme court or administrative judge as an evaluator, ~~pursuant to court rule,~~ or unless the parties have agreed in advance to the selection of a particular evaluator, upon receipt of a notice of initiation of the provisions of this chapter, the clerk of the court shall provide each party to the case a list containing the names of the same five (5) randomly selected evaluators. If there are more than two (2) parties to the litigation, the clerk will provide ten (10) names.

(4) In every case each party may submit requests for replacement list(s) to the clerk within three (3) days of receipt of a list of evaluators. Upon receipt of such a request, the clerk of the court shall provide each party to the case a new list containing an appropriate number of names of randomly selected evaluators.

(5) Within seven (7) days of receipt of the list, it shall be the duty of the party that filed the notice initiating proceedings under this chapter to initiate contact with the ~~representatives of the~~ other ~~litigants~~ party or parties for the purpose of selecting an evaluator. Unless the parties agree on a particular evaluator or a different method of selection, selection of the evaluator will be by alternating strikes. The ~~representative of the~~ initiating party shall strike an evaluator's name, the opposing ~~counsel~~ party shall then strike an evaluator's name with the parties alternating until only one (1) name is left. If there are more than two (2) parties, the strikes shall be made in the order the parties' names appear on the case caption commencing with the initiating party. The initiating party shall file notice of the selected evaluator within ten (10) days of the receipt of the list.

(6) If there is any dispute or failure to cooperate with the selection procedures contained in this section, any party may file a motion

with the court for assistance in selection of an evaluator. No hearing shall be required and the court shall rule on such motion expeditiously and take whatever steps are necessary to obtain the prompt selection of an evaluator. If the court finds that a party has requested a replacement list of evaluators unreasonably or determines it is otherwise appropriate, the court may appoint a sitting or retired judge or a private lawyer from the list of approved evaluators to serve as evaluator for the case.

(7) Upon application by any party made no sooner than fourteen (14) days after the filing of the notice of request for civil evaluation, the clerk shall assign by random lot any of the individuals identified on the list as the evaluator if no notice of selection or motion for assistance has been filed.

(8) Nothing shall preclude the parties stipulating to the appointment of any individual who agrees to serve as their evaluator under this statute. If the parties stipulate to the appointment of an evaluator different from one on the list provided by the clerk, they shall file a joint statement to that effect with the court.

(9) To the extent it deems necessary, the supreme court may prescribe rules to reduce the costs of evaluation under this chapter. It may also prescribe forms to be used in the evaluation process, and other rules, standards or procedures it deems appropriate to effectuate the purposes of this chapter.

(10) The supreme court may exempt all cases filed in the courts of any county from the operation of this chapter if, following application made by the administrative judge of the judicial district which includes that county, the supreme court determines the county does not have sufficient judicial or other resources to implement and effectuate the purposes of this chapter or for other good cause shown.

SECTION 3. That Section 7-1505, Idaho Code, be, and the same is hereby amended to read as follows:

7-1505. QUALIFICATIONS, APPOINTMENT AND COMPENSATION OF EVALUATORS. (1) Any individual desiring to be on a list of private civil litigation evaluators under this chapter shall submit a request to the supreme court identifying each ~~district~~ county in which the individual wishes to serve. The task of acting as an evaluator under this chapter shall be a service to the judiciary and the legal profession. The legislature encourages members of the bar to accept up to two (2) appointments under this chapter on a pro bono basis each year.

(2) To ~~serve~~ be listed as a private civil litigation evaluator, a person must currently be an active member of the Idaho state bar association and have had such membership for a minimum of seven (7) years or be a retired or senior judge. To the extent it deems them necessary, the supreme court may prescribe by rule additional qualifications for civil litigation evaluators in some or all cases with the purpose of providing the largest pool of individuals with the knowledge and experience to fairly determine claims under this chapter at minimal or no cost to litigants.

(3) Upon appointment in each case, the evaluator must sign an oath to fulfill the duties of the office, including the impartial, unbiased and timely discharge of those duties. He must also affirmatively state that he has no conflict of interest or, in the alternative, make a writ-

ten disclosure of any conflict of interest to the parties, which they may waive by filing a written consent with the evaluator. Challenges to the service of an evaluator shall be made by motion to the trial court and shall be heard expeditiously. Evaluators may decline ~~any~~ an appointments ~~for the balance of a calendar year without cause after serving as an evaluator twice during the year~~. The trial court may ~~otherwise excuse~~ also release evaluators from an appointment for good cause. If an evaluator declines or is ~~excused~~ released from service, a new list shall be requested from the clerk for selection of an evaluator.

(4) Evaluators shall submit their rates of hourly compensation, if any, to the supreme court when submitting their request to be on the list of civil litigation evaluators. The clerk shall include the rate of hourly compensation, if any, for each evaluator in the list of names submitted to the parties. The parties shall each pay an equal portion of a private evaluator's fee if any is charged as well as an equal portion of any actual costs incurred by the private evaluator. Individuals who wish to serve as private civil litigation evaluators under this chapter other than on a pro bono basis shall agree to serve as an evaluator in exchange for a fee not to exceed one thousand dollars ($1,000) unless the parties agree otherwise. Provided however, ~~that~~ sitting or senior judges ~~assigned~~ appointed as evaluators ~~pursuant to court rule~~ by the supreme court or administrative judge as part of their judicial service shall not be compensated by the parties. Retired or senior judges selected by the parties from the roster of private civil litigation evaluators maintained by the supreme court through the administrative director of the courts shall be compensated by the parties in accordance with this subsection.

SECTION 4. That Section 7-1506, Idaho Code, be, and the same is hereby amended to read as follows:

7-1506. EVALUATOR AUTHORITY -- PROCEDURES RELATING TO SERVICE, FILING AND COMPUTATION OF TIME. (1) Solely for the purpose of an evaluation, a~~A~~n evaluator has the authority to:

(a) Decide procedural issues and deadlines relating to the conduct of the evaluation, including discovery disputes, arising before or during the evaluation process except issues relating to the qualification of the evaluator, which shall be decided by the trial court.

(b) Invite, with reasonable notice, the parties to submit ~~pre-evaluation~~ preevaluation briefs;

(c) Examine any site or object relevant to the case;

(d) Administer oaths and affirmations to witnesses for the purposes of the evaluation;

(e) Rule on the admissibility of evidence;

(f) Determine the facts, decide the law, and issue a written evaluation decision~~,~~; and ~~make an award;~~

~~(g) Adjust or extend statutory deadlines set forth in this chapter, for good cause shown; and~~

~~(h)~~ Take such other acts as are necessary to accomplish the object of a fair, swift, and cost-effective determination of the case.

(2) An evaluator shall not decide motions to dismiss, motions to add or change parties in the case, or motions for summary judgment. Any

such motion shall be presented to the trial court for determination.

(3) After the case is assigned to the evaluator, service shall be made consistent with rule 5 of the Idaho rules of civil procedure, except that documents used in the evaluation shall be filed with the evaluator instead of the court.

(4) Time shall be computed pursuant to the Idaho rules of civil procedure.

(5) Except for the authority expressly given to an evaluator by this chapter, all issues shall be determined by the court.

SECTION 5. That Section 7-1507, Idaho Code, be, and the same is hereby amended to read as follows:

7-1507. DISCOVERY. (1) Unless the evaluator orders otherwise:

(a) A defending party may demand in writing a statement from each claimant setting forth separately the amounts of any special, general or other damages sought in the evaluation. Such statement shall be served on all parties no later than twenty-one (21) days after receipt of the demand;

(b) A party may take the deposition of another party pursuant to the Idaho rules of civil procedure;

(c) If the physical or mental condition of a claimant is at issue, the defending parties may obtain the relevant medical reports of the claimant and one (1) defendant's medical examination of the claimant. The evaluator shall decide any limitations to be placed on the time, place, manner, conditions or scope of the examination if requested. A claimant shall have an absolute right to a copy of any document relating to the claimant which is created by the examiner or the examiner's employees or agents during or after the examination. Such ~~material~~s shall be provided to the claimant within fourteen (14) days of the date of the examination and no later than twenty-one (21) days prior to the evaluation hearing date. Failure to timely provide the medical examiner's materials shall be a basis for vacating and rescheduling the hearing or for excluding the evidence in the discretion of the evaluator;

(d) The parties may submit requests for admission to one another pursuant to the Idaho rules of civil procedure.

(2) The conclusions and foundations therefore of any expert opinion testimony that a party intends to offer at the evaluation shall be submitted in writing to the opposing party no later than twenty-one (21) days prior to the evaluation. Medical records are deemed to fulfill the requirements of this subsection. If the opposing party concludes that it needs to take the expert's deposition and the parties cannot reach agreement to do so, the written report shall be submitted to the evaluator who, after hearing the opposing party's reasons for requesting the deposition, may order it to go forward. The evaluator's determination that such discovery will occur shall be based on whether it is necessary to obtain a fair determination of the case. If a party wishes to offer the live testimony of any expert witness at the evaluation, notice of the intent to do so must be given to the other parties no later than twenty-one (21) days prior to the evaluation and the opposing parties shall have the right to depose the expert before the evaluation is conducted.

(3) No additional discovery shall be due or obtained for the pur-

pose of the evaluation unless the parties stipulate thereto or the evaluator has ordered otherwise based on the evaluator's determination that such discovery is necessary to obtain a fair, swift and cost-effective determination of the case.

(4) Costs of all depositions, including fees for expert testimony, and medical examinations shall be paid by the party requesting the examination or testimony.

SECTION 6. That Section 7-1508, Idaho Code, be, and the same is hereby amended to read as follows:

7-1508. PREHEARING AND HEARING PROCEDURES. (1) The evaluator shall set the time and place of the evaluation hearing and shall give reasonable notice of the hearing to the parties. The parties may agree to hold the hearing by telephone. Except by stipulation among the parties and the evaluator, or for good cause shown, the hearing shall be scheduled to take place no sooner than twenty-eight (28) days, nor later than seventy (70) days, from the date of the assignment of the case to the evaluator. If a case will be heard later than seventy (70) days from the date of assignment, the evaluator shall file a notice with the trial court providing reasons for the delay and informing the court of the date of the hearing.

(2) ~~Except for good cause shown~~ Subject to the evaluator's discretion, no party shall be allowed more than three (3) hours for presentation of its case at an evaluation hearing.

(3) Counsel for the parties and the evaluator may issue subpoenas for the hearing in the manner provided in the Idaho rules of civil procedure.

(4) Unless otherwise agreed by the parties, a~~A~~t least ~~fourteen~~ seven (~~14~~7) days prior to the date of the evaluation, each party shall file with the evaluator and serve upon all other parties a prehearing statement containing a list of witnesses the party intends to call at the evaluation hearing and a list of exhibits and documentary evidence a party intends to utilize at the hearing. The document will identify whether the testimony shall be live, presented in a sworn writing, or taken by telephone. ~~Upon request, a~~All written and other tangible evidence identified shall be made available for the opposing party's inspection and copying at least seven (7) days prior to the hearing date. The evaluator ~~shall have the right to~~ may exclude any evidence not provided in compliance with this section.

(5) The evaluator shall control the mode and order of proof with the objectives of making the presentation of evidence effective for the ascertainment of facts, avoiding the needless consumption of time, protecting witnesses from harassment and undue embarrassment, and ensuring the fair, swift, and cost-effective determination of the case. Witnesses shall testify under oath administered by the evaluator with the full penalty of law to apply to violation of that oath. The evaluator may allow testimony by telephone or other nontraditional means. The evaluator may question any witness. A party has the right to cross-examine any other party and any witness called by another party.

(6) ~~The hearing may be recorded electronically upon~~ A stenographic or electronic recording may be made at the request and at the expense of any party~~, the cost to be borne by that party~~.

(7) Proceedings shall be under the control of the evaluator and as

informal as practicable. The extent to which the formal rules of evidence will be applied shall rest in the discretion of the evaluator. To the extent determined applicable, the evaluator shall construe those rules liberally in order to effectuate a fair, swift and cost-efficient procedure. Expert opinion testimony shall only be allowed if the conclusions and foundations therefore were appropriately disclosed and, if offered live, subjected to the opportunity for deposition pursuant to section 7-1507(2), Idaho Code, and otherwise admissible under the Idaho rules of evidence.

(8) To effectuate the fair, swift and cost-efficient nature of the evaluation, the following documents shall be presumed admissible and may be provided to the evaluator prior to the hearing, provided the documents are disclosed in the prehearing statement and, where relevant, the name, address and telephone number of the author of the document is contained in the document or set forth in the prehearing statement:

(a) Any written contract between the parties;

(b) A copy of any billing statement or invoice prepared in the normal course of business;

(c) Copies of any correspondence between the parties <u>except documents inadmissible under rule 408 of the Idaho rules of evidence;</u>

(d) Any document that would be admissible under rule 803(6) of the Idaho rules of evidence;

(e) A bill, report, chart, or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead, or billhead or otherwise clearly identifiable as part of the provider's professional record;

(f) A bill for drugs, medical appliances or other related expenses on letterhead, or billhead or otherwise clearly identifiable as part of a provider's professional record;

(g) A bill for, or estimate of, property damage or loss on a letterhead or billhead. In the case of an estimate, the offering party shall notify the adverse party no later than, as part of the prehearing statement, whether the property was repaired, in full or in part and provide the actual bill showing the cost of repairs;

(h) A police, weather, or wage loss report or standard life expectancy table to the extent it is relevant without need for authentication;

(i) A photograph, videotape, x-ray, drawing, map, blueprint, or similar evidence to the extent it is relevant without the need for authentication;

(j) The written statement of any witness made as part of a police investigation;

(k) The written statement of any witness, including a written report of any expert witness that contains a statement of opinion based on proper qualifications which the witness would be allowed to express if testifying in person;

(l) A document not specifically covered by the foregoing but having equivalent circumstantial guarantees of trustworthiness, the admission of which would help in the swift, fair and cost-effective resolution of the dispute or otherwise serve the interests of justice.

(9) The admission of a document under subsection (8) of this section does not, in any manner, restrict argument or proof relating to the weight of the evidence admitted, nor does it limit the evaluator's dis-

cretion to determine the weight of the evidence after hearing all evidence and the arguments of the parties.

(10) The evaluation hearing may proceed, and a decision may issue, in the absence of any party who, after due notice, fails to participate or to obtain a continuance. Continuances shall only be granted for good cause and for the shortest practicable time. If a party is absent, the evaluator may permit any party present to submit evidence supporting such present party's position in the case. In a case involving more than one (1) defendant, the absence of a defendant shall not preclude the evaluator from assessing as part of the award, damages against the defendant or defendants who are absent. The evaluator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award. A party who fails to participate in the hearing or prehearing process without good cause waives the right to a trial de novo. If it is shown to the trial court by clear and convincing evidence that a party or its counsel has not acted in good faith during the evaluation, the trial court may impose any appropriate sanction against such party or its counsel.

SECTION 7. That Section 7-1509, Idaho Code, be, and the same is hereby amended to read as follows:

7-1509. EVALUATION DECISION ~~AND AWARD---APPEALS~~ -- TRIAL DE NOVO -- MISCELLANEOUS. (1) Within fourteen (14) days following the evaluation, the evaluator shall issue a written, signed decision. The evaluator shall determine all issues raised by the pleadings, including a determination of any damages. The evaluator shall apply the applicable law as it exists; however, neither findings of fact nor conclusions of law shall be required. The decision ~~and award~~ shall be served on the parties. The evaluator shall file a notice of issuance of the evaluator's decision with the clerk of the court, together with proof of service of the notice and the decision on the parties. The decision ~~and award~~ shall not be filed with the clerk of the court. ~~No~~ The evaluator's ~~award~~ decision shall not exceed twenty-five thousand dollars ($25,000) in total damages to a party. ~~No~~ The evaluator's ~~award~~ ~~decision~~ shall not include exemplary or punitive damages. An evaluator may, in addition, award costs and attorney's fees under the terms of an applicable contract. All other costs and attorney's fees to which a party is entitled by statute or court rule shall be awarded by the court.

(2) Within twenty-one (21) days after the notice of issuance of the evaluator's decision has been filed with the clerk of the court, any party may file ~~with the~~ clerk a ~~written notice of appeal and~~ request for a trial de novo in the district court on all issues of law and fact. ~~Within twenty-eight (28) days after the request for a trial de novo has been filed, the court shall issue a scheduling order or hold a scheduling conference pursuant to the Idaho rules of civil procedure.~~

(3) The trial de novo shall proceed as if the evaluation had not occurred. No reference to the evaluation or to the amount of the evaluation ~~award~~ decision shall be made to the trial court or the jury during any part of the trial de novo. Discovery taken and recorded statements made during the evaluation process may be used at the trial de novo as provided in the Idaho rules of civil procedure and the Idaho rules of evidence; however, no reference shall be made to the fact that any statement was made in an evaluation proceeding. Any dollar amount

sought, demanded or awarded during the evaluation, including the parties' agreement that for the purposes of the evaluation the claim is limited to twenty-five thousand dollars ($25,000), shall be treated as an offer of compromise pursuant to the Idaho rules of evidence and shall not be admissible at trial. Any examination made pursuant to the provisions of section 7-1507(1)(c), Idaho Code, shall be subject to rule 35 of the Idaho rules of civil procedure. Any violation of the provisions of this subsection by a party or its ~~representatives~~ attorney shall be subject to appropriate sanctions by the trial court.

(4) The relief sought at trial shall not be limited by the evaluation; provided however, that judgment for damages of more than twenty-five thousand dollars ($25,000), exclusive of costs and fees, may not be entered for a party who has agreed that its claim does not exceed twenty-five thousand dollars ($25,000) for the purposes of initiating alternative dispute resolution under this chapter and shall be reduced by the court unless the claimant establishes the applicability of the factors of rule 60 of the Idaho rules of civil procedure. An evaluator may not be called as a witness at the trial de novo.

(5) The trial court shall assess costs, ~~and~~ reasonable attorney's fees, and the entire amount of the evaluator's fee against a party who ~~appeals--from--an-evaluation-award~~ requests a trial de novo and fails to improve its position at the trial de novo by at least fifteen percent (15%). For purposes of this subsection, "costs and reasonable attorney's fees" means all attorney's fees and costs as provided for by statute or court rule incurred after the filing of a request for a trial de novo. In addition, the court shall award all other expert witness fees and expenses in excess of those permitted by statute or rule if the court finds that they were reasonably incurred.

(6) ~~Up-to-forty-five-(45)~~ Within twenty-one (21) days following the filing of the ~~notice-of-issuance-of-the-evaluator's-decision~~ request for trial de novo, a party may serve upon the other party(ies) a written offer of compromise. If an offer of compromise is not accepted by the other party(ies) within ~~ten~~ fourteen (~~10~~4) days after service thereof, the amount used for determining whether the party ~~appealing--the evaluator's-award~~ requesting the trial de novo has improved its position shall be the amount of the offer of compromise. Neither the evaluator's decision nor the offer of compromise shall be submitted to the trial court until the verdict or judgment has been rendered in the trial de novo.

(7) The trial court may assess some or all costs and reasonable attorney's fees against a party who withdraws its request for a trial de novo where the withdrawal is not in conjunction with the acceptance of an offer of compromise.

(8) ~~For--the--purposes-of-this-section-"costs-and-reasonable-attorney's-fees"-means-all-those-provided-for-by-statute-or-rule-as--well--as all--expert-witness-fees-and-other-expenses-the-court-finds-were-reasonably-incurred-after-the-appeal-from-the-evaluation-award-was-filed.~~

~~(9)~~ If no ~~appeal~~ request for trial de novo has been filed at the expiration of twenty-one (21) days following the filing of the evaluator's notice of decision, a judgment may be presented to the court by any party accompanied by a copy of the evaluator's ~~award~~ decision. If the judgment is in conformity with the evaluator's ~~award~~ decision it shall be entered and shall have the same force and effect as any other judgment in a civil action but shall not be subject to appellate review

and may only be set aside pursuant to the provisions of rule 60 of the Idaho rules of civil procedure. An accepted offer of compromise may also be presented to the court to be converted to a judgment.

~~(10) Witness fees and other costs provided for by statute or court rule in district court proceedings shall be awarded by the court upon entry of judgment to the same extent and in the same manner as if the hearing had been held in court.~~

(~~11~~9) Except as provided in subsection (5) of this section, t~~T~~he provisions of this chapter do not affect or preclude the application of any other statute or rule regarding fees or costs including, but not limited to, those in title 7 or 12, Idaho Code, section 41-1839, Idaho Code, or the Idaho rules of civil procedure. Awards of damages and of attorney's fees and costs, when made to opposing parties, shall be set off against one another and judgment shall be entered for the net amount to the party(ies) entitled thereto.

(~~12~~0) An evaluator may obtain a judgment for his fees and costs in the pending litigation against any party that refuses to pay its share. Judgment shall be obtained by motion to the trial court which shall only be granted after the party failing to pay has had the opportunity to be heard and object.

SECTION 8. That Section 7-1510, Idaho Code, be, and the same is hereby amended to read as follows:

7-1510. RIGHT TO TRIAL. ~~BY JURY.~~ The intent of this chapter is to maintain the right to a court or jury trial and the provisions of this statute shall not be construed to ~~uphold~~ impair that right.

SECTION 9. That Section 7-1512, Idaho Code, be, and the same is hereby amended to read as follows:

7-1512. STATISTICAL RECORDS -- COMPILATION OF EVALUATOR LIST. (1) The supreme court shall keep statistical records of the number of requests for evaluation filed pursuant to the provisions of this chapter, the number of ~~appeals from evaluation awards~~ requests for trial de novo hereunder, and the number of instances in which a party improves its position by at least fifteen percent (15%) ~~on appeal~~ at trial.

(2) Commencing no later than July 1, 2002, the supreme court shall begin compiling the names of individuals desiring to serve as civil litigation evaluators in each judicial district.

SECTION 10. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply to all cases for which initial complaints are filed on or after January 1, 2003. This act shall be null, void and of no force and effect on and after June 30, 2006, provided, however, that the provisions of the act shall continue to apply to all applicable cases in which initial complaints are filed on or before June 30, 2006.

Approved February 27, 2003.

CHAPTER 30
(H.B. No. 130)

AN ACT

RELATING TO TAXATION; AMENDING SECTION 63-115, IDAHO CODE, TO DELETE THE CREDIT FOR FILING AN INCOME TAX RETURN ELECTRONICALLY; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION TO CERTAIN INCOME TAX RETURNS AND PROVIDING AN EFFECTIVE DATE FOR OTHER INCOME TAX RETURNS.

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.

(~~4~~3) Any return or other document transmitted electronically to the commission and accepted by the commission shall be deemed received on the earlier of:

(a) The date it arrives at the commission or, 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.

(~~5~~4) Any payment made electronically shall be deemed paid on the date the funds are available to the state treasurer.

(~~6~~5) To constitute a properly filed valid tax return or report, a document transmitted electronically or submitted in a physical machine sensible form such as tape or disk must:

(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.

(~~7~~6) The tax commission may, by rule, prescribe exclusive methods for electronically signing or verifying a return or other document transmitted electronically to the commission that shall have the same validity and consequences as manual signing by the taxpayer or other individual effecting the signature or verification.

SECTION 2. 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, 2003, in the case of returns required by Section 63-3030, Idaho Code, for taxable periods beginning on and after January 1, 2003, and in the case of all other returns the effective date shall be on and after July 1, 2003.

Approved February 27, 2003.

## CHAPTER 31
## (H.B. No. 13, As Amended)

AN ACT

RELATING TO DISPOSAL OF SURPLUS PERSONAL PROPERTY OF THE STATE OF IDAHO; AMENDING SECTION 67-2024, IDAHO CODE, TO AUTHORIZE ADOPTION OF POLICIES AND PROCEDURES; AMENDING CHAPTER 20, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2024A, IDAHO CODE, TO DISTINGUISH POLICIES GOVERNING THE DISPOSAL OF STATE SURPLUS REAL PROPERTY AND STATE SURPLUS PERSONAL PROPERTY; AND AMENDING SECTION 67-5732A, IDAHO CODE, TO AUTHORIZE DISPOSAL OF SURPLUS PERSONAL PROPERTY UNDER THE CONDITIONS SPECIFIED.

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

SECTION 1. That Section 67-2024, Idaho Code, be, and the same is hereby amended to read as follows:

67-2024. BOARD MAY ~~MAKE RULES~~ ADOPT POLICIES AND PROCEDURES. The board may ~~make~~ adopt such ~~rules and regulations~~ policies and procedures for the conduct of its business as it may deem desirable, not inconsistent with law.

SECTION 2. That Chapter 20, 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 67-2024A, Idaho Code, and to read as follows:

67-2024A. AUTHORIZATION FOR DISPOSAL OF STATE SURPLUS PROPERTY. The state board of examiners shall authorize:

(1) The disposal of state surplus real property classified as "state administrative facilities" in accordance with section 67-5709A, Idaho Code, excluding real property as set forth in section 58-331, Idaho Code; and

(2) The disposal of state surplus personal property in accordance with section 67-5732A, Idaho Code, and in compliance with the internal management policies and procedures for state surplus personal property as adopted by the board.

SECTION 3. That Section 67-5732A, Idaho Code, be, and the same is hereby amended to read as follows:

67-5732A. ~~SALE~~ DISPOSAL OF SURPLUS PERSONAL PROPERTY AUTHORIZED. Whenever the head of any commission, board, council, task force, committee or department of state government, or any institution of the state, or any elected state official, has under their jurisdiction or control, any personal property belonging to the state which, in their judgment, is of no further use to the state or to such ~~department,~~ commission, board, council, task force, committee, department, institution or state office, they may~~,~~ sell, ~~in the name of the state,~~ transfer, recycle or discard such personal property ~~at public sale. Provided, that where the reasonable value of such property exceeds the sum established by the internal management policies, guidelines or instructions of the state board of examiners, the same will be sold at public auction or sold after receipt of sealed bids, to the highest responsible bidder, after thirty (30) days of notice of such sale, giving the time and place and any sale conditions thereof, published in a newspaper in the county where such property is to be sold, or if no newspaper is published in the county where such sale is to be held, one (1) such notice shall be posted at the place of sale. All funds received from sales of surplus personal property must be deposited into the state treasury and credited to the account of the disposing agency less the cost of the sale. The board of examiners may authorize the sale or transfer of surplus state personal property to city, county, school district, or any other public agency without public notice and without public sale, provided the board has determined that it is in the best public interest~~ in the name of the state and in accordance with the internal management policies and procedures of the board of examiners. The board of examiners shall adopt internal management policies and procedures for the disposal of state surplus personal property to efficiently dispose of surplus personal property, to allow conveyance of surplus personal property to other state and local agencies, to offer state surplus personal property for sale to the public at large and to provide for maximum value received by the state of Idaho with attendant benefits to its citizens. Provided that when sales will be offered to the public and sold to the highest responsible bidder, notice of such sale shall be published in at least a newspaper of general circulation in accordance with section 60-106, Idaho Code, for at least two (2) weeks prior to such offering.

Approved March 3, 2003.

## CHAPTER 32
(H.B. No. 89, As Amended)

AN ACT

RELATING TO THE POWERS AND DUTIES OF THE STATE CONTROLLER; REPEALING SECTIONS 50-1012 AND 57-726, IDAHO CODE; AMENDING SECTION 1-2008, IDAHO CODE, TO STRIKE DUTY OF THE STATE CONTROLLER TO SIGN CERTAIN VOUCHERS; AMENDING SECTION 11-202, IDAHO CODE, TO CLARIFY DUTIES OF THE STATE CONTROLLER WHEN SERVED WITH NOTICE OF GARNISHMENT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 22-1209 AND 22-1803,

IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER; AMENDING SECTION 22-2809, IDAHO CODE, TO REQUIRE APPROVAL OF CLAIMS AND ISSUANCE OF WARRANTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 22-2919 AND 22-3319, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER; AMENDING SECTION 22-3510, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 22-3607, 22-3707, 22-4010, 22-4215 AND 22-4720, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER; AMENDING SECTION 25-156, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 25-3112, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE OFFICE OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER; AMENDING SECTION 36-301, IDAHO CODE, TO STRIKE DUTY OF THE STATE CONTROLLER RELATING TO VARIOUS FISHING, HUNTING AND TRAPPING LICENSES AND TO REQUIRE THE DIRECTOR OF THE DEPARTMENT TO ACCOUNT FOR THE FORMS; AMENDING SECTION 38-131, IDAHO CODE, TO STRIKE REQUIREMENT FOR NOTICE TO THE STATE TREASURER PRIOR TO ISSUE OF DEFICIENCY WARRANTS AGAINST THE GENERAL FUND; AMENDING SECTION 38-131A, IDAHO CODE, TO STRIKE THE REQUIREMENT FOR NOTICE TO THE STATE TREASURER PRIOR TO ISSUE OF DEFICIENCY WARRANTS AGAINST THE GENERAL FUND AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 38-1517, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-7110, IDAHO CODE, TO STRIKE REQUIREMENT FOR NOTICE TO THE STATE TREASURER PRIOR TO ISSUE OF DEFICIENCY WARRANTS AGAINST THE GENERAL FUND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 40-715, IDAHO CODE, TO CORRECT TERMINOLOGY REFERENCING WARRANTS; AMENDING SECTION 42-1718, IDAHO CODE, TO STRIKE REQUIREMENT FOR NOTICE TO THE STATE TREASURER PRIOR TO ISSUE OF DEFICIENCY WARRANTS AGAINST THE GENERAL FUND; AMENDING SECTION 42-2807, IDAHO CODE, TO STRIKE REQUIREMENT OF NOTICE TO THE STATE CONTROLLER, TO REQUIRE NOTICE TO THE STATE AGENCY RESPONSIBLE FOR MANAGEMENT OF AFFECTED STATE OWNED LAND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1047, IDAHO CODE, TO STRIKE REQUIREMENT FOR NOTICE TO THE STATE CONTROLLER OF CERTAIN ORDINANCES OR AMENDMENTS; AMENDING SECTION 50-2611, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS AND INCLUDE REFERENCE TO RULES OR PROCEDURES; AMENDING SECTION 54-3607, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER; AMENDING SECTION 58-1408, IDAHO CODE, TO REQUIRE ACCESS BY THE STATE CONTROLLER AND THE PUBLIC TO RECORDS OF THE IDAHO RANGELAND RESOURCES COMMISSION; AMENDING SECTION 58-1415, IDAHO CODE, TO ADOPT CORRECT TERMINOLOGY, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 59-1105 AND 59-1108, IDAHO CODE, TO ADOPT CORRECT TERMINOLOGY; AMENDING SECTION 61-1008, IDAHO CODE, TO CORRECT TERMINOLOGY REGARDING AUTHORITY OF THE STATE CONTROLLER TO REVIEW VOUCHERS OF THE PUBLIC UTILITIES COMMISSION AND TO MAKE A CODIFIER CORRECTION; AMENDING SECTION 63-3202, IDAHO CODE, TO CORRECT TERMINOLOGY REGARDING RECORDING TAX ANTICIPA-

TION NOTES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 66-118, IDAHO CODE, TO ADOPT CORRECT TERMINOLOGY REGARDING AUTHORITY OF THE STATE CONTROLLER TO REVIEW RECORDS OF CERTAIN STATE OPERATED HOSPITALS; AMENDING SECTION 67-412, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-1004, IDAHO CODE, TO STRIKE REFERENCE TO A SEAL OF THE OFFICE OF THE STATE CONTROLLER AND TO AUTHORIZE USE OF AN ELECTRONIC SIGNATURE; AMENDING SECTION 67-1024, IDAHO CODE, TO ADOPT CORRECT TERMINOLOGY REGARDING POLICIES AND PROCEDURES; AMENDING SECTION 67-1041, IDAHO CODE, TO STRIKE REQUIREMENTS FOR RETENTION OF CERTAIN RECORDS BY THE STATE CONTROLLER; AMENDING SECTION 67-1081, IDAHO CODE, TO ADOPT CORRECT TERMINOLOGY REGARDING POLICIES AND PROCEDURES; AMENDING SECTION 67-1102, IDAHO CODE, TO STRIKE OBSOLETE REFERENCE TO ORIGINAL CONTROLLER'S CERTIFICATES; AMENDING SECTION 67-1103, IDAHO CODE, TO PROVIDE CURRENT TERMINOLOGY GOVERNING PROCEDURE TO RECORD RECEIPTS; AMENDING SECTION 67-1209, IDAHO CODE, TO ADOPT CORRECT TERMINOLOGY REGARDING POLICIES AND PROCEDURES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-1610, IDAHO CODE, TO ADOPT CORRECT TERMINOLOGY REFERENCING THE CAPITOL PERMANENT ENDOWMENT FUND AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-3610, IDAHO CODE, TO ALLOW THE STATE CONTROLLER AND THE STATE BOARD OF EDUCATION AND BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO TO ADOPT A MUTUALLY AGREED UPON DATE FOR SUBMISSION OF FINANCIAL STATEMENT; AMENDING SECTION 67-7409, IDAHO CODE, TO REQUIRE EXAMINATION OF FINANCIAL STATEMENTS BY THE LEGISLATIVE SERVICES OFFICE INSTEAD OF THE STATE CONTROLLER AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-8305, IDAHO CODE, TO REQUIRE DELIVERY OF AUDITS TO THE DIRECTOR OF LEGISLATIVE SERVICES INSTEAD OF THE STATE CONTROLLER.

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

SECTION 1. That Sections 50-1012 and 57-726, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 1-2008, Idaho Code, be, and the same is hereby amended to read as follows:

1-2008. INVESTMENT OF JUDGES' RETIREMENT FUND. The investment board shall at the direction of the supreme court select and contract with a minimum of one (1) investment manager to manage the investment of the judges' retirement fund. The investment manager(s) shall, subject to the direction of the board, exert control over the funds as though the investment manager(s) were the owner thereof, subject to the limitation hereinafter provided. The investment manager(s) is hereby authorized to invest the judges' retirement fund in the following manner and in the following investments or securities and none others:

(1) Bonds, notes or other obligations of the United States or any agency or instrumentality thereof.

(2) Money market mutual funds.

(3) Bonds, notes, or other obligations of the state of Idaho and its political subdivisions, or bonds, notes, or other obligations of other states and their political subdivisions, provided such bonds, notes, or other obligations or the issuing agency for other than the state of Idaho and its political subdivisions have, at the time of their

purchase, an AAA rating by a commonly known rating service.

(4) 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.

(5) Corporate obligations designated as corporate convertible debt securities.

(6) Obligations secured by mortgages constituting a first lien upon real property of the state of Idaho which are fully insured or guaranteed as to the payment of the principal by the government of the United States or any agency thereof.

(7) Time certificates of deposit and savings accounts.

(8) Common or preferred stocks of corporations.

(9) Commercial paper, which at the time of purchase, is rated prime 1 by moody's investors service incorporated or is rated A-1 or higher by standard and poor's corporation.

In acquiring, investing, reinvesting, exchanging, retaining, selling and managing the moneys and securities of the fund, the investment manager(s) shall be governed by the prudent man investment act, sections 68-501 through 68-506, Idaho Code; provided, however, that the supreme court may in its sole discretion, limit the types, kinds and amounts of such investments. The investment board shall be responsible for assuring that the investment manager(s) complies with this act. The investment board, subject to the approval of the supreme court, is hereby authorized to select and contract with a bank or trust company located in the state of Idaho, to act as custodian of the judges' retirement fund, who shall hold all securities and moneys of the judges' retirement fund and shall collect the principal, dividends and interest thereof when due and pay the same into the judges' retirement fund. The state treasurer shall pay all warrants drawn on the judges' retirement fund for making such investments when issued pursuant to vouchers signed by the chief justice of the supreme court. ~~and by the state controller.~~

SECTION 3. That Section 11-202, Idaho Code, be, and the same is hereby amended to read as follows:

11-202. DEBTS OWING BY STATE OF IDAHO SUBJECT TO EXECUTION OR GARNISHMENT AFTER JUDGMENT. Debts, moneys and credits due or owing by the state of Idaho to any person whomsoever, except an elective official of the state of Idaho, shall be subject to execution and garnishment after final judgment against such person for the satisfaction of such judgment by service by the sheriff of Ada ~~C~~county, Idaho, upon the state controller of a copy of the writ of execution and a notice of garnishment signed by such officer in duplicate. ~~, and t~~The state controller shall at the time of ~~the~~ such service ~~of such writ and notice~~ collect a fee of ten dollars ($10.00) therefor from said officer. ~~and t~~The state controller shall thereafter have a period of thirty (30) days in which to answer said notice of garnishment. ~~and he shall immediately after such service notify the board of examiners of the state of Idaho thereof, and upon the claim of such person being allowed by the state board of examiners,~~ The state controller shall pay, in the usual manner provided by law to the officer serving said writ of execution and notice of judgment, the amount ~~thereof so levied upon or garnisheed, or so much thereof as is~~ necessary ~~for the satisfaction of the writ of execution~~

~~and~~ to satisfy said judgment ~~upon which the same was issued, and not subject to~~ excluding any exemption as provided ~~for~~ by law. ~~and claimed by said person, shall be paid by the state controller in the usual manner provided by law to the officer serving said writ and notice, and said~~ The officer's receipt therefor shall be a sufficient release of the state of Idaho and the state controller, of said claim of such person.

SECTION 4. That Section 22-1209, Idaho Code, be, and the same is hereby amended to read as follows:

22-1209. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 5. That Section 22-1803, Idaho Code, be, and the same is hereby amended to read as follows:

22-1803. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this

chapter. Any interest earned on the investment of idle moneys in an account shall be returned to the account.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. The report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially, but shall address every year distinctly, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house of representatives agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 6. That Section 22-2809, Idaho Code, be, and the same is hereby amended to read as follows:

22-2809. PAYMENT OF EXPENSES AND COSTS. All expenses and costs incurred in the administration of this act shall be paid out of the Idaho H~~h~~oney ~~A~~advertising ~~F~~fund. The commission shall keep an accurate record of all costs and expenditures and will report the same by publication on October 1st of each year. All expenses and costs incurred and contracted for by the commission in performing its duties under this act shall be paid out of such Idaho H~~h~~oney ~~A~~advertising ~~F~~fund in the following manner: ~~V~~vouchers shall be approved and submitted by the commission chairman~~,--to-the-state-controller,-who-shall,-upon-approval-by-the-state board--of--examiners,--forthwith-submit-such-vouchers-to-the-state-treasurer-for-issue-of-warrants-therefor~~ to the director or his designated representative of the Idaho department of agriculture for approval and subsequent issuance of a warrant by the state controller.

SECTION 7. That Section 22-2919, Idaho Code, be, and the same is hereby amended to read as follows:

22-2919. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously

appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 8. That Section 22-3319, Idaho Code, be, and the same is hereby amended to read as follows:

22-3319. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses pro-

jected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 9. That Section 22-3510, Idaho Code, be, and the same is hereby amended to read as follows:

22-3510. DUTIES AND POWERS OF COMMISSION. (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

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

(a) To conduct a campaign of research, education and publicity.

(b) To find new markets for pea and lentil products.

(c) To give, publicize and promulgate reliable information showing the value of peas and lentils for any purpose for which they are found useful and profitable.

(d) To make public and encourage the widespread national and international use of the special kinds of pea and lentil products produced from all varieties of peas and lentils grown in Idaho.

(e) To investigate and participate in studies of the problems peculiar to the producers of peas and lentils in Idaho.

(f) To take such action as the commission deems necessary or advisable in order to stabilize and protect the pea and lentil industry of the state.

(g) To sue and be sued.

(h) To enter into such contracts as may be necessary or advisable.

(i) To appoint and employ all necessary officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation.

(j) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.

(k) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement.

(l) To lease, purchase or own the real or personal property deemed necessary in the administration of this ~~act~~ chapter.

(m) To prosecute in the name of the state of Idaho any suit or action for collection of the assessment provided for in this ~~act~~ chapter.

(n) To adopt, rescind, modify and amend all necessary and proper

orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties.

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

(p) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to this order. Such records, books and accounts shall be audited subject to lawful, sound procedures and methods of accounting at least annually and a copy of such audit shall be delivered within thirty (30) days after completion thereof to the governor, commissioner of agriculture, ~~state controller~~ director of legislative services and the commission. The books, records and accounts shall be open to inspection by the state controller and public at all times.

(q) To ~~m~~Make a full and complete report available to all Idaho pea and lentil producers annually, and once every five (5) years, commencing May 1, 1970, poll each grower as to the advisability of continuing the commission. If a majority of the growers representative of a majority of the pounds produced request a repeal of this act, the commission shall at the next session of the legislature request a repeal.

SECTION 10. That Section 22-3607, Idaho Code, be, and the same is hereby amended to read as follows:

22-3607. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural

affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 11. That Section 22-3707, Idaho Code, be, and the same is hereby amended to read as follows:

22-3707. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1990, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited biennially by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 12. That Section 22-4010, Idaho Code, be, and the same is hereby amended to read as follows:

22-4010. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift, and all of the revenues received under the provisions of section 22-4017, Idaho Code, shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission

shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income to the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited every second year, but shall address every year distinctly, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 13. That Section 22-4215, Idaho Code, be, and the same is hereby amended to read as follows:

22-4215. DEPOSIT OF ASSESSMENTS -- WITHDRAWAL METHOD -- EXPENSES -- BOND REQUIRED -- AUDIT. (1) All receipts for the commission will be deposited within five (5) working days of being received, all moneys received by the commission from the assessment levied under section 22-4210, Idaho Code, and all other moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such accounts at such banks or trust companies.

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

(b) All moneys referred to in subsection (1) of this section shall be used by the commission only for the payment of expenses of the commission in carrying out the powers conferred on the commission.

(c) The commission may require any commission member or agent or employee appointed by the commission to give a bond payable to the commission in the amount and with the security and containing the

terms and conditions the commission may prescribe. The cost of such bond is an administrative cost under this act.

(3) All moneys received or expended by the commission shall be audited every second year, but shall address each year separately, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year. The right is reserved to the state of Idaho to audit all funds of the commission at any time.

SECTION 14. That Section 22-4720, Idaho Code, be, and the same is hereby amended to read as follows:

22-4720. DEPOSITS AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate the banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year. From and after January 15, 1999, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of the audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 15. That Section 25-156, Idaho Code, be, and the same is hereby amended to read as follows:

25-156. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be

specified as a condition of any grant, donation or gift, and all of the revenues received under the provisions of section 25-159, Idaho Code, shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this ~~act~~ chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income to the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. The report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 16. That Section 25-3112, Idaho Code, be, and the same is hereby amended to read as follows:

25-3112. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission

during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state--controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 17. That Section 36-301, Idaho Code, be, and the same is hereby amended to read as follows:

36-301. FORMS OF LICENSES — PRINTING ~~--~~ CHARGEABLE TO DIRECTOR. (a) Computerized licensing system. The fish and game commission shall prescribe by rule:

1. The procedures for the issuance of licenses and applications by a computerized licensing system.
2. The criteria for authorizing a person as a license vendor. In developing the criteria, the commission shall consider the cost to the state to install and maintain a license vendor and the public's need to be able to reasonably obtain the necessary license. The criteria should include, but are not limited to, the remoteness of the location; availability of licenses in the area; angling and hunting supplies and services at the location; distance to the next closest license vendor; and the number of licenses issued at the location.

(b) Forms. The forms of the various fishing, hunting and trapping licenses and related applications shall be determined by the director. The director shall ~~cause to be printed such number of blank~~ authorize printing the licenses and related applications as may be required from time to time and shall supervise the selling of same throughout the state.

(c) Accountability. ~~It is hereby made the duty of the state controller to keep and maintain a record of the number of such licenses so printed, and to hold t~~The director shall manage the issuance of such licenses and be accountable for ~~same and for~~ moneys received therefor.

SECTION 18. That Section 38-131, Idaho Code, be, and the same is hereby amended to read as follows:

38-131. DEFICIENCY WARRANTS FOR EXCESS COSTS OF FIRE SUPPRESSION. In event the actual cost for the control or suppression of forest fires in any forest protective district exceeds in any one (1) year the maximum moneys available for forest protection in that district from the forest protection fund or any other special or general fund provided for that purpose, the state board of land commissioners may authorize the issuance of deficiency warrants for the purpose of defraying such excess costs and when so authorized the state controller shall~~, after notice to~~

~~the state treasurer,~~ draw deficiency warrants against the general fund.

SECTION 19. That Section 38-131A, Idaho Code, be, and the same is hereby amended to read as follows:

38-131A. DEFICIENCY WARRANTS FOR COSTS OF FIRE SUPPRESSION ON STATE-OWNED RANGE LANDS. The state board of land commissioners may authorize the issuance of deficiency warrants for the purpose of paying the costs of fire suppression on state-owned range lands whether or not said lands are adjacent to or intermingled with forest lands. When so authorized, the state controller shall~~, after notice to the state treasurer,~~ draw deficiency warrants against the general ~~account~~ fund.

SECTION 20. That Section 38-1517, Idaho Code, be, and the same is hereby amended to read as follows:

38-1517. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission when the amount of such payments exceeds two thousand dollars ($2,000). Such designees may include the members of the staff of the commission.

(3) The right is reserved to the state of Idaho to audit the funds to the commission at ~~anytime~~ any time.

(4) On or before January 15 of each year, the commission shall file with the senate and house committees responsible for natural resources, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission for the preceding year. The report shall also include an estimate of income of the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1994, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 21. That Section 39-7110, Idaho Code, be, and the same is hereby amended to read as follows:

39-7110. DEFICIENCY WARRANTS FOR REIMBURSEMENT OF RESPONSE COSTS. (1) The military division shall review all claims for reimbursement and

make recommendations as to payment or nonpayment of the claims to the board of examiners within one hundred twenty (120) days after termination of the hazardous substance incident. The board of examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing reasonable and documented costs associated with emergency response actions taken pursuant to this chapter. The costs associated with routine firefighting procedures shall not be reimbursable costs under this chapter.

(2) Deficiency warrants authorized by the board of examiners shall not exceed the sum of one hundred thousand dollars ($100,000) for reimbursement of all claims made as a result of a single hazardous substance incident. In the event all claims for reimbursement for a single hazardous substance incident exceed~~s~~ the sum of one hundred thousand dollars ($100,000), the board of examiners shall determine an appropriate and equitable basis of payment of reimbursements.

(3) Upon authorization of deficiency warrants by the board of examiners in accordance with the provisions of this section, the state controller shall~~, after notice to the state treasurer,~~ draw deficiency warrants in the authorized amounts against the general ~~account~~ fund.

(4) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provisions of law.

SECTION 22. That Section 40-715, Idaho Code, be, and the same is hereby amended to read as follows:

40-715. TRANSFER OF SUMS ALLOCABLE TO COUNTIES, HIGHWAY DISTRICTS AND CITIES -- DISBURSEMENT. It is the duty of the state controller to draw ~~drafts~~ warrants upon the state treasury for the transfer of the distributive sums allocable to the several counties, highway districts and cities, which ~~drafts~~ warrants shall be made payable directly to the county treasurers, highway district secretary or city clerk. The county treasurers shall deposit the moneys in the county highway fund, highway district secretaries shall deposit the moneys in the highway district road fund and the city clerk shall deposit the moneys in the city street fund.

SECTION 23. That Section 42-1718, Idaho Code, be, and the same is hereby amended to read as follows:

42-1718. REMEDIAL MEANS FOR PROTECTION OF LIFE AND PROPERTY. The director shall immediately employ any remedial means necessary to protect life and property if either:

(a) The condition of any dam, reservoir or mine tailings impoundment structure is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation.

(b) Passing or imminent floods threaten the safety of any dam, reservoir or mine tailings impoundment structure.

In applying the remedial means provided for in this act, the department may in emergency do any of the following:

(a) Lower the water level by releasing water from the reservoir or lower mine tailings slurry level by releasing slurry from the mine tailings impoundment structure.

(b) Completely empty the reservoir.

(c) Take such other steps as may be essential to safeguard life and property.

The director shall continue in full charge and control of such dam or reservoir, or both, or mine tailings impoundment structure, or all, and its appurtenances, until they are rendered safe or the emergency occasioning the action has ceased.

If the cost of the emergency remedial action by the director for the protection of life and property exceeds the amount of money appropriated from the general fund specifically for that purpose, the additional costs may be defrayed by the issuance of deficiency warrants as may be authorized by the board of examiners. When so authorized, the state controller shall~~, after notice to the state treasurer,~~ draw deficiency warrants against the general fund.

The cost and expenses of the remedial means provided in this act, including cost of any work done to render a dam, reservoir or mine tailings impoundment structure or its appurtenances safe, shall be recoverable by the state from the owner. If not paid within sixty (60) days of invoice, action may be brought by the director in the district court of the district wherein the dam, reservoir or mine tailings impoundment structure or any part thereof is situated. The funds recovered shall be returned to the general fund to offset the amount of the deficiency warrant.

No action shall be brought by the state against the owner for pollution which may occur in the event that the director orders emergency dumping or bypassing.

SECTION 24. That Section 42-2807, Idaho Code, be, and the same is hereby amended to read as follows:

42-2807. LANDS ASSESSED -- STATE LANDS. All lands directly ~~benefited~~ benefitted by any irrigation or drainage project, or any irrigation or drainage works established under this chapter, and all public or corporate roads or railroads so ~~benefited~~ benefitted in whole or in part, shall be assessed in proportion to the benefits for the construction thereof. All lands owned by the state of Idaho ~~benefited~~ benefitted by such project may be assessed for such benefit the same as taxable land, provided a notice of the filing of the petition and of the time and place of hearing and notice of hearing shall have first been served on the ~~state controller~~ state agency responsible for the management of such state owned lands: provided, that instead of paying the said assessments so levied against the state lands, the state may promptly offer said state lands for sale at public sale in the manner provided by law, and as rapidly as permitted by the provisions of the state constitution, until the entire acreage of state land in such project shall have been sold and if the state does not make appropriations for the payment of such assessments against such state lands, then the sale of such state land, when made, shall be made under contract requiring the purchaser as a condition to receiving title to such lands from the state, or to receiving any contract right or interest therein, to pay all assessments duly levied against such lands under the provisions of this chapter, and to pay to the proper county officer at the time of such sale such annual assessments as may have come due prior to the time of such sale, with interest thereon as hereinafter provided, and to con-

tinue the payment of such assessments until title passes from the state to such purchaser, which conveyance shall be made from the state to the purchaser subject to the liens herein provided for.

SECTION 25. That Section 50-1047, Idaho Code, be, and the same is hereby amended to read as follows:

50-1047. GENERAL PROVISIONS. Any ordinance assessing a tax pursuant to this act shall contain a finding by the local governing body of the city based upon evidence presented to it that the condition set forth in section 50-1044, Idaho Code, exists and shall provide the methods for reporting and collecting taxes due. Taxes collected pursuant to any such ordinance shall be remitted to the city official designated in such ordinance or other such official contracting, pursuant to this act, with the city to provide collection services, and shall constitute revenue of the city available for any lawful corporate purpose approved by city voters subject to the provisions of this act. In any election, the ordinance submitted to city voters shall: (a) state and define the specific tax to be approved; (b) state the exact rate of the tax to be assessed; (c) state the exact purpose or purposes for which the revenues derived from the tax shall be used; and (d) state the duration of the tax. No tax shall be redefined, no rate shall be increased, no purpose shall be modified, and no duration shall be extended without subsequent approval of city voters. An ordinance adopting any local-option nonproperty tax authorized by this act may provide for separate identification of taxes as may be appropriate. The city clerk of any city adopting an ordinance pursuant to this act shall, immediately following approval of such ordinance, or any amendment thereto, forward a copy of said ordinance or amendment to ~~the state controller,~~ the chairman of the state tax commission, and the chairman of the state board of tax appeals.

SECTION 26. That Section 50-2611, Idaho Code, be, and the same is hereby amended to read as follows:

50-2611. USE OF REVENUE -- CONTRACTS TO ADMINISTER OPERATION OF DISTRICT. The legislative authority of each city shall have sole discretion as to how the revenue derived from the special assessments is to be used within the scope of the purposes; however, the legislative authority may appoint existing advisory boards or commissions to make recommendations as to its use, or the legislative authority may create a new advisory board or commission for the purpose.

The legislative authority may contract with a chamber of commerce or other similar business association operating primarily within the boundaries of the legislative authority to administer the operation of a business improvement district, including any funds derived pursuant thereto; provided, that such administration must comply with all applicable provisions of law including this chapter, with all county or city resolutions and ordinances, and with all ~~regulations~~ rules or procedures lawfully imposed by the state controller or other state agencies.

SECTION 27. That Section 54-3607, Idaho Code, be, and the same is hereby amended to read as follows:

54-3607. COMMISSION ACCOUNT. (1) The commission may accept tax

receipts, grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this act, which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this act or as provided by law shall be paid to the commission and shall be deposited into a bank account in the name of the Idaho grape growers and wine producers commission. Moneys in the bank account are continuously appropriated and made available for defraying the expenses of the commission in carrying out the provisions of this chapter. Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 28. That Section 58-1408, Idaho Code, be, and the same is hereby amended to read as follows:

58-1408. DUTIES AND POWERS OF THE COMMISSION. (1) Consistent with the general purposes of this chapter, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of the provisions of this chapter, the commission shall, in conjunction and cooperation with other entities which represent the livestock grazing industry, have the following duties, authorities and powers.

(a) Conduct research and surveys to determine public attitudes and levels of knowledge regarding rangeland management and the livestock grazing industry;

(b) Design educational campaigns and other needed efforts to provide the public with accurate information regarding the management of Idaho's rangelands and the livestock grazing industry;
(c) Be an advocate for the proper management of Idaho's rangelands and for a healthy livestock grazing industry in the state;
(d) Be a source of accurate and timely data regarding the rangeland resource and the livestock grazing industry;
(e) Make projections regarding availability of forage, new or existing products and markets, and other biological or social trends which might affect rangeland management or the livestock grazing industry in Idaho; and
(f) Cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity.
(3) The commission shall also have the duty, power and authority:
(a) To take such actions as the commission deems necessary or advisable to stabilize and protect the livestock grazing industry of the state and the health and welfare of the public;
(b) To enter into such contracts as may be necessary or advisable;
(c) To appoint and employ officers, agents and other personnel, including experts in publicizing rangeland management or the livestock grazing industry, and to prescribe their duties and fix their compensation;
(d) To sue and be sued as a board, without individual liability of the board members, when the board is acting within the scope of the powers of the board;
(e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within the state;
(f) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this chapter;
(g) To prosecute in the name of the state of Idaho any suit or action for collection of any assessment provided for in this chapter;
(h) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties;
(i) To incur indebtedness and carry on all business activities; and
(j) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to ~~the~~ inspection ~~and audit by the state auditor and public~~ at all times by the state controller and the public.

SECTION 29. That Section 58-1415, Idaho Code, be, and the same is hereby amended to read as follows:

58-1415. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby contin-

uously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such account signed by two (2) officers designated by the commission when the amount of such payments exceeds two thousand dollars ($2,000). Such designees may include the members of the staff of the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at ~~anytime~~ any time.

(4) On or before January 15 of each year, the commission shall file with the senate and house committees responsible for natural resources, the director of legislative ~~budget office~~ services, the state ~~auditor~~ controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission for the preceding year. The report shall also include an estimate of income of the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1994, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the ~~state auditor~~ director of legislative services. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 30. That Section 59-1105, Idaho Code, be, and the same is hereby amended to read as follows:

59-1105. CONTRIBUTIONS FROM LOCAL ENTITIES. Under ~~rules and regulations~~ policies and procedures to be prescribed by the state controller, each municipal corporation, political subdivision, drainage or irrigation district, hereinafter referred to as public employer, coming within the provisions of this chapter, shall remit to the state controller the amounts required to be withheld from the salary or wages of each officer and employee together with the matching contribution of such public employer and any interest or penalties imposed for late remittances, in the manner and form prescribed by the state controller. Such moneys shall be deposited in the social security trust account.

In case any public employer does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of six percent (6%) per annum from the date due until paid plus a penalty of six percent (6%) and the state controller may, at his discretion, deduct any delinquent amounts including interest and penalty from any funds or moneys due such delinquent public employer as may be in the possession of the state treasurer, and credit the same to the social security trust account.

If any public employer is delinquent in the payment of any moneys required to be paid under the provisions of this chapter, and is so delinquent for more than thirty (30) days, the state controller shall so notify the board of county commissioners who shall thereupon order the

county treasurer to withhold the equivalent amount of such moneys as are delinquent, together with the equivalent amount of any penalty or interest which may be due as a result of such delinquency, from any funds or moneys due such delinquent public employer as may be in the possession of the county treasurer, and to pay the same over to the state controller, for the credit of the social security trust account.

SECTION 31. That Section 59-1108, Idaho Code, be, and the same is hereby amended to read as follows:

59-1108. RECEIPTS OF STATE TRUST FUND. Collections into said fund shall be paid into said fund under such ~~rules~~ policies and procedures as shall be prescribed by the state controller, and shall consist of all moneys received from the various political subdivisions of the state, all state contributions for participation in the Federal Old Age and Survivors Insurance program, and all taxes collected from employees covered by said program.

SECTION 32. That Section 61-1008, Idaho Code, be, and the same is hereby amended to read as follows:

61-1008. EXPENDITURE -- PUBLIC UTILITIES COMMISSION FUND -- CREATION -- APPROPRIATION -- DISPOSITION OF SURPLUS. (1) At each regular session, the legislature shall determine the amount of money that may be expended by the public utilities commission during the next ensuing fiscal year.

(2) The state treasurer shall be custodian of the "public utilities commission fund," into which shall be paid and deposited all funds accruing or received under any and all provisions of this chapter, and all fees, licenses, charges, assessments, fines and penalties, now or hereafter payable to, collected or recovered by the commission under any other law of this state, and all funds otherwise appropriated or made available to said fund. All moneys from whatever source accruing to and received into said fund are hereby appropriated, within the limits of funds determined therefor by the legislature, for the payment of the administrative and maintenance expenses of the commission, including salaries and wages of the commissioners and employees, travel, supplies, equipment, fixed charges, refunds of fees and all other necessary expenses of the commission, not otherwise provided for. Moneys shall be paid out of the public utilities commission fund by the state treasurer only upon claim vouchers prepared and approved by the commission, certified by the president of the commission to the state controller who, after ~~audit~~ review as provided by law, shall draw his warrant against the public utilities commission fund for all such claims.

(3) Any moneys ~~chapter~~ remaining in the public utilities commission fund at the end of any fiscal year, shall be retained in said fund for the use of the commission for the purposes specified in this chapter. Remaining funds shall be credited ratably by the commission to the respective railroad corporations and other public utilities ~~chapter~~ according to the respective portions of such fees determined hereunder to be assessable against each such railroad corporation and other public utility, respectively, for the ensuing fiscal year. The respective fee assessed against each railroad corporation and public utility for such ensuing fiscal year shall be correspondingly reduced; provided that,

only moneys paid under the provisions of this chapter by railroad corporations and other public utilities shall be considered in determining the surplus to be so credited by the commission.

SECTION 33. That Section 63-3202, Idaho Code, be, and the same is hereby amended to read as follows:

63-3202. PROCEDURE FOR ISSUANCE OF NOTES. (1) Whenever the state treasurer shall deem it to the best interests of the state of Idaho to issue state of Idaho tax anticipation notes, as provided in section 63-3201, Idaho Code, the state treasurer shall make written application to the state board of examiners, stating the amount of state of Idaho tax anticipation notes the state treasurer deems advisable to issue. Upon approval of the state board of examiners by order or resolution duly entered on the minutes of the state board of examiners, the state treasurer shall issue the tax anticipation notes in accordance with the provisions of this chapter.

(2) Prior to the public issuance and public sale of any tax anticipation note, the state treasurer shall prepare a written plan of financing which shall be filed in the office of the governor. The plan of financing shall provide for the terms and conditions under which the tax anticipation notes shall be issued, sold and delivered, the taxes to be anticipated, the maximum amount of tax anticipation notes which may be outstanding at any one time under the plan of financing, the sources of payment of the tax anticipation notes issued pursuant to the plan of financing, which may include the proceeds of sale of notes issued to refund outstanding tax anticipation notes and to pay accrued interest thereon, and all other details necessary in connection with the issuance, sale and delivery of the tax anticipation notes. The plan of financing shall specify a method pursuant to which the interest rate or rates on the tax anticipation notes may be determined during the time the tax anticipation notes are outstanding and shall also set forth the maximum interest rate which the tax anticipation notes may bear.

(3) The tax anticipation notes shall bear interest, shall be in the form, shall be executed in the manner, shall be payable, shall be sold in the manner and at prices, either at, in excess of, or below the face value thereof, and generally shall be issued in the manner and with the details as shall be set forth in an order of the state treasurer, all in conformity with any applicable plan of financing and with this chapter.

(4) Each tax anticipation note shall recite that it is a valid and binding obligation of the state of Idaho and that the faith and credit of the state of Idaho is solemnly pledged for the payment of the principal of and interest thereon in accordance with its terms and the constitution and laws of the state of Idaho.

(5) Each tax anticipation note shall be ~~registered prior to issuance~~ recorded in the office of the state controller. ~~and a legend to that effect shall appear on each tax anticipation note.~~

(6) Immediately upon the completion of any sale, the state treasurer shall make a verified return of said sale to the state controller, specifying the amount of notes sold, the person or persons to whom said notes were sold and the price, terms and conditions of the sale. Immediately upon the sale of any tax anticipation notes, the state treasurer shall credit the proceeds of sale, other than accrued interest, to the general ~~account of the state operating~~ fund of the state.

SECTION 34. That Section 66-118, Idaho Code, be, and the same is hereby amended to read as follows:

66-118. POWERS AND DUTIES OF THE BOARD -- HOSPITALS MANAGED BY -- ANNUAL REPORT. The board shall have complete authority to manage and operate the State Hospital North, at Orofino; the State Hospital South, at Blackfoot; the Idaho State School and Hospital at Nampa; with authority to establish professional standards of qualifications for doctors, nurses, superintendents, general managers, farm managers, attendants, and all other personnel and may employ a general business manager for each of said hospitals, and hospital personnel at said hospitals and medical superintendents for each of said hospitals, at its discretion, or a superintendent, or director, or manager who may be over all hospitals. The board shall have complete authority to, or it is the duty of the board:

(a) To make rules ~~and regulations~~ for the government of said hospitals and to define the duties of all employees; provided, that the members of the board shall not be personally liable for any act of any employee done in violation of any law, or contrary to any rule ~~or regulation~~ of the board; nor shall any administrative employee of the board be responsible for the act of any other employee done in violation of any laws of the state, or rule ~~or regulation~~ of the board, or order of the administrative employee;

(b) To receive, take and hold property, both real and personal, in trust for the state and for the use and benefit of such hospitals;

(c) To visit each of said hospitals at such times as it deems necessary and to keep itself advised of all expenses and the condition of buildings and property, the safety and treatment of patients, and require the general manager or superintendent to make periodic reports as to the condition of each hospital and treatment of the patients;

(d) To require the keeping of a complete and accurate set of books of each hospital in accordance with the accounting required of other institutions of the state; to examine and audit the expenditures of each hospital and to certify the same to the state controller. The board shall require that all itemized bills, purchases and other expenditures made, must be examined and approved by the head of the hospital making such purchases or expenditures and then the same must be certified by the board, and transmitted to the state controller to be ~~audited~~ reviewed and allowed in the same manner as other accounts against the state are ~~audited~~ reviewed and allowed. When allowed the state controller must draw his warrant on the state treasurer for the amount so ~~audited~~ reviewed and allowed, and the state treasurer is hereby authorized and required to pay the same out of any money in the state treasury appropriated therefor;

(e) To make ~~regulations~~ rules and fix the terms and conditions of payment of costs of care and treatment of mentally ill persons who are not indigent or who are not residents of the state, who are admitted to said State Hospital North, State Hospital South, or Idaho State School and Hospital, all receipts from such persons to be paid into the state treasury and credited to salaries and wages, other current expense, or capital outlay of the general fund of the remitting hospital, at the discretion of the board;

(f) To enter into reciprocal agreements with similar boards of other states for the transfer of residents of those states, who have

been involuntarily hospitalized to any of the aforesaid hospitals in this state, or the transfer of Idaho residents, who have been involuntarily hospitalized to similar hospitals in those states, to the appropriate hospital in this state;

(g) To recognize that or to proceed on the fact that any order of involuntary hospitalization of an Idaho resident, by judicial action of another state, shall be sufficient for admitting such resident, without further judicial action in this state, to a similar hospital in this state;

(h) To remove patients in case of necessity, or when they feel it is for the betterment of the patient's welfare, to an appropriate place at the discretion of the board, and to make necessary negotiations to carry out such a procedure;

(i) To purchase insurance for any of the medical staff in any of the hospitals against liability for alleged malpractice by reason of any act, or omission, while in the service of the state of Idaho;

(j) To remove and transfer from one (1) state hospital to another, or from a state hospital to a private hospital, or to a hospital of another state, or other government agency, any person confined therein, for the purpose of grouping together classes of mentally ill persons, or to give them better medical aid and care;

(k) To report to the governor each year, a statement of receipts and expenditures, the condition of each hospital, the number of patients under treatment at each hospital during the preceding year and such other matters as may be pertinent, and to make an annual report to the governor in substantially the same manner on or before the 1st day of December prior to each regular session of the legislature;

(l) To delegate to the head of the hospital, or to a director or superintendent, or manager of all hospitals the powers and duties vested by law in the board, at its discretion;

(m) To initiate, create, or promote procedures, policies and practices either as a body or in cooperation with other governmental departments or agencies for the general welfare and betterment of the mental health of the people of the state of Idaho.

SECTION 35. That Section 67-412, Idaho Code, be, and the same is hereby amended to read as follows:

67-412. ALLOWANCE FOR MEMBERS. (1) From and after December 1, 1976, a member of the legislature of the state of Idaho who, while serving during any session of the legislature, and a lieutenant-governor while performing his duties as president of the senate who maintains a second home in Ada County during such period shall receive an allowance of forty dollars ($40.00) per day while away from home during such period for his away from home expenses. Such expenses shall be allowed for one (1) extra day prior to and immediately following each session of the legislature.

(2) A member of the legislature and a lieutenant-governor of the state of Idaho who does not maintain a second residence in Ada County during any legislative session, but who commutes to the legislative sessions from his home, shall be reimbursed for actual travel expenses necessarily incurred in traveling to and from the legislature at the rate per mile allowed by the board of examiners for official travel, not to exceed one (1) round trip per day and not to exceed ten dollars ($10.00)

total expenses per day, during each day of the legislative session, including each day after December 1, 1976, which expenses shall be accounted for to the presiding officer of the legislative body in which the member serves, and shall additionally receive the sum of thirty dollars ($30.00) per day as expenses for board, necessary committee expenses, and the necessary expenses of maintaining the office of a legislator.

(3) The legislature of the state of Idaho further finds and declares that in the discharge of their official duties it is important that legislators return to their legislative districts on occasion during the term of each legislative session to confer and consult with their constituents concerning pending legislation. Therefore, commencing January 11, 1971, in addition to the travel expenses allowed in section 23, article ~~3~~ III of the Idaho ~~C~~constitution, each member of the legislature shall be reimbursed for actual expenses necessarily incurred in travel to and from his home legislative district on four (4) occasions during each regular legislative session. Reimbursement shall be upon voucher submitted in the usual form.

(4) The legislature of the state of Idaho finds and declares that to enable the legislature to carry out its constitutional duties and to function responsibly and effectively as an independent branch of state government, its members are required during periods when the legislature is not in session, to meet and correspond with officials of the departments and agencies of the executive and judicial branches of state government and local governments as well as individual constituents and groups of constituents concerning state and area problems and concerns, proposed legislation, existing laws, and to study and prepare proposed legislation. To offset the expense incurred in performing such services and maintaining the office of legislator, each member of the forty-fourth legislature of the state of Idaho, and each member of subsequent legislatures, shall receive for legislative expenses and for the expense of maintaining the office of legislator while the legislature is not in session, the sum of five dollars ($5.00) per day during each day the legislature is not in session. This expense allowance shall be paid in regular installments as determined by the state ~~auditor~~ controller and shall be in addition to all other compensation, either as per diem or expense, paid to any member of the legislature under the previous subsections or as an officer or member of any council, board, commission or other agency or instrumentality of the state of Idaho.

(5) Members of the legislature shall receive the same per diem allowances and be reimbursed for actual expenses necessarily incurred in attending meetings or performing services previously authorized by the legislature and held during the interim between legislative sessions in the same manner and in the same amounts as ~~is~~ are provided for members of the legislative council, including each day so spent after December 1, 1976.

SECTION 36. That Section 67-1004, Idaho Code, be, and the same is hereby amended to read as follows:

67-1004. ~~SEAL--OF--OFFICE----~~ CERTIFIED COPIES OF DOCUMENTS AS EVIDENCE. The state controller must, in addition to his original handwritten signature, keep ~~a--seal-of-office-or-sign,-or~~ and use a facsimile signature~~,~~ or electronic signature for the authentication of all papers,

writings, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original.

SECTION 37. That Section 67-1024, Idaho Code, be, and the same is hereby amended to read as follows:

67-1024. REGULATING CLAIMS REQUIRING PAYMENT IN ADVANCE. When an expenditure authorized to be made by any state department, body or officer is of such a nature as to require payment in advance of performance or delivery, then the right of the officer to obtain such service or property on behalf of or in the service of the state shall constitute a claim against the state to be presented and allowed as are other claims. The board of examiners may, in its discretion, prescribe ~~rules~~ policies and procedures with respect to the filing and allowance of such claims and the subsequent accounting therefor. Any money obtained upon such claim and not expended on behalf of or in the service of the state shall be repaid by the claimant to the state.

SECTION 38. That Section 67-1041, Idaho Code, be, and the same is hereby amended to read as follows:

67-1041. VOUCHERS AND ACCOUNTS PRESERVED. Evidence of all accounts, vouchers, and/or documents settled, or to be settled, by the state controller or board of examiners must be preserved ~~in his office~~ for not less than two (2) years~~, and copies thereof, authenticated by the official seal of the state controller, shall be given to any person interested therein who requires the same~~. After the legislative council has indicated no further need, such records may be disposed of unless a specific written request for further retention has been made to the state controller.

SECTION 39. That Section 67-1081, Idaho Code, be, and the same is hereby amended to read as follows:

67-1081. SUBMISSION OF ANNUAL FINANCIAL STATEMENT TO STATE CONTROLLER BY ALL TAXING UNITS OF GOVERNMENT -- ~~RULES~~ POLICIES. (1) When requested in addition to any other statement of financial condition required by law, the auditor of every county, and the treasurer of any other taxing unit of government, shall submit to the state controller an annual financial report, under oath, as in this act provided. The state controller shall formulate ~~rules~~ policies necessary hereunder.

(2) The state controller shall report to the prosecuting attorney, the refusal or neglect of county officers to obey his instructions. The prosecuting attorney, in case of county or municipal officers, shall promptly take action to enforce a compliance with such instructions of the state controller.

SECTION 40. That Section 67-1102, Idaho Code, be, and the same is hereby amended to read as follows:

67-1102. RECEIPTS AND DISBURSEMENTS -- CLASSIFICATION -- TABULATION BY CALENDAR MONTHS. It shall be the duty of the state controller to classify, according to the aforesaid standards, all remittances received

into the state treasury and all disbursements authorized therefrom, and to tabulate the same by calendar months from ~~original controller's certificates and~~ data on file in his office.

SECTION 41. That Section 67-1103, Idaho Code, be, and the same is hereby amended to read as follows:

67-1103. CERTIFICATES AND CLAIM VOUCHERS TO CONTAIN DATA ESSENTIAL TO CLASSIFICATION. The state controller shall not ~~issue any certificate authorizing the treasurer to receive money~~ record the receipt, nor file any claim voucher for disbursement, until all data essential for classification purposes regarding such document is set forth ~~on such document~~ in accordance with the policies and procedures of the state controller.

SECTION 42. That Section 67-1209, Idaho Code, be, and the same is hereby amended to read as follows:

67-1209. SUSPENSE ACCOUNT. Any state officer, department, board or institution having or receiving money in trust or for ~~safe-keeping~~ safe-keeping pending its final disposition or distribution shall deposit the same in the state treasury in a special suspense account from which it may be withdrawn or distributed under ~~rules promulgated by~~ policies and procedures of the state controller.

SECTION 43. That Section 67-1610, Idaho Code, be, and the same is hereby amended to read as follows:

67-1610. CAPITOL PERMANENT ENDOWMENT FUND. There is hereby created a permanent fund within the state treasury to be known as the capitol permanent endowment fund, consisting of, from this point forward: (a) the proceeds of the sale of lands granted to the state of Idaho for the purpose of facilitating the construction, repair, furnishing and improvement of public buildings at its capitol by an Act of Congress (26 Stat. L. 214, ch. 656 (1890) (as amended)) entitled "An Act to Provide for the Admission of the State of Idaho into the Union," comprising thirty-two thousand (32,000) acres, or any portion thereof, or mineral therein; (b) all unappropriated and unencumbered moneys in the public building fund shown on the state controller's chart of accounts as ~~Fund No. 0481-09~~ the capitol permanent endowment fund; (c) retained earnings to compensate for the effects of inflation; and (d) legislative appropriations. The fund shall be managed by the endowment fund investment board in accordance with chapter 5, title 68, Idaho Code. All realized earnings shall be credited to the capitol endowment income fund ~~creation~~ created in section 67-1611, Idaho Code.

SECTION 44. That Section 67-3610, Idaho Code, be, and the same is hereby amended to read as follows:

67-3610. UNIVERSITY OF IDAHO -- ANNUAL AUDITED FINANCIAL STATEMENT. As a condition to availability of appropriations made to it, and to institutions and activities under its control or supervision, the state board of education and board of regents of the University of Idaho shall file with the state controller on or before ~~the 20th day of January of each year for the preceding fiscal year~~ a date mutually agreed upon by

the state controller and the state board of education and board of regents of the university of Idaho, an audited financial statement showing receipt of moneys from state and federal appropriations, endowment funds, local and institutional incomes, or from any other source, made to it and to institutions and activities under its control or supervision.

SECTION 45. That Section 67-7409, Idaho Code, be, and the same is hereby amended to read as follows:

67-7409. POWERS AND DUTIES OF THE DIRECTOR. The director shall be responsible for the daily operations of the lottery, and shall have the following duties, powers and responsibilities in addition to others herein granted:

(1) The director shall:

(a) Operate and administer the lottery in accordance with the provisions of this ~~act~~ chapter and the policies~~,~~ and rules ~~and regulations~~ of the lottery;

(b) Appoint deputy directors, sales personnel and security staff, who shall be exempt from the provisions of chapter 53, title 67, Idaho Code, as may be required to carry out the functions and duties of his office; and

(c) Hire professional, technical and other employees as may be necessary to perform the duties of his office subject to the provisions of chapter 53, title 67, Idaho Code.

(2) The director shall:

(a) Confer regularly with the commission on the operation and administration of the lottery;

(b) Make available for inspection by the commission, on request, all books, records, files, and other information and documents of the lottery; and

(c) Advise the commission and make such recommendations as the director considers necessary and advisable to improve the operation and administration of the lottery.

(3) The director may enter into contracts for marketing, advertising, promotion, research and studies for the lottery and for products and services for effectuating the purposes of this chapter, however, contracts for major procurements must be approved by the commission. The director may not enter into contracts for the administration of the lottery.

(4) The director shall:

(a) Submit quarterly financial statements to the commission, the governor, the state treasurer, and the legislature. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements are to be provided within forty-five (45) days of the last day of each quarter;

(b) Submit annual financial statements to the commission, the governor, the state treasurer, and each member of the legislature. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements shall have

been examined by the ~~state controller~~ legislative services office or a firm of independent certified public accountants in accordance with generally accepted auditing standards and shall be provided within ninety (90) days of the last day of the lottery's fiscal year;

(c) Report to the governor and the legislature any matters which require immediate changes in the laws of this state in order to prevent abuses and evasions of this ~~act~~ chapter or the rules ~~and regulations~~ of the lottery or to rectify undesirable conditions in connection with administration or operation of the lottery;

(d) Carry on a continuous study and investigation of the lottery to:

(i) Identify any defects in the provisions of this chapter or in the rules and regulations of the commission leading to an abuse in the administration or operation of the lottery or an evasion of this act or the rules ~~and regulations~~ of the lottery;

(ii) Make recommendations for changes in this chapter or the rules ~~and regulations~~ of the lottery to prevent abuses or evasions or to improve the efficiency of the lottery;

(iii) Ensure that the provisions of this chapter and the rules ~~and regulations~~ of the lottery are administered and formulated to serve the purposes of this chapter;

(iv) Prevent the use of the lottery, the provisions of this chapter, or the rules ~~and regulations~~ of the lottery from fostering professional gambling or crime;

(e) Make a continuous study and investigation of:

(i) The operation and administration of similar laws and lotteries in other states and countries;

(ii) The available information on the subject of lotteries and related subjects;

(iii) Any federal laws which may affect the operation of the lottery; and

(iv) The reaction of citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(5) The director shall provide for secure lottery facilities and lottery systems, including data processing facilities and systems.

(6) The director shall be responsible for monitoring class III gaming on Indian reservations as may be required by compacts entered into by the state in accordance with state statutory law and pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. section 2701 et seq. and 18 U.S.C. sections 1166-1168.

(7) The director shall perform all other acts necessary to carry out the purposes and provisions of this chapter.

SECTION 46. That Section 67-8305, Idaho Code, be, and the same is hereby amended to read as follows:

67-8305. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the institute shall be deposited in one (1) or more separate accounts in the name of the institute in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho

Code, as state depositories. The institute shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the institute.

(3) The right is reserved to the state of Idaho to audit the funds of the institute at any time.

(4) On or before January 15 of each year, the institute shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the institute during the preceding fiscal year. The report shall also include an estimate of income to the institute for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1998, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the institute shall be audited annually by a certified public accountant designated by the institute, who shall furnish a copy of such audit to the ~~state controller~~ director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the institute are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

Approved March 5, 2003.

## CHAPTER 33
(H.B. No. 111, As Amended)

AN ACT

RELATING TO THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT ACT; REPEALING SECTIONS 39-7804 AND 39-7805, IDAHO CODE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 84, TITLE 39, IDAHO CODE, PROVIDING A STATEMENT OF FINDINGS AND PURPOSE, PROVIDING DEFINITIONS, ESTABLISHING A DUTY UPON NONPARTICIPATING TOBACCO PRODUCT MANUFACTURERS TO CERTIFY THEIR COMPLIANCE WITH IDAHO'S MASTER SETTLEMENT AGREEMENT ACT, ESTABLISHING A DIRECTORY OF COMPLIANT TOBACCO PRODUCT MANUFACTURERS AND PROHIBITING THE STAMPING OR SALE OF CIGARETTES NOT IN COMPLIANCE WITH THE IDAHO MASTER SETTLEMENT AGREEMENT ACT, PROVIDING FOR AN AGENT FOR SERVICE OF PROCESS, PROVIDING FOR THE REPORTING OF INFORMATION BY STAMPING AGENTS AND THE ESTABLISHMENT OF QUARTERLY ESCROW INSTALLMENTS, PROVIDING FOR PENALTIES AND OTHER REMEDIES FOR VIOLATIONS, AND PROVIDING FOR MISCELLANEOUS PROVISIONS RELATED TO NOTICE OF DETERMINATIONS, LICENSING OF STAMPING AGENTS, EFFECTIVE DATES, PROMULGATION OF RULES, THE RECOVERY OF COSTS AND FEES BY THE ATTORNEY GENERAL AND DISGORGEMENT OF PROFITS FOR VIOLATION OF THE ACT, AND PROVIDING SEVERABILITY.

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

SECTION 1. That Sections 39-7804 and 39-7805, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known as designated as Chapter 84, Title 39, Idaho Code, and to read as follows:

CHAPTER 84
TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

39-8401. FINDINGS AND PURPOSE. The legislature finds that violations of Idaho's tobacco master settlement agreement act threaten the integrity of Idaho's master settlement agreement with leading tobacco product manufacturers, the fiscal soundness of the state, and the public health. The legislature finds that enacting procedural enhancements will help prevent violations of Idaho's tobacco master settlement agreement act and thereby safeguard the master settlement agreement, the fiscal soundness of the state and the public health.

39-8402. DEFINITIONS. (1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Cigarette" has the same meaning as that term is defined in section 39-7802(d), Idaho Code.

(3) "Commission" means the state tax commission for the state of Idaho.

(4) "Master settlement agreement" has the same meaning as that term is defined in section 39-7802(e), Idaho Code.

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the same meaning as that term is defined in section II(jj) of the master settlement agreement and all amendments thereto.

(7) "Qualified escrow fund" has the same meaning as that term is defined in section 39-7802(f), Idaho Code.

(8) "Stamping agent" means a person that is authorized or required to affix tax stamps to packages or other containers of cigarettes under chapter 25, title 63, Idaho Code.

(9) "Tobacco product manufacturer" has the same meaning as that term is defined in section 39-7802(i), Idaho Code.

(10) "Units sold" has the same meaning as that term is defined in section 39-7802(j), Idaho Code.

39-8403. CERTIFICATIONS -- DIRECTORY -- TAX STAMPS. (1) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a wholesaler, distributor, retailer or similar intermediary or intermediaries shall execute and deliver on a form

prescribed by the attorney general a certification to the attorney general no later than the thirtieth day of April each year, certifying, under penalty of perjury, that, as of the date of such certification, such tobacco product manufacturer is either: a participating manufacturer; or in full compliance with section 39-7803(b), Idaho Code, including all quarterly installment payments required by section 39-8405(5), Idaho Code.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty (30) days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families that were sold in the state at any time during the preceding calendar year, or that have been sold in the state at any time during the current calendar year, and shall:

(i) List, for each brand family, the number of units sold in the state during the preceding calendar year;

(ii) Note, by means of an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification;

(iii) Identify by name and address any other manufacturer of such brand families in the preceding calendar year or the current calendar year. The nonparticipating manufacturer shall update such list thirty (30) days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general;

(c) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by section 39-8404, Idaho Code;

(ii) That such nonparticipating manufacturer has:

1. Established and continues to maintain a qualified escrow fund;

2. Executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That such nonparticipating manufacturer is in full compliance with section 39-7803(b), Idaho Code, and this section, and any rules promulgated pursuant thereto.

(iv) 1. The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to section 39-7803(b), Idaho Code, and all rules promulgated thereto;

2. The account number of such qualified escrow fund and any subaccount number for the state of Idaho;

3. The amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be

deemed necessary by the attorney general to confirm the foregoing;

4. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to section 39-7803(b), Idaho Code, and all rules promulgated thereto.

(d) A tobacco product manufacturer may not include a brand family in its certification unless:

(i) In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

(ii) In the case of a nonparticipating manufacturer, said nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of section 39-7803(b), Idaho Code. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of section 39-7803(b), Idaho Code.

(e) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five (5) years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than September 30, 2003, the attorney general shall develop and publish on his website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section, and all brand families that are listed in such certifications, except as noted below.

(a) The attorney general shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with subsections (1)(b) and (c) of this section, unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes in the case of a nonparticipating manufacturer that:

(i) Any escrow payment required pursuant to section 39-7803(b), Idaho Code, for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or

(ii) Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand fam-

ily and such manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter. The attorney general shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family.

(d) Every stamping agent shall provide and update as necessary a mailing address and, where available, an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(3) It shall be unlawful for any person:

(a) To affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory;

(b) To sell, offer or possess for sale in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory;

(c) To acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of this subsection (3).

(4) Nothing in this chapter shall excuse payment of cigarette taxes under chapter 25, title 63, Idaho Code, by any person in regard to any package or other container of cigarettes not included in the directory but sold by that person.

39-8404. AGENT FOR SERVICE OF PROCESS. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and Idaho's tobacco master settlement agreement act, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of such agent to, and to the satisfaction of, the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty (30) calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five (5) calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of said termination within five (5) calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in

this state, without appointing or designating an agent as herein required, shall be deemed to have appointed the secretary of state as such agent and may be proceeded against in courts of this state by service of process upon the secretary of state; however, the appointment of the secretary of state as such agent shall not satisfy the condition precedent to having its brand families listed or retained in the directory.

39-8405. REPORTING OF INFORMATION -- ESCROW INSTALLMENTS. (1) Not later than twenty (20) calendar days after the end of each calendar quarter, and more frequently if so directed by the attorney general, each stamping agent shall submit such information as the attorney general requires to facilitate compliance with this chapter including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the attorney general, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of five (5) years.

(2) The commission is authorized to disclose to the attorney general any information received under this chapter or Idaho's tobacco master settlement agreement act and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The commission and attorney general shall share with each other the information received under this chapter or chapter 25, title 63, Idaho Code, and may share such information with other federal, state or local agencies only for purposes of enforcement of this chapter, Idaho's tobacco master settlement agreement act, or corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with Idaho's tobacco master settlement agreement act, of the amount of money in such fund, exclusive of interest, and the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to this chapter, the attorney general may require a stamping agent or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer or stamping agent is in compliance with this chapter.

(5) To promote compliance with the provisions of this chapter, the attorney general may promulgate rules requiring a tobacco product manufacturer subject to the requirements of section 39-7803(b), Idaho Code, to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

39-8406. PENALTIES AND OTHER REMEDIES. (1) Each stamp affixed, each

sale or offer to sell, and each cigarette possessed in violation of section 39-8403(3), Idaho Code, shall constitute a separate violation. For each violation hereof, the district court may impose a civil penalty in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes or five thousand dollars ($5,000) upon a determination of violation of section 39-8403(3), Idaho Code, or any rule adopted pursuant thereto.

(2) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated section 39-8403(3), Idaho Code, or any rule adopted pursuant thereto, the commission may revoke or suspend the license of any stamping agent in the manner provided by law.

(3) Any cigarettes that have had stamps affixed, been sold, offered for sale or possessed for sale in this state in violation of section 39-8403(3) shall be deemed contraband under section 63-2513, Idaho Code, and such cigarettes shall be subject to seizure and forfeiture by the commission as provided in such section, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

(4) The attorney general may seek an injunction to prevent or restrain a threatened or actual violation of section 39-8403(3), 39-8405(1) or 39-8405(4), Idaho Code, by a stamping agent and to compel the stamping agent to comply with such subsections.

(5) A person who violates section 39-8403(3), Idaho Code, engages in an unfair and deceptive trade practice in violation of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

39-8407. MISCELLANEOUS PROVISIONS. (1) A determination of the attorney general to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Idaho's administrative procedure act.

(2) No person shall be issued a license or granted a renewal of a license to act as a stamping agent unless such person has certified, in writing, that such person will comply fully with this chapter.

(3) For the year 2003, the first report of stamping agents required by section 39-8405(1), Idaho Code, shall be due thirty (30) calendar days after the effective date of this chapter; the certifications by a tobacco product manufacturer described in section 39-8403(1), Idaho Code, shall be due forty-five (45) days after such effective date; and the directory described in section 39-8403(2), Idaho Code, shall be published or made available within ninety (90) calendar days after such effective date.

(4) The commission and the attorney general may promulgate rules necessary to effect the purposes of this chapter.

(5) In any action brought by the attorney general to enforce this chapter, the attorney general shall be entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney's fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund. Unless otherwise expressly provided the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

(7) If a court of competent jurisdiction finds that the provisions of this chapter and of the Idaho tobacco master settlement agreement act conflict and cannot be harmonized, then such provisions of the Idaho tobacco master settlement agreement act, chapter 78, title 39, Idaho Code, shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter causes the Idaho tobacco master settlement agreement act to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this chapter shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof.

Approved March 5, 2003.

## CHAPTER 34
## (H.B. No. 142)

### AN ACT

RELATING TO ASSESSMENT OF REAL AND PERSONAL PROPERTY; AMENDING SECTION 63-314, IDAHO CODE, TO SPECIFY A TIMELINE FOR THE APPRAISAL OF ALL TAXABLE PROPERTY IN A COUNTY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 63-314, Idaho Code, be, and the same is hereby amended to read as follows:

63-314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR. (1) It shall be the duty of the county assessor of each county in the state to conduct and carry out a continuing program of valuation of all taxable properties under his jurisdiction pursuant to such rules as the state tax commission may prescribe, to the end that all parcels of property under the assessor's jurisdiction are assessed at current market value. In order to promote uniform assessment of property in the state of Idaho, taxable property shall be appraised or indexed annually to reflect current market value. In order to achieve this goal, ~~at--least twenty--percent--(20%)--of-the-taxable-properties-in-the-county-shall-be included-in-each-year's-appraisal,-resulting-in-a-complete-appraisal--of~~ all taxable property in a county shall be appraised at least once every five (5) years, except as provided in subsection (6). ~~of--this--section.~~ Beginning in 2003, or year one (1) of any five (5) year cycle not less than fifteen percent (15%) of the taxable properties in the county shall be appraised during that year; by the end of year two (2) not less than thirty-five percent (35%) of the taxable properties in the county shall have been appraised during that year and the previous year; by the end of year three (3) not less than fifty-five percent (55%) of the taxable properties in the county shall have been appraised during that year and the previous two (2) years; by the end of year four (4) not less than seventy-five percent (75%) of the taxable properties in the county shall have been appraised during that year and the previous three (3) years;

and by the end of year five (5) all one hundred percent (100%) of the taxable properties within the county shall have been appraised during that year and the previous four (4) years. Annually, all taxable property, not ~~actually~~ appraised ~~each~~ that year, shall be indexed to reflect current market value for assessment purposes using market value property transactions and results of the annual appraisal of ~~twenty-percent-(20%) of-the~~ taxable property. The county assessor shall maintain in the respective offices sufficient records to show when each parcel or item of property was last appraised. The appraisal required by this section shall include a plan outlining the continuing valuation program. Said plan shall be submitted to the state tax commission for approval on or before the first Monday in February, 1997, and no less frequently than every fifth year thereafter. The state tax commission shall not approve any plan that fails to provide for adequate appraisal and valuation of all taxable properties in any county.

(2) The state tax commission is hereby authorized, empowered and directed to promulgate rules for the implementation of this program, and to provide any such county assessor with such supervision and technical assistance as may be necessary.

(3) The county commissioners of each county shall furnish the assessor with such additional funds and personnel as may be required to carry out the program hereby provided, and for this purpose may levy annually a property tax of not to exceed four-hundredths percent (.04%) of the market value for assessment purposes on all taxable property in the county to be collected and paid into the county treasury and appropriated to the property valuation fund which is hereby created.

(4) If compliance with the requirements of subsection (1) ~~of--this section~~ is not obtained, or if any county fails to meet the goals set in subsection (1), ~~of-this-section,~~ the state tax commission may proceed as required by section 63-316, Idaho Code. If a county fails to meet the timelines in subsection (1), the state tax commission shall require a remediation plan.

(5) As used in this section the term "adequate appraisal and valuation of all taxable properties in any county" means a process which includes a field inspection of ~~at-least-twenty-percent-(20%)-of-the-taxable-properties-each-year~~ not less than the number of taxable properties necessary to meet the requirements of subsection (1). Appraisal also includes collection, verification and analysis of market value sales, applicable income and expense data and building cost information, and application of this information to predict market value.

(6) The board of county commissioners may request that the Idaho state tax commission grant an extension of the five (5) year reappraisal deadline set forth in subsection (1). ~~of-this-section.~~ The request shall be in writing and shall set forth the reason(s) that the county is unable to complete the reappraisal process as required by subsection (1) ~~of--this-section~~ and shall set forth the measures the county will undertake in order to complete the reappraisal program within the extension of time requested. In no case shall an extension exceed two (2) years. The state tax commission may approve or deny any request for an extension and shall notify the board of county commissioners of its decision in writing. The state tax commission shall not approve any extension absent a showing by the county of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, natural disasters or unforeseen circumstances that result in extreme financial hard-

ship to the county. Circumstances that will not qualify for an extension may include, but are not limited to, failure to adequately fund the county valuation program as provided by this section, malfeasance, or mismanagement by a current elected official. The state tax commission shall not grant the extension provided in this section if studies conducted by the commission indicate that any category of property affected by such extension is not assessed at market value.

(7) The Idaho state tax commission shall report back to the Idaho house of representatives revenue and taxation committee and the senate local government and taxation committee whenever an extension authorized under subsection (6) ~~of this section~~ is granted.

Approved March 5, 2003.

## CHAPTER 35
## (H.B. No. 219)

### AN ACT

RELATING TO THE DEPARTMENT OF JUVENILE CORRECTIONS; AMENDING SECTION 20-504, IDAHO CODE, TO REMOVE LANGUAGE REQUIRING THE DEPARTMENT TO ESTABLISH CRITERIA AND OPERATING PROCEDURES FOR COUNTY JUVENILE PROBATION SERVICES.

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

SECTION 1. That Section 20-504, Idaho Code, be, and the same is hereby amended to read as follows:

20-504. DUTIES OF THE DEPARTMENT OF JUVENILE CORRECTIONS. (1) The department shall have jurisdiction over all juveniles committed to it pursuant to chapter 5, title 20, Idaho Code.

(2) The department is responsible for all juvenile offenders committed to it by the courts of this state for confinement. The department shall also establish minimum standards for detention, care and certification of approved detention facilities based upon such standards.

(3) The department shall establish and administer all secure residential facilities including all state juvenile corrections centers.

(4) The department shall make all decisions regarding placement of juvenile offenders committed to it in the most appropriate program for supervision and treatment.

(5) The department shall establish an observation and assessment process for juvenile offenders committed to it by a court.

(6) The department shall establish liaison services with the counties.

(7) The department may establish and operate work programs designed to employ juvenile offenders in public service work projects for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

(8) The department is hereby authorized and may place juveniles committed to it pursuant to this chapter in a community-based program, on a ranch, in a forestry camp or similar facility for care and for work, if possible; provided, that the person, agency or association

operating the facility has been approved and has otherwise complied with all applicable state and local laws. A juvenile placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads and on other works on or off the grounds of such facility and may be paid wages.

(9) The department shall establish minimum standards for the operation of all private residential and nonresidential facilities and programs which provide services to juvenile offenders. The standards shall be no more stringent than standards imposed for facilities operated by the department or for detention facilities operated by counties.

(10) The department shall assist counties in establishing meaningful programs for juveniles who either have been found to come under the purview of this chapter or who have had their case informally diverted pursuant to section 20-511, Idaho Code, and who have not been committed to the legal custody of the department.

(11) The department shall have authority to adopt such administrative rules pursuant to the procedures provided in chapter 52, title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of this act.

(12) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with a private association or organization or other public agency or organization for the inspection and licensure of detention facilities.

(13) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with private providers or local governmental agencies for the confinement or other permanent or temporary placement of juveniles committed to its custody.

(14) The department shall have authority to apply for, receive and expend federal funds, subject to appropriation by the legislature. The department shall have authority to establish guidelines for and administer the distribution of state block grant funds to counties for the employment and training of county probation officers, the establishment of secure and nonsecure residential or nonresidential facilities and programs for juvenile offenders. The department may require that a county provide matching funds as a condition of receiving a block grant. The department, by rule, in cooperation with the courts and the counties, shall establish uniform standards~~, criteria and operating procedures~~ for county juvenile probation services, as well as qualifications for and standards for the training of juvenile probation officers.

(15) All of the powers and duties imposed upon or granted to the director of the department of health and welfare or the board of health and welfare pursuant to chapter 18, title 16, Idaho Code, are hereby transferred to the director of the department of juvenile corrections. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law with respect to chapter 18, title 16, Idaho Code, and shall be the successor in law to all contractual obligations entered into by his predecessor in law.

Approved March 5, 2003.

## CHAPTER 36
## (S.B. No. 1035)

### AN ACT

RELATING TO WATER AND SEWER DISTRICTS; AMENDING SECTION 42-3209, IDAHO CODE, TO INCREASE THE COMPENSATION FOR BOARD OF DIRECTORS MEMBERS OF WATER AND SEWER DISTRICTS.

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

SECTION 1. That Section 42-3209, Idaho Code, be, and the same is hereby amended to read as follows:

42-3209. ORGANIZATION OF BOARD -- ACCOUNTS OF TREASURER -- COMPENSATION OF MEMBERS -- ANNUAL AUDIT -- REMOVAL OF DIRECTORS. After taking oath and filing bonds, the board shall choose one (1) of its members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and of the district, who may or may not be members of the board. The secretary and the treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection of all owners of real property in the district, as well as to all other interested parties.

The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of the court, at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars ($5,000), conditioned on the faithful performance of the duties of his office.

Each member of the board shall receive as compensation for his service a sum not in excess of ~~fifty~~ one hundred dollars (~~$50.~~100) per meeting, payable monthly. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that herein provided, and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

It shall be the duty of the board of directors to cause an audit to be made of all financial affairs of the district during each year ending November 30th as required in section 67-450B, Idaho Code.

The court having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice and hearing.

Approved March 5, 2003.

## CHAPTER 37
## (H.B. No. 115)

### AN ACT

RELATING TO THE CRIME OF SEXUAL CONTACT WITH A PRISONER; AMENDING SECTION 18-6110, IDAHO CODE, TO ADD MANUAL-ANAL AND MANUAL-GENITAL TO THE DEFINITION OF SEXUAL CONTACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-6110, Idaho Code, be, and the same is hereby amended to read as follows:

18-6110. SEXUAL CONTACT WITH A PRISONER. It is a felony for any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with a prisoner, whether an in-state or out-of-state prisoner, as those terms are defined in section 18-101A, Idaho Code, housed in such facility. For the purposes of this section "sexual contact" means sexual intercourse, genital-genital, manual-anal, manual-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex.

Any person found guilty of sexual contact with a prisoner is punishable by imprisonment in the state prison for a term not to exceed life.

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

Approved March 11, 2003.

## CHAPTER 38
## (H.B. No. 116)

AN ACT

RELATING TO LIABILITY FOR EMERGENCY RESPONSE; AMENDING SECTION 6-2401, IDAHO CODE, TO PROVIDE THAT LIABILITY FOR SEARCH AND RESCUE COSTS SHALL NOT APPLY TO ANY PERSON WHO IS AUTHORIZED BY THE LAND OWNER, LESSOR OR MANAGER OF THE CLOSED AREA, TO BE IN THE CLOSED AREA, AND FURTHER SHALL HAVE NO APPLICATION TO ANY FEDERAL, STATE OR LOCAL GOVERNMENT OFFICIAL WHO IS IN THE CLOSED AREA AS PART OF HIS OR HER OFFICIAL DUTY, NOR TO ANY PERSON ACTING IN CONCERT WITH A GOVERNMENT AUTHORIZED SEARCH OR RESCUE.

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

SECTION 1. That Section 6-2401, Idaho Code, be, and the same is hereby amended to read as follows:

6-2401. LIABILITY FOR EMERGENCY RESPONSES. (1) Any person who knowingly enters into any area that has been closed to the public by competent authority for any reason, where such closure is posted by sign, barricade or other device, is liable for the expenses of an emergency response required to search for or rescue such person or, if the person was operating a vehicle, any of his or her passengers, plus expenses for the removal of any inoperable vehicle. This section shall not apply to any person who is authorized by the land owner, lessor or manager of the closed area, to be in the closed area, and further shall have no application to any federal, state or local government official who is in the closed area as part of his or her official duty, nor to any person act-

ing in concert with a government authorized search or rescue.

(2) Unless otherwise provided by law, subsection (1) of this section shall apply only to persons eighteen (18) years of age or older and shall apply to all such persons irrespective of whether the person is on foot, on skis or snowshoes, or is operating a motor vehicle, bicycle, vessel, watercraft, raft, snowmobile, all-terrain vehicle, or any other boat or vehicle of any description.

(3) Unless otherwise provided by law, subsection (1) of this section shall only apply to the person who knowingly enters the closed area, and not to his or her family, heirs or assigns.

(4) Expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection (1) of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities and not-for-profit entities that incurred the expenses. The person's liability for expenses of an emergency response shall not exceed four thousand dollars ($4,000) for a single incident. The liability imposed under this section is in addition to and not in limitation of any other liability that is imposed.

(5) An insurance policy may exclude coverage for a person's liability for expenses of an emergency response under this section.

(6) Any public agency or private entity that receives full reimbursement from the state search and rescue fund shall not attempt to collect any money from the person. In such cases, the debt described in subsection (4) of this section is collectable by the state of Idaho for reimbursement to the state search and rescue fund.

(7) For purposes of this section:

(a) "Expenses of an emergency response" means those reasonable and necessary costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident, and shall include the cost of providing police, firefighting, search and rescue, and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

(b) "Public agency" means this state and any city, county, municipal corporation or other public authority that is located in whole or in part in this state and that provides police, firefighting, medical or other emergency services.

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

Approved March 11, 2003.

## CHAPTER 39
## (H.B. No. 145)

### AN ACT

RELATING TO SHERIFF'S FEES; AMENDING SECTION 31-3203, IDAHO CODE, TO REVISE PROCEDURES RELATING TO THE SETTING OF CERTAIN SHERIFF'S FEES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 31-3203, Idaho Code, be, and the same is hereby amended to read as follows:

31-3203. SHERIFF'S FEES. The board of county commissioners of each respective county shall have the power to set sheriff's fees by a resolution of the board for the services herein specified in an amount reasonably related to but not exceeding the actual costs of such service. The sheriff is allowed and may demand and receive such fees. In the event that the board of commissioners does not resolve to set fees by resolution as herein described, t~~T~~he sheriff is allowed and may demand and receive the fees hereinafter specified:

For serving summons and complaint, or any other process by which an action or proceeding is commenced, on each defendant ..... $10.00

For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property ..... $10.00

For his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, such sum as the court may order: provided, however, that said sum shall be no more than five dollars ($5.00) per diem or the reasonable costs incurred by a keeper in preserving said property.

For making and issuing a keeper's receipt ..... $5.00

For taking a bond or undertaking in any case in which he is authorized to take the same ..... $10.00

For copy of and making return on any writ, process or other paper, when demanded or required by law ..... $10.00

For serving every notice, rule or order ..... $10.00

For making and posting notices, and advertising property for sale on attachment or execution, or under any judgment or order of sale, exclusive of the costs of publication, each notice, per folio ..... $ 3.00

For serving a writ of possession or restitution, putting a person in possession of premises and removing the occupant ..... $10.00

For holding each inquest, or trial of right of property, to include all services in the matter except mileage ..... $ 3.00

For serving a subpoena, for each witness summoned ..... $10.00

For commissions for receiving and paying over money on execution or other process, when land or personal property has been levied on and sold, on the first one thousand dollars ($1,000), two ~~per--cent~~ percent (2%); on all sums above that amount, one ~~per-cent~~ percent (1%); but in no case of sale of real estate shall his commission exceed the sum of ..... $100.00

When the amount of such sale is credited on the debt and no money is transferred, then one-half (1/2) of such commission.

For commissions for receiving and paying over money on execution without levy, or where lands or goods levied on are not sold, on the first one thousand dollars ($1,000), one and one-half ~~per-cent~~ percent (1 1/2%); and one-half (1/2) of one ~~per-cent~~ percent (1%) on all over that sum, but not to exceed in any case ..... $75.00

The fees herein allowed for the levy of an execution, costs for advertising and percentage for making or collecting the money on execution, must be collected from the judgment debtor by virtue of such execution, in the same manner as the sum therein directed to be made.

For drawing and executing a sheriff's deed, including the acknowledgment, to be paid by the grantee before delivery ..... $10.00

For executing a certificate of sale, exclusive of the filing and recording of same ..... $ 5.00

For making every arrest in a criminal proceeding ..... $ 5.00

For summoning each juror ..... $ 1.00

For serving a subpoena in a criminal action or proceeding, for each witness summoned ..... $10.00

For traveling to serve any summons and complaint, or any other process by which an action or proceeding is commenced, notice, rule, order, subpoena, venire, attachment on property, to levy an execution, to post notice of sale, to sell property under execution or other order of sale, or execute an order of arrest, or order for the delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property, for each mile actually and necessarily traveled for the first twenty-five (25) miles no charge shall be allowed, and for any miles traveled over twenty-five (25) miles, even if process is not served, the following shall be allowed, in going only ..... $ .40

For traveling to execute any warrant of arrest, subpoena, venire or other process in criminal cases, or for taking a prisoner from prison, before a court or magistrate, or for taking a prisoner from the place of arrest to prison, or before a court or magistrate, for each mile actually and necessarily traveled, in going only ..... $ .40

For each additional prisoner taken at the same time, per mile ..... $ .25

But if any two (2) or more papers be required to be served in the same action or proceeding, civil or criminal, or be in the possession of the sheriff for service at the same time, and in the same direction, one (1) mileage only shall be charged; and in serving a subpoena, venire, process or paper, when two (2) or more jurors, witnesses, parties or persons to be served reside or are found in the same direction, traveling fees must be charged only for the most distant; and only one (1) mileage per day must be charged for taking a prisoner from prison before a court or magistrate; and constructive mileage must in no case be charged or allowed.

For all services under the election laws, the same mileage and fees as in this chapter provided for similar services.

For copy of and making an interim return on a continuing garnishment to show disbursement of moneys held by the sheriff ..... $5.00

For postage and processing of each mail renewal class D driver's license authorized pursuant to section 49-319, Idaho Code ..... $1.00

Approved March 11, 2003.

## CHAPTER 40
## (H.B. No. 146)

### AN ACT

RELATING TO THE SHERIFF'S REVOLVING TRAVEL FUND; AMENDING THE HEADING FOR CHAPTER 18, TITLE 31, IDAHO CODE; AMENDING SECTION 31-1801, IDAHO CODE, TO REVISE PROVISIONS RELATING TO A SHERIFF DRAWING CERTAIN EXPENSES IN ADVANCE; AMENDING SECTION 31-1802, IDAHO CODE, TO

PROVIDE FOR THE SHERIFF'S REVOLVING EXPENSE FUND AND TO INCREASE THE MAXIMUM AMOUNT TO BE SET ASIDE FOR THE FUND AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 31-1803, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AUDIT OF CERTAIN EXPENSES OF THE SHERIFF BY THE BOARD OF COUNTY COMMISSIONERS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That the heading for Chapter 18, Title 31, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 18
SHERIFF'S REVOLVING ~~TRAVEL~~ EXPENSE FUND

SECTION 2. That Section 31-1801, Idaho Code, be, and the same is hereby amended to read as follows:

31-1801. DRAWING ~~TRAVELING~~ EXPENSES IN ADVANCE. In each instance where the duties of the sheriff of any county require him, in his official capacity, to incur traveling and hotel expenses, training, or any duty requiring the need of a warrant, for himself or his deputies, he may, prior to the incurring thereof, make demand on the county auditor for a warrant on the county treasurer and shall receive a sum not to exceed the amount set aside under the provisions of section 31-1802, Idaho Code, to be used for the purpose of defraying the whole or a part of said traveling and hotel expenses, training, or any duty requiring the need of a warrant. At the time demand is made on the county auditor for said warrant it shall be the duty of the sheriff to file with the auditor a statement specifying the general purpose for which the sum to be withdrawn is to be used.

SECTION 3. That Section 31-1802, Idaho Code, be, and the same is hereby amended to read as follows:

31-1802. SHERIFF'S REVOLVING ~~TRAVELING~~ EXPENSE FUND. There shall be set aside by the board of county commissioners of each county upon the request of the sheriff thereof by order entered in their minutes a sum not exceeding ~~five~~ ten thousand dollars ($~~5~~10,000), to be known as the "Sheriff's Revolving ~~Travel~~ Expense Fund," in this ~~act~~ chapter referred to as the fund, out of which fund any warrants drawn under the provision of this ~~act~~ chapter shall be paid. The amount set aside for such fund shall be charged by the auditor against the sheriff and the board of county commissioners may require of the sheriff, a bond, in addition to his official bond, in such sum as the board may determine, to secure the repayment of such sum or sums withdrawn. The fund so set aside shall remain in the county treasury subject to withdrawal and reimbursement as herein provided.

SECTION 4. That Section 31-1803, Idaho Code, be, and the same is hereby amended to read as follows:

31-1803. AUDIT AND ALLOWANCE OF ~~ACCOUNT~~ FUND -- REPAYMENT OF DISALLOWED AMOUNT. After the performance of the duty, which necessitated the incurring of traveling and hotel expenses, training, or any duty requir-

ing the need of a warrant, and the withdrawal of money~~,~~ has been made, as in this ~~act~~ chapter provided, the board of county commissioners may require the sheriff to present his itemized claim for such traveling and hotel expenses, training, or any duty requiring the need of a warrant, as other claims are presented to the board of county commissioners, which body shall audit said claims for allowance or rejection. For those items allowed it shall be the duty of the board of county commissioners to order a warrant drawn, payable to the county treasurer for the total amount of the items allowed, which warrant shall be delivered to the county auditor. If any item of said claim is disallowed, the sheriff shall deposit with the county auditor an amount equal to the amount disallowed, together with any unexpended portion of the amounts withdrawn, which amounts, together with the warrant drawn in favor of the county treasurer for the amount of items allowed, shall be credited by the county auditor to the sheriff and shall be deposited by the auditor in the county treasury and placed to the credit of the fund.

Approved March 11, 2003.

## CHAPTER 41
## (H.B. No. 147)

### AN ACT

RELATING TO THE AWARD OF COSTS OF INTERVENTION BEFORE THE PUBLIC UTILITIES COMMISSION; AMENDING SECTION 61-617A, IDAHO CODE, TO INCREASE THE REVENUE THRESHOLD FOR UTILITIES BEFORE THEY PAY THE COSTS OF INTERVENORS, TO INCREASE THE MAXIMUM AWARD OF INTERVENOR FUNDING IN CERTAIN CASES BEFORE THE PUBLIC UTILITIES COMMISSION AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 61-617A, Idaho Code, be, and the same is hereby amended to read as follows:

61-617A. AWARD OF COSTS OF INTERVENTION. (1) It is hereby declared the policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings.

(2) The commission may order any regulated electric, gas, water or telephone utility with gross Idaho intrastate annual revenues exceeding ~~one~~ three million five hundred thousand dollars ($~~1~~3,500,000) to pay all or a portion of the costs of one (1) or more parties for legal fees, witness fees, and reproduction costs, not to exceed a total for all intervening parties combined of ~~twenty-five~~ forty thousand dollars ($~~25~~40,000) in any proceeding before the commission. The determination of the commission with regard to the payment of these expenses shall be based on the following considerations:

(a) A finding that the participation of the intervenor has materially contributed to the decision rendered by the commission; and

(b) A finding that the costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor; and

(c) The recommendation made by the intervenor differed materially from the testimony and exhibits of the commission staff; and

(d) The testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

(3) Expenses awarded to qualifying intervenors shall be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility's next rate case. Expenses awarded shall be chargeable to the class of customers represented by the qualifying intervenors.

(4) The commission may adopt rules ~~and regulations~~ for the implementation of this statute.

(5) The payment of expenses of intervenors who are in direct competition with a public utility involved in proceedings before the commission is prohibited.

Approved March 11, 2003.

## CHAPTER 42
## (H.B. No. 181)

### AN ACT

RELATING TO THE DIVISION OF VETERANS SERVICES; AMENDING SECTION 65-107, IDAHO CODE, TO AUTHORIZE CHARGES RELATED TO INTERMENT, DISINTERMENT AND REINTERMENT IN THE STATE VETERANS CEMETERY TO BE PLACED IN THE VETERANS CEMETERY MAINTENANCE FUND; AND AMENDING SECTION 65-202, IDAHO CODE, TO ALLOW THE DIVISION TO ESTABLISH BY RULE FEES RELATED TO INTERMENT, DISINTERMENT OR REINTERMENT IN THE STATE VETERANS CEMETERY AND TO PROVIDE FOR REMITTANCE OF SUCH FEES.

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, gifts, grants, contributions and bequests to the fund 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 <u>and charges related to interment, disinterment and reinterment in the state veterans cemetery</u> shall be deposited by the administrator of the division of veterans services as authorized and directed in section 65-202, Idaho Code.

(3) Moneys in the fund shall be used exclusively for the purposes of operating, maintaining and acquiring services and personal property for a state veterans cemetery, and moneys shall be continuously appropriated for such purposes.

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 veterans of the armed forces of the United States, to:

(1) Oversee the management and operation of the veterans homes in the state and the state veterans cemetery, and provide care to veterans of the armed forces of the United States under such rules as the administrator may from time to time adopt.

(2) Extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such disabled or destitute wartime veterans as the commission shall determine to be reasonably required under such rules as the administrator may, from time to time, adopt.

(3) 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 the administrator is hereby directed to cause such benefits to be deposited in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(4) Prescribe, with the approval of the commission, the qualifications of all personnel in accordance with the Idaho personnel system law. The administrators in charge of state veterans homes and the office of veterans advocacy shall be considered nonclassified exempt employees pursuant to the provisions of chapter 53, title 67, Idaho Code, and shall serve at the pleasure of the administrator of the division of veterans services.

(5) Accept gifts, grants, contributions and bequests of funds, and personal property to the state of Idaho for the benefit of veterans of the armed forces of the United States.

(6) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of services to veterans of the armed forces of the United States.

(7) Administer, with the advice and approval of the commission, moneys in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(8) Establish by rule charges related to interment, disinterment and reinterment in the state veterans cemetery and the administrator is hereby directed to cause such charges to be deposited in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

Approved March 11, 2003.

## CHAPTER 43
## (S.B. No. 1011)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY

THE ADDITION OF A NEW SECTION 49-419B, IDAHO CODE, TO ESTABLISH AN IDAHO MOTORCYCLE SAFETY LICENSE PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

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

(2) For all school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twenty-four dollars ($24.00).

(3) For all motorcycles and all-terrain vehicles operated upon the public highways the annual fee shall be nine dollars ($9.00). For operation of an all-terrain vehicle or motorcycle off the public highways, the fee specified in section 67-7122, Idaho Code, shall be paid. Registration exemptions provided in section 49-426(2) and (3), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in subsections (2) and (3) of section 49-426, Idaho Code.

(4) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

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

(6) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a secu-

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

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

SECTION 2. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-419B, Idaho Code, and to read as follows:

49-419B. IDAHO MOTORCYCLE SAFETY PROGRAM PLATES. (1) On and after January 1, 2004, 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 motorcycle safety program 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 motorcycle safety program license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the Idaho motorcycle safety program fund established in section 33-4904, Idaho Code, and shall be used exclusively for the purposes described in chapter 49, title 33, Idaho Code.

(3) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(4) The Idaho motorcycle safety program 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 the Idaho motorcycle safety program shall be acceptable to the motorcycle safety program advisory committee. The design shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho motorcycle safety program.

(5) Sample Idaho motorcycle safety program license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Idaho motorcycle safety program fund. No additional fee shall be charged for personalizing sample plates.

SECTION 3. This act shall be in full force and effect on and after January 1, 2004.

Approved March 11, 2003.

## CHAPTER 44
## (S.B. No. 1026)

AN ACT

RELATING TO ATTACHMENTS AND GARNISHMENTS; AMENDING SECTION 8-507C, IDAHO CODE, TO REVISE LEGAL NOTICE FORM REQUIREMENTS TO PROVIDE CORRECT INFORMATION REGARDING GARNISHMENT LIMITATIONS APPLICABLE TO CONSUMER DEBTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 8-507C, Idaho Code, be, and the same is hereby amended to read as follows:

8-507C. FORMS. The notice of exemptions, instructions to debtors and third parties, and the claim of exemption shall be in a form substantially similar to the form hereinafter provided. The forms shall be made available in English and Spanish language translations in the offices of each county sheriff. Notice, written in Spanish, of the availability of these documents in Spanish translation shall be set forth on the notice of exemptions.

IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE

MONEY/PERSONAL PROPERTY BELONGING TO YOU MAY HAVE BEEN TAKEN OR HELD IN ORDER TO SATISFY A COURT JUDGMENT. YOU MAY BE ABLE TO GET YOUR MONEY/PROPERTY BACK SO READ THIS NOTICE CAREFULLY.

SI SOLAMENTE HABLA ESPANOL PUEDE OBTENER UNA FORMA EN ESPANOL EN EL DEPARTAMENTO DEL SHERIFE.

The enclosed writ of execution and/or notice of garnishment has directed the sheriff to take custody by levying on your money and/or personal property in order to satisfy a court judgment.

The sheriff has levied on your money and/or personal property. You have FOURTEEN (14) DAYS after the date of mailing or personal service of these documents to file a claim of exemption with the sheriff. An exemption from levy entitles you to obtain the release of your money and personal property.

The following is a partial list of money and personal property that may be exempt from levy. EXEMPTIONS ARE PROVIDED BY IDAHO AND FEDERAL LAW AND CAN BE FOUND IN THE IDAHO CODE AND IN THE UNITED STATES CODE. MOST OF THE EXEMPTIONS PROVIDED BY THE STATE ARE CONTAINED IN CHAPTER 6, TITLE 11, IDAHO CODE. GOVERNMENTAL BENEFITS SUCH AS SOCIAL SECURITY, SSI, VETERANS, RAILROAD RETIREMENT, MILITARY, AND WELFARE ARE EXEMPT FROM LEVY IN MOST CASES UNDER FEDERAL LAW.

This list may not be complete and may not include all exemptions that apply in your case because of periodic changes in the law. Additionally, some of the exemptions may not apply in full or under all circumstances. There may be special requirements for child support. You or your attorney should read the exemption statutes which apply to you.

If you believe the money or personal property that are being levied upon ~~are~~ is exempt, you should immediately file a claim of exemption. If you fail to make a timely claim of exemption, the sheriff will release money to the plaintiff, or the property may be sold at an execution sale, perhaps at a price substantially below its value, and you may have to bring further court action to recover the money and property.

The sheriff cannot give you legal advice. Therefore, if you have any questions concerning your rights in this action, you should consult an attorney as soon as possible. You may contact the nearest office of Idaho legal aid services, inc. to inquire if you are eligible for their assistance.

SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED

Type of Money and Property

1. Alimony, support, maintenance (money or property)
2. Appliances (household) ($500 per item, up to $5,000 gross)
3. Annuity contract payments
4. Bodily injury and wrongful death awards*
5. Books (professional) up to $1,500
6. Burial plots
7. Child support payments*
8. Disability or illness benefits*
9. Furnishings (household) ($500 per item, up to $5,000 gross)
10. Health aids
11. Homestead, house, mobile home, and related structures

12. Jewelry (up to $1,000)
13. Life insurance benefits payable to spouse or dependent*
14. Medical and/or hospital benefits
15. Military retirement and survivor's benefits
16. Motor vehicle: car, truck, motorcycle with a value of up to $3,000 per person
17. Pension: stock bonus, profit sharing annuity, or similar plans
18. Personal property: ($500 per item, up to $5,000 gross) (furnishings, appliances, one firearm, animals, musical instruments, books, clothes, family portraits and heirlooms)
19. Public assistance: federal, state, or local including: Aid to Aged, Blind and Disabled (AABD); Aid to Dependent Children (AFDC); Aid to Permanently and Totally Disabled (APTD)
20. Public Employee's Benefits including Federal Civil Service Retirement, Idaho Retirement and Disability
21. Railroad Retirement Benefits
22. Retirement, pension or profit sharing plan qualified by IRS
23. Social Security Disability and Retirement Benefits
24. SSI (Supplemental Security Insurance Benefits)
25. Tools of trade and implements up to $1,500
26. Unemployment benefits
27. Veterans benefits and insurance
28. Wages or salary:
    Consumer debts primarily for personal or household purposes: exemption is ~~40~~ 30 times the federal minimum wage or 25% of disposable income, whichever is greater
    Nonconsumer debts: exemption is 30 times the federal minimum wage or 25% of disposable income, whichever is greater
29. Worker's compensation
30. An unmatured life insurance contract other than a credit life insurance contract
31. An aggregate interest, not to exceed $5,000, in any accrued dividend or interest under, or loan value of, an unmatured life insurance contract under which the insured is the individual or a person of whom the individual is a dependent
32. An aggregate interest in any tangible personal property, not to exceed the value of $800

* To the extent reasonably necessary for support of family and if not commingled with other funds.

INSTRUCTIONS TO DEFENDANTS AND THIRD PARTIES

In order to claim an exemption from execution and garnishment under Idaho and federal law, you, the defendant, judgment debtor, or a third party, holding or known to have an interest in the money and/or personal property, must:

1. DELIVER OR MAIL A CLAIM OF EXEMPTION TO THE SHERIFF WHO LEVIED UPON YOUR MONEY AND/OR PERSONAL PROPERTY AT (SHERIFF'S STREET ADDRESS) , WITHIN FOURTEEN (14) DAYS AFTER MAILING OR PERSONAL SERVICE OF THESE INSTRUCTIONS, NOTICE OF EXEMPTIONS AND FORM FOR FILING A CLAIM OF EXEMPTION. IF YOU MAIL A CLAIM OF EXEMPTION, IT MUST BE RECEIVED BY THE SHERIFF WITHIN THE FOURTEEN (14) DAY

PERIOD.

2. The sheriff has to notify the plaintiff or judgment creditor within one (1) business day, excluding weekends and holidays, that you filed a claim of exemption. The judgment creditor has five (5) business days, excluding weekends and holidays, after the date notice was provided that a claim of exemption was filed with the sheriff, to file a motion with the court contesting the claim of exemption.
3. If the judgment creditor notifies the sheriff that he will not object to the claim of exemption or does not file a motion with the court contesting the claim of exemption, the sheriff will immediately return the money and/or personal property or notify the bank or depository institution to release the money and/or personal property which has been levied upon.
4. IF THE JUDGMENT CREDITOR DOES FILE A MOTION WITH THE COURT CONTESTING THE CLAIM OF EXEMPTION, YOU, THE JUDGMENT DEBTOR OR ANY INTERESTED THIRD PARTY, WILL RECEIVE A COPY OF THE MOTION AND NOTICE OF HEARING. A HEARING WILL BE HELD WITHIN NOT LESS THAN FIVE (5) NOR MORE THAN TWELVE (12) DAYS AFTER THE FILING DATE OF THE MOTION. YOU SHOULD BE PREPARED TO EXPLAIN THE GROUNDS FOR CLAIMING THE EXEMPTION IN COURT ON THE DATE AND TIME SET FOR THE HEARING. YOU SHOULD BRING WHATEVER DOCUMENTS YOU HAVE TO SUPPORT YOUR CLAIM.
5. This is a notice, not legal advice. If you have any questions concerning your rights in this action, you should contact an attorney as soon as possible. If you are low income and cannot afford an attorney you may contact the nearest office of Idaho Legal Aid Services, Inc. to inquire if they can assist you.

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF .....

| | | |
|---|---|---|
| ....., | ) | |
| Plaintiff(s), | ) | CASE NO. |
| vs. | ) | CLAIM OF EXEMPTION |
| ....., | ) | |
| Defendant(s). | ) | |
| ..... | ) | |

I claim an exemption from levy for the following described money and/or property:

a. Money, including money in a bank account, which was paid to me or my family as:

..... Public assistance of any kind
..... Social security or SSI
..... Worker's compensation
..... Unemployment benefits
..... Child support
..... Retirement, pension, or profit sharing benefits
..... Military or veteran's benefits

..... Life insurance or other insurance
..... Disability, illness, medical or hospital benefits
..... Alimony, support or maintenance
..... Annuity contract benefits
..... Bodily injury or wrongful death awards
..... Other money (describe).....
..... Wages (Do not check this box until you have first talked to your employer to see if he correctly calculated your exemption according to the formula under item 28 on the form entitled "SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED." Then check this box only if you believe your employer's calculation is incorrect.)

b. Property:
..... Professional books
..... Burial plots
..... Health aids
..... Homestead, house, mobile home and related structures
..... Jewelry
..... Car, truck or motorcycle
..... Tools and implements
..... Appliances, furnishings, firearms, animals, musical instruments, books, clothes, family portraits and heirlooms
..... Other property (describe)

.....
Defendant or
Representative

Approved March 11, 2003.

## CHAPTER 45
## (S.B. No. 1052)

### AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-420G, IDAHO CODE, TO ESTABLISH AN IDAHO BOY SCOUT LICENSE PLATE PROGRAM; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE CORRECT REFERENCES AND TO PROVIDE A REFERENCE TO FEES FOR THE IDAHO BOY SCOUT LICENSE PLATE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-420G, Idaho Code, and to read as follows:

49-420G. IDAHO BOY SCOUT PLATES. (1) On and after January 1, 2004, 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 boy scout 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 boy scout plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be deposited by the department to the respective boy scout council in which the selling county is located. Inland Northwest Council, Boy Scouts of America, contains the following counties: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone. Ore-Ida Council, Boy Scouts of America, contains the following counties: Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington. Snake River Council, Boy Scouts of America, contains the following counties: Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls. Grand Teton Council, Boys Scouts of America, contains the following counties: Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power and Teton. Boy scout councils whose borders extend outside the state of Idaho are restricted to utilization of received funds totally within 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 boy scout 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 the Idaho boy scout program shall be acceptable to the Boy Scouts of America. The design shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including the costs of plate design shall be paid by the Boy Scouts of America.

(5) Sample boy scout license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited by the department to the respective boy scout council in which the selling county is located as provided in subsection (2) of this section. Boy scout councils whose boundaries extend outside the state of Idaho are restricted to utilization of received funds totally within the state of Idaho. No additional fee shall be charged for personalizing sample plates.

SECTION 2. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

(2) For all school buses operated either by a nonprofit, nonpublic school or operated pursuant to a service contract with a school district for transporting children to or from school or in connection with school approved activities, the annual fee shall be twenty-four dollars ($24.00).

(3) For all motorcycles and all-terrain vehicles operated upon the public highways the annual fee shall be nine dollars ($9.00). For operation of an all-terrain vehicle or motorcycle off the public highways, the fee specified in section 67-7122, Idaho Code, shall be paid. Registration exemptions provided in section 49-426(2) and (3), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in subsections (2) and (3) of section 49-426, Idaho Code.

(4) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

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

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

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

SECTION 3. This act shall be in full force and effect on and after January 1, 2004.

Approved March 11, 2003.

## CHAPTER 46
## (S.B. No. 1106)

### AN ACT

RELATING TO THE IDAHO GEOLOGICAL SURVEY; AMENDING SECTION 47-201, IDAHO CODE, TO STRIKE THE TRANSFER OF RESPONSIBILITY FROM THE BUREAU OF MINES AND GEOLOGY TO THE GEOLOGICAL SURVEY, TO DELETE THE REQUIREMENT THAT THE DEAN OF THE COLLEGE OF MINES AND EARTH RESOURCES OF THE UNIVERSITY OF IDAHO BE DIRECTOR OF THE GEOLOGICAL SURVEY AND THE BOARD CHAIRPERSON AND TO REVISE MEMBERSHIP ON THE GEOLOGICAL SURVEY; AMENDING SECTION 47-202, IDAHO CODE, TO DELETE THE SPECIFIED DATE FOR THE ANNUAL MEETING OF THE ADVISORY BOARD, TO DELETE THE REQUIREMENT THAT THE OFFICE OF THE SURVEY'S SECRETARY BE MAINTAINED AT THE UNIVERSITY OF IDAHO, TO PROVIDE THAT THE DIRECTOR OF THE SURVEY SHALL REPORT TO THE PRESIDENT OF THE UNIVERSITY OF IDAHO THROUGH THE VICE PRESIDENT FOR RESEARCH AT THE UNIVERSITY OF IDAHO AND TO STRIKE UNNECESSARY VERBIAGE; AND AMENDING SECTION 47-203, IDAHO CODE, TO PROVIDE FOR THE PREPARATION AND PUBLICATION OF REPORTS ON HYDROGEOLOGY AND GEOLOGIC HAZARDS AND TO DELETE THE REQUIREMENT THAT THE STATE SURVEY MAINTAIN LABORATORY FACILITIES TO PERFORM NON-COMMERCIAL MINERAL AND CHEMICAL ANALYSES.

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

SECTION 1. That Section 47-201, Idaho Code, be, and the same is hereby amended to read as follows:

47-201. GEOLOGICAL SURVEY CREATED -- PURPOSE -- ADVISORY BOARD. There is hereby created the Idaho geological survey, to be administered as a special program at the university of Idaho under the authority of the board of regents of the university of Idaho. ~~This survey will conduct business heretofore carried out by the Idaho bureau of mines and geology.~~ The survey shall be the lead state agency for the collection, interpretation, and dissemination of geologic and mineral data for Idaho. Such information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies. There is hereby established an advisory board for the survey, consisting of the following members: The ~~dean of the college of mines and earth resources of the university of Idaho, who shall be~~ director of the survey and board chairperson (nonvoting); the chair~~man~~ of the department of ~~geology~~ geosciences at Boise state university; the chair~~man~~ of the department of ~~geology~~ geosciences at Idaho state university; the ~~president of the Idaho mining association, so long as said association continues to exist and elect a president~~ chair of the department of geological sciences at the university of Idaho; a representative from the mining and mineral processing industry selected by the director; the governor of the state of Idaho or his designated representative; a member of the board of land commissioners designated by the state land board; the president or his designee of the Idaho association of professional geologists; and two (2) members at large selected by the director from other state or federal organizations, or from the private sector with a direct interest in the survey's programs, both serving two (2) year staggered terms; all of whom shall serve as members of the said board and shall be compensated as provided by section 59-509(b), Idaho Code.

SECTION 2. That Section 47-202, Idaho Code, be, and the same is hereby amended to read as follows:

47-202. MEETINGS -- OFFICE -- STATE GEOLOGIST. The advisory board shall hold an annual meeting~~s~~ at the university of Idaho, Boise state university or Idaho state university ~~on the first Monday of June of each year~~ and such other meetings as it may determine. The chief office of said survey ~~and the office of its secretary~~ shall be maintained at the university of Idaho. The director of the survey shall report to the president of the university of Idaho through the vice president for research at the university of Idaho. The director, ~~of the survey,~~ or a professional geologist in the survey if so appointed by the director, is designated state geologist.

SECTION 3. That Section 47-203, Idaho Code, be, and the same is hereby amended to read as follows:

47-203. DUTIES -- PUBLICATIONS -- COOPERATION WITH OTHER AGENCIES -- SATELLITE OFFICES. It shall be the duty of the said state survey to conduct statewide studies in the field; laboratory studies; prepare and publish reports on the geology, hydrogeology, geologic hazards and mineral resources of the state; ~~maintain laboratory facilities to perform noncommercial mineral and chemical analyses;~~ fix a price upon printed reports not used in exchange with other state bureaus or surveys, universities or public libraries, and deposit receipts from sales in a

printing fund to be used for the preparation and publication of reports of the survey, and for no other purpose. The survey shall be allowed to seek and accept funded projects from and cooperative programs with other agencies for support of the survey's research and service activities as authorized by the board of regents. All funds received from these projects shall be used for said projects and services. The survey shall be allowed to have satellite offices at the geology departments of Boise state university and Idaho state university.

Approved March 11, 2003.

## CHAPTER 47
## (H.B. No. 103)

### AN ACT

RELATING TO CLASS D MOTOR VEHICLE DRIVER'S LICENSES; AMENDING SECTION 49-302, IDAHO CODE, TO PROVIDE REFERENCE TO A CODE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-303, IDAHO CODE, TO PROVIDE REFERENCE TO A CODE SECTION; AND AMENDING SECTION 49-307, IDAHO CODE, TO ALLOW A PERSON UNDER SIXTEEN YEARS OF AGE WHO HOLDS A VALID CLASS D DRIVER'S LICENSE TO DRIVE AFTER DARK IF THE LICENSEE UNDER SIXTEEN YEARS OF AGE IS ACCOMPANIED BY ANOTHER PERSON WHO HOLDS A VALID DRIVER'S LICENSE AND IS TWENTY-ONE YEARS OF AGE OR OLDER AND IS ACTUALLY OCCUPYING A SEAT BESIDE THE LICENSEE UNDER SIXTEEN YEARS OF AGE, AND THE TWO LICENSED DRIVERS ARE THE ONLY OCCUPANTS OF THE FRONT PASSENGER SECTION OF THE VEHICLE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-302, Idaho Code, be, and the same is hereby amended to read as follows:

49-302. WHAT PERSONS ARE EXEMPT FROM LICENSE. The following persons are exempt from licensing if driving privileges are not suspended, ~~cancelled~~ canceled, revoked, disqualified, denied or refused:

(1) Any person while driving or operating any farm tractor or implement of husbandry when incidentally operated on a highway.

(2) Farmers are exempt from obtaining a class A, B or C driver's license to operate a commercial motor vehicle which is:

(a) Controlled and operated by a farmer, including operation by employees or family members; and

(b) Used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm; and

(c) Not used in the operations of a common or contract motor carrier; and

(d) Used within one hundred fifty (150) miles of the person's farm.

(3) Any person is exempt from obtaining a class A, B or C driver's license for the operation of commercial motor vehicles which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulations.

(4) Any person is exempt from obtaining a class A, B or C license to operate a commercial vehicle which is exclusively used to transport personal possessions or family members for nonbusiness or recreational purposes.

(5) A nonresident who is at least fifteen (15) years of age and who has in his immediate possession a valid driver's license issued to him in his home state or country may operate a motor vehicle in Idaho only as a class D operator with driving privileges restricted to daylight hours only except as provided in section 49-307(7), Idaho Code, and with full privileges at sixteen (16) years of age, and only if Idaho residency is not established.

(6) A nonresident who is at least fifteen (15) years of age and who has in his possession a valid driver's license with a motorcycle endorsement or who has a valid motorcycle driver's license issued to him in his home state or country may operate a motorcycle in Idaho with driving privileges restricted to daylight hours only, and with full privileges at sixteen (16) years of age.

(7) A nonresident who has in his immediate possession a valid commercial driver's license issued to him in his home state or country may operate a motor vehicle in Idaho.

(8) A nonresident on active duty in the armed forces of the United States who has a valid driver's license issued by his home jurisdiction, and such nonresident's spouse or dependent son or daughter who has a valid driver's license issued by such person's home jurisdiction.

(9) Any active duty military personnel, active duty U.S. coast guard personnel, and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training and national guard military technicians who as civilians are required to wear military uniforms and are subject to the code of military justice, are exempt from obtaining a commercial driver's license to operate military vehicles. This exemption does not apply to U.S. reserve technicians.

(10) Any person with a valid driver's license issued in their name is exempt from the requirement to obtain a motorcycle endorsement on the license when operating a motorcycle on highways or sections of highways designated for unregistered motorcycle use under section 49-426(3), Idaho Code.

SECTION 2. 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 except as provided in section 49-307(7), Idaho Code, 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. Provided however, that a restricted school attendance driving permit may be issued to those persons meeting the criteria set forth in section 49-307A, Idaho Code.

(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. Provided however, that a restricted school attendance driving permit may be issued to those persons meeting the criteria set forth in section 49-307A, Idaho Code.

(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, restricted school attendance driving 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 canceled for the duration of the cancellation, nor to any person whose license has been revoked, suspended, 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 3. That Section 49-307, Idaho Code, be, and the same is hereby amended to read as follows:

49-307. FEE FOR CLASS D DRIVER'S TRAINING INSTRUCTION PERMIT -- CLASS D SUPERVISED INSTRUCTION PERMIT. (1) Every enrollee of a class D driver training course in a public school shall pay a nonrefundable fee of thirty dollars ($30.00). Twenty-five dollars ($25.00) of each fee so imposed shall be deposited in the driver training account and five dollars ($5.00) will be deposited in the county current expense fund.

(2) Every enrollee of a class D driver's training course offered by a commercial business shall pay a nonrefundable fee of ten dollars ($10.00). Five dollars ($5.00) of the fee so imposed shall be deposited in the driver training account and five dollars ($5.00) shall be deposited in the county current expense fund.

(3) Each enrollee of a class D driver training course shall provide the type of information required for a driver's license or instruction permit, but the class D driver's training instruction permit shall be issued to the instructor of the course, and the class D driver training instruction permit shall expire one (1) year from the issue date. No enrollee of any class D driver training course shall be allowed to attend classes or participate in driving instruction unless he has obtained a class D driver's training instruction permit.

(4) Upon successful completion of the class D driver's training course, the driver's training instructor shall date and sign the class D driver's training instruction permit over to the parent or legal guardian of the permittee, and the parent or legal guardian shall also date and sign the class D driver's training permit and in so doing agrees to assume responsibility for ensuring that the permittee complies with the requirements of operating a vehicle with a class D supervised instruction permit. The signed and dated class D driver's training instruction permit shall then serve as a class D supervised instruction permit.

(5) No permittee may apply for a class D driver's license sooner than fifteen (15) years of age and no sooner than four (4) months after completing a class D driver's training course, during which time the permittee shall satisfy all requirements for operation of a class D vehicle with a class D supervised instruction permit as follows:

(a) The permittee shall not operate a vehicle unless he is accompanied by a driver who holds a valid driver's license, is twenty-one (21) years of age or older, and who is actually occupying a seat beside the permittee driver. The supervising driver and the permittee shall be the only occupants of the front passenger section of the vehicle.

(b) The permittee shall accumulate at least fifty (50) hours of supervised driving time, ten (10) hours of which shall be during hours of darkness.

(c) The permit shall be in the permittee's immediate possession at all times while operating a vehicle.

(d) In addition to the permittee driver and the supervising driver, all other occupants of the vehicle shall wear a seat belt or be restrained by child passenger restraints as required by law.

(e) The permittee is subject to the provisions of sections 18-1502 and 18-8004, Idaho Code, relating to violation of age restrictions on consumption of beer, wine, and alcohol and driving under the influence of alcohol, drugs or any other intoxicating substances, respectively.

(f) The permittee shall not have been convicted of any moving traffic violation, or have had driving privileges suspended by the department or the court for any offense, or found to be in violation of any of the restrictions on the class D supervised instruction permit, for a period of at least four (4) months from the date the driver's training instructor signed the permit over to the parent or legal guardian, or from the date a ~~cancelled~~ canceled class D supervised instruction permit was reissued, or until the permittee reaches seventeen (17) years of age.

(g) If the permittee is convicted of a violation of any traffic law, or section 18-1502, Idaho Code, or section 18-8004, Idaho Code, or is found to be in violation of any of the restrictions on the class D supervised instruction permit, the department shall cancel the class D supervised instruction permit, and the cancellation shall not be used to establish rates of motor vehicle insurance charged by a casualty insurer. The permittee may reapply for and be issued a new class D supervised instruction permit upon payment of the appropriate fees, and shall again be required to operate with the class D supervised instruction permit for at least four (4) months from the date of reissue without a conviction or suspension, accumulate the required hours of driving time and adhere to the requirements as specified in paragraphs (a) through (f) of this subsection (5).

(6) Upon completion of the requirements in subsection (5) of this section, the permittee shall take the knowledge test and skills test administered by a person certified by the Idaho transportation department to administer knowledge and skills tests.

(7) Upon passage of the knowledge and skills tests, the permittee may apply for a class D driver's license with driving privileges restricted to daylight hours for persons under sixteen (16) years of age, and with full privileges at sixteen (16) years of age or older. Provided however, the restriction on daylight hours only driving privileges for persons under sixteen (16) years of age shall not apply if:

(a) The person under sixteen (16) years of age has a valid class D driver's license; and

(b) Is accompanied by a driver who holds a valid driver's license and is twenty-one (21) years of age or older and is actually occupying a seat beside the licensee who is under sixteen (16) years of age; and

(c) The two (2) licensed drivers are the only occupants of the front passenger section of the vehicle.

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.

Approved March 13, 2003.

CHAPTER 48
(H.B. No. 162)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-201, IDAHO CODE, TO PROVIDE FURTHER DUTIES OF THE SECRETARY OF STATE REGARDING ELECTIONS; AMENDING CHAPTER 2, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-216, IDAHO CODE, TO PROVIDE FOR GRIEVANCE PROCEDURES; AMENDING SECTION 34-303, IDAHO CODE, TO DELETE LANGUAGE STATING THAT NO ELECTION BOARD FOR A PRECINCT SHALL EXCEED TEN MEMBERS; AMENDING SECTION 34-410, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS FOR MAIL REGISTRATION; AMENDING SECTION 34-411, IDAHO CODE, TO REVISE THE CONTENTS OF AN APPLICATION FOR REGISTRATION; AMENDING SECTION 34-416, IDAHO CODE, TO DELETE LANGUAGE REQUIRING THE OFFICIAL WHO PERSONALLY REGISTERS THE ELECTOR TO SIGN HIS NAME AND TITLE IN ATTESTATION ON THE COMPLETED CARD; AMENDING SECTION 34-437, IDAHO CODE, TO REVISE REQUIREMENTS AND RESTRICTIONS FOR FURNISHING LISTS OF REGISTERED ELECTORS; AMENDING SECTION 34-437A, IDAHO CODE, TO REQUIRE THE SECRETARY OF STATE IN CONJUNCTION WITH COUNTY CLERKS TO DEVELOP AND IMPLEMENT A SINGLE, UNIFORM OFFICIAL LIST OF REGISTERED ELECTORS AND TO PROVIDE REQUIREMENTS; REPEALING SECTION 34-438, IDAHO CODE; AMENDING SECTION 34-704, IDAHO CODE, TO REVISE DECLARATION OF CANDIDACY REQUIREMENTS; AMENDING SECTION 34-1002, IDAHO CODE, TO REVISE APPLICATION FOR ABSENTEE BALLOT REQUIREMENTS; AMENDING SECTION 34-1203, IDAHO CODE, TO PROVIDE THAT THE SECRETARY OF STATE SHALL ISSUE DIRECTIVES OR PROMULGATE ADMINISTRATIVE RULES ADOPTING STANDARDS THAT DEFINE WHAT CONSTITUTES A VOTE AND WHAT WILL BE COUNTED AS A VOTE FOR EACH CATEGORY OF VOTING SYSTEM USED IN THIS STATE; AMENDING SECTION 34-1402, IDAHO CODE, TO REVISE REQUIREMENTS FOR REGISTRATION; AMENDING SECTION 34-2401, IDAHO CODE, TO REVISE THE DEFINITION OF "BALLOT"; AMENDING SECTION 67-916, IDAHO CODE, TO REVISE THE PROCEDURES, PURPOSES AND SPENDING AUTHORITY OF THE DEMOCRACY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 34-201, Idaho Code, be, and the same is hereby amended to read as follows:

34-201. SECRETARY OF STATE CHIEF ELECTION OFFICER. The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws.

The secretary of state is responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed service voters and overseas voters with respect to elections for federal office as required by section 102 of the uniformed and overseas citizens absentee voting act (42 U.S.C. section 1973 et seq.).

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the uniformed and overseas citizens absentee voting act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States armed forces, mobilization of those forces, including state national guard and

reserve components of this state, the secretary of state may prescribe, by directive, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in this state.

SECTION 2. That Chapter 2, Title 34, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 34-216, Idaho Code, and to read as follows:

34-216. GRIEVANCE PROCEDURES. The secretary of state shall promulgate rules in compliance with chapter 52, title 67, Idaho Code, establishing a state-based administrative complaint procedure as required by the help America vote act (P.L. 107-252).

SECTION 3. That Section 34-303, Idaho Code, be, and the same is hereby amended to read as follows:

34-303. APPOINTMENT OF ELECTION JUDGES BY COUNTY CLERK. The county clerk shall appoint two (2) or more election judges, one (1) of whom shall be designated chief judge, and the number of clerks deemed necessary by him for each polling place. In the event a single polling place is designated for two (2) or more precincts, an individual may serve simultaneously on the election board for two (2) or more precincts thus served by a single polling place. ~~No election board for a precinct shall exceed ten (10) members.~~ The precinct committeemen shall recommend persons for the position in their respective precincts to the county clerk in writing at least ten (10) days prior to the date on which any appointment shall be made and the county clerk shall appoint the judges from such lists if the persons recommended are qualified.

The chief election judge shall be responsible for the conduct of the proceedings in the polling place. Compensation for all election personnel shall be determined by the board of county commissioners, and not less than the minimum wage as prescribed by the laws of the state of Idaho.

Each election board shall contain personnel representing all existing political parties if a list of applicants has been provided to the county clerk by the precinct committeemen of the precincts at least sixty (60) days prior to the primary election.

SECTION 4. That Section 34-410, Idaho Code, be, and the same is hereby amended to read as follows:

34-410. MAIL REGISTRATION. Any elector may register by mail for any election. Any mail registration application must be received by the county clerk prior to the close of registration as provided in section 34-408, Idaho Code, provided that any mail registration application postmarked not later than twenty-five (25) days prior to an election shall be deemed timely.

The secretary of state shall prescribe the form for the mail registration application. This mail application form shall be available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

Any federal mail registration form adopted pursuant to the provi-

sions of the national voter registration act of 1993 (P.L. 103-31) shall also be accepted as a valid registration, if such form is postmarked not later than twenty-five (25) days prior to an election.

The county clerk shall prepare and issue by first class nonforwardable mail to each elector registering by mail a verification of registration containing the name and residence of the elector and the name or number of the precinct in which the elector resides.

A verification returned undeliverable shall cause the county clerk to remove the elector's card from the register of electors.

As required by the help America vote act of 2002 (P.L. 107-252), a copy of proper identification will be required prior to issuance of a ballot to anyone who has registered by mail and has not previously voted in an election for federal office in the state. Proper identification consists of:

(1) A current and valid photo identification; or

(2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

SECTION 5. That Section 34-411, Idaho Code, be, and the same is hereby amended to read as follows:

34-411. APPLICATION FOR REGISTRATION -- CONTENTS. (1) Each elector who requests registration shall supply the following information under oath or affirmation:

(a) His full name and sex.

(b) His mailing address, his residence address or any other necessary information definitely locating his residence.

(c) The period of time preceding the date of registration during which he has resided in the state.

(d) Whether or not he is a citizen.

(e) That he is under no legal disqualifications to vote.

(f) The county and state where he was previously registered, if any.

(g) Date of birth.

(h) Current driver's license number or, in the absence of an Idaho driver's license, the last four (4) digits of the elector's social security number.

(2) Any elector who shall supply any information under subsection (1) of this section, knowing it to be false, is guilty of perjury.

(3) Each elector who requests registration may, at the elector's option, supply the ~~following information:~~

~~(a) Social security number; and~~

~~(b)~~ Home the elector's telephone number. If the ~~home~~ telephone number is supplied by the elector, the ~~home~~ telephone number shall be available to the public.

SECTION 6. That Section 34-416, Idaho Code, be, and the same is hereby amended to read as follows:

34-416. REGISTRATION CARDS. (1) The registration card 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 7. That Section 34-437, Idaho Code, be, and the same is hereby amended to read as follows:

34-437. FURNISHING LISTS OF REGISTERED ELECTORS -- RESTRICTIONS. (1) Each of the county clerks, upon receiving a request ~~therefor--not later--than the thirtieth day before a general, special or primary election,~~ shall supply to any individual, a current list of the registered electors of the county and their addresses, arranged in groups according to election precincts. The county clerks shall prepare an original of the above list from the state voter registration system at county expense. Any person desiring a copy of the original list shall be furnished the same, and the county clerk shall assess the individual an amount which will compensate the county for the cost of reproducing such copy.

(2) ~~The county clerk may, in his sole discretion, waive the deadline provided in subsection (1) of this section; provided that the clerk shall not discriminate against any political party, candidate or individual in waiving said deadline.~~

~~(3)~~ No person to whom a list of registered electors is made available or supplied under subsection (1) of this section and no person who acquires a list of registered electors prepared from such list shall use any information contained therein for ~~commercial purposes~~ the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose.

SECTION 8. That Section 34-437A, Idaho Code, be, and the same is hereby amended to read as follows:

34-437A. ~~SECRETARY OF STATE REQUIRING~~ STATEWIDE LISTS OF REGISTERED ELECTORS. (1) The secretary of state, ~~may require each county clerk to submit to him, for use in compiling a statewide list of registered electors, the current list of registered electors as described in section 34-437, Idaho Code~~ in conjunction with county clerks, shall develop and implement a single, uniform official, centralized, interactive, computerized statewide voter registration system as required by the help America vote act of 2002 (P.L. 107-252).

(2) The statewide system shall contain the name and registration information of every legally registered voter in the state and assign a unique identifier to each legally registered voter in the state, and include the following:

(a) The computerized list shall serve as the single system for

storing and managing the official list of registered voters throughout the state.

(b) The computerized list shall contain the name and registration information of every legally registered voter in the state.

(c) Under the computerized list, a unique identifier shall be assigned to each legally registered voter in the state.

(d) The computerized list shall be coordinated with other agency databases within the state.

(e) Any election official in the state, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(f) All voter registration information obtained by any local election official in the state shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(g) The secretary of state shall provide such support as may be required so that local election officials are able to enter information as described in subsection (2)(f) of this section.

(h) The computerized list shall serve as the official voter registration list for the conduct of all elections for federal office in the state.

(3) Any person desiring a copy of the statewide list of registered electors shall be furnished the same, and the secretary of state shall assess the individual an amount which will compensate the state for the cost of reproducing such copy.

No person to whom a list of statewide electors is furnished and no person who acquires a list of statewide electors prepared from such list shall use any information contained therein for ~~commercial purposes~~ the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose.

SECTION 9. That Section 34-438, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 34-704, Idaho Code, be, and the same is hereby amended to read as follows:

34-704. DECLARATION OF CANDIDACY. Any person legally qualified to hold such office is entitled to become a candidate and file his declaration of candidacy. Each political party candidate for precinct, state, district or county office shall file his declaration of candidacy in the proper office between 8 a.m., on the ~~tenth~~ twelfth Monday preceding the primary election and 5 p.m., on the ~~eighth~~ tenth Friday preceding the primary election. All political party candidates shall declare their party affiliation in their declaration of ~~candidacy,~~ except candidates for nonpartisan office.

Candidates who file a declaration of candidacy under a party name and are not nominated at the primary election shall not be allowed to appear on the general election ballot under any other political party name, nor as an independent candidate.

Independent candidates shall file their declaration of candidacy in

the manner provided in section 34-708, Idaho Code.

SECTION 11. That Section 34-1002, Idaho Code, be, and the same is hereby amended to read as follows:

34-1002. APPLICATION FOR ABSENTEE BALLOT. Any registered elector may make written application to the county clerk, or other proper officer charged by law with the duty of issuing official ballots for such election, for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address, county, and address to which such ballot shall be forwarded.

The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be received by the county clerk not later than 5:00 p.m. on the sixth day before the election. An application for in person absentee voting at the absent elector's polling place described in section 34-1006, Idaho Code, shall be received by the county clerk not later than 5:00 p.m. on the day before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated polling place on the day of election because of an emergency situation which rendered him physically unable, he may nevertheless apply for an absent elector's ballot on the day of election by notifying the county clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the closing of the polls.

A person may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff, et seq.). A properly executed federal postcard application (F.P.C.A.)~~, if received prior to the primary election~~, shall be considered as a request for an absent elector's ballot ~~for both the primary and general election~~ through the next two (2) regularly scheduled general elections for federal office following receipt of the application. The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

The county clerk shall, not later than seventy-five (75) days after the date of each general election, submit a report to the secretary of state containing information concerning absentee voters as required by federal law.

SECTION 12. That Section 34-1203, Idaho Code, be, and the same is hereby amended to read as follows:

34-1203. COUNTING OF BALLOTS -- CERTIFICATES OF JUDGES. The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title the number of votes for each candidate and such other information required by the secretary of state shall be entered in the tally books together with the total of the above figures in the manner prescribed by the secretary of state. Any

ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted. When a ballot is sufficiently plain to determine therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Following the counting, the judges must post a correct copy of such results at the polling place and a copy transmitted to the county clerk.

In no event shall the results of any count be released to the public until all voting places in the state have closed on election day.

The secretary of state shall issue directives or promulgate administrative rules adopting standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in this state.

SECTION 13. That Section 34-1402, Idaho Code, be, and the same is hereby amended to read as follows:

34-1402. REGISTRATION. All electors must register with the county clerk before being able to vote in any primary, general, special or any other election conducted in this state. The county clerk shall determine, for each registered elector, the elections for which he is eligible to vote by a determination of the applicable code areas. ~~The register of electors shall be maintained by the clerk in a manner which will make this information readily available to the electors and to the election officials of the various political subdivisions.~~ The determination of tax code area shall be made for all political subdivisions including those otherwise exempt from the provisions of this chapter.

The county clerk shall conform to the provisions of chapter 4, title 34, Idaho Code, in the administration of registration for all political subdivisions within the county. The county clerk shall appoint each city clerk for any city within the county and each election official designated by a political subdivision, as an at-large registrar as provided in section 34-406, Idaho Code, except that no compensation shall be paid by the county clerk for electors registered by these special registrars.

SECTION 14. That Section 34-2401, Idaho Code, be, and the same is hereby amended to read as follows:

34-2401. DEFINITIONS. As used in this chapter:

(1) "Ballot" means any material used or the voting surface of a direct recording electronic system on which votes are cast for offices, ~~and~~ candidates and measures. ~~which do not appear on ballot labels or a ballot which is used to record votes which are cast for offices and candidates and measures in a voting system which does not use ballot cards.~~

(2) "Ballot card" means the tabulating card or cards of any size upon which the voter records his vote.

(3) "Ballot label" means the cards, papers, booklet or other material containing the names of offices and candidates and measures to be voted on.

(4) "Election" means all state, county, city, district and other political subdivision elections including bond issue elections.

(5) "Governing body" means the board of county commissioners of any county or the governing body of any city, district or other political subdivision elections including bond issue elections.

(6) "Measure" means a proposed law, act or part of an act of the

legislative assembly or amendment to the constitution of the state of Idaho to be submitted to the people for their approval or rejection at an election. "Measure" also means other propositions which can be submitted to the voters at any election by counties, cities, districts or other political subdivisions.

(7) "Model" means a mechanically operated model of a portion of the face of the machine illustrating the means of voting.

(8) "Precinct" includes all election districts.

(9) "Voting machine" means:

(a) Any mechanical or electronic device which will record every vote cast by any voter on candidates and measures and which will either internally or externally total all votes cast on that device;

(b) Any device into which a ballot card may be inserted and which is so designed and constructed that the vote for any candidate or measure may be indicated by punching or marking the ballot card.

(10) "Vote tally system" means one (1) or more pieces of machinery or equipment necessary to examine and tally automatically paper ballots having marks placed thereon by a written mark or by a marking stamp. The examination shall be accomplished by either mark sensing or optical scanning.

SECTION 15. That Section 67-916, Idaho Code, be, and the same is hereby amended to read as follows:

67-916. DEMOCRACY FUND. (1) There is hereby created in the state treasury in the office of the secretary of state the "Democracy Fund." The purpose of the democracy fund is to provide funding for ~~improving the--election-systems-for-the-benefit-of-Idaho's-voters~~ carrying out the activities for which payments are made to the state under the federal help America vote act of 2002 (P.L. 107-252) including, but not limited to:

(a) Establishing and maintaining accurate lists of eligible voters;

(b) Encouraging eligible voters to vote;

(c) Improving verification and identification of voters at the polling place;

(d) Improving equipment and methods for casting and counting votes;

(e) Recruiting and training election officials and poll workers;

(f) Improving the quantity and quality of available polling places;

(g) Educating voters about their rights and responsibilities;

(h) Assuring access for voters with physical disabilities;

(i) Carrying out other activities to improve the administration of elections in the state.

(2) The democracy fund shall consist of all moneys appropriated by the legislature, federal moneys that may be available for the purpose of improving Idaho's election system, county matching funds and funds from any other source.

(3) ~~Moneys-in-the-democracy-fund-may-be-expended-pursuant-to-appropriation-and-a~~All interest earned on the investment of idle moneys in the fund by the state treasurer shall be returned to the fund.

(4) Moneys deposited in, or remitted to, the democracy fund are continuously appropriated to the secretary of state for the purpose of paying the expenses of carrying out the activities for which payments are made to this state under the federal help America vote act of 2002 (P.L. 107-252).

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 March 13, 2003.

## CHAPTER 49
## (H.B. No. 23)

AN ACT
RELATING TO COSMETICIANS; AMENDING SECTION 54-804, IDAHO CODE, TO REVISE EXEMPTIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-804, Idaho Code, be, and the same is hereby amended to read as follows:

54-804. EXEMPTIONS. The provisions of this chapter shall not apply in the following instances:

(1~~.~~) Persons authorized by the laws of this state to practice as a ~~registered or practical~~ nurse~~, mortician, and~~/or any of the healing arts, while in the proper discharge of their professional duties.

(2~~.~~) Persons licensed to practice barbering or ~~apprentice barbering~~ barber-styling in this state.

However, the provisions of this section shall not be construed to authorize the practice of cosmetology, except those acts that are permitted under the Idaho barber law.

(3~~.~~) Persons practicing in their own home without compensation, and not practicing on the public in general.

(4~~.~~) The provisions of section 54-803(1), Idaho Code, shall not apply to licensed parties performing cosmetological services for persons unable by reason of ill health, medical confinement or involuntary incarceration to go to a cosmetological establishment.

(5~~.~~) The provisions of section 54-803(1), Idaho Code, shall not apply to licensed electrologists or licensed estheticians practicing electrology or esthetics under the supervision of a person licensed as a chiropractor, dentist, medical doctor or podiatrist at a facility utilized by the doctor.

(6~~.~~) Persons whose practice is limited to the facial application of cosmetic products to customers in connection with the sale, or attempted sale, on the premises of a retail cosmetics dealer, of cosmetic products at retail, without compensation from the customer other than the regular price of the merchandise.

Approved March 13, 2003.

CHAPTER 50
(H.B. No. 24)

AN ACT

RELATING TO COUNSELORS AND THERAPISTS; AMENDING SECTION 54-3407, IDAHO CODE, TO EXPAND THE PERMISSIBLE DISCIPLINARY ACTIONS OF THE BOARD OF COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS TO INCLUDE THE REFUSAL TO ISSUE OR RENEW A LICENSE UPON SPECIFIED GROUNDS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 54-3411, IDAHO CODE, TO PROVIDE FOR A MAXIMUM FEE OF TWENTY-FIVE DOLLARS FOR THE ORIGINAL REGISTRATION OF INTERNS.

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

SECTION 1. That Section 54-3407, Idaho Code, be, and the same is hereby amended to read as follows:

54-3407. DISCIPLINARY PROCEEDINGS. Subject to the provisions of chapter 52, title 67, Idaho Code, the board may refuse to issue, refuse to renew, revoke or suspend a license upon the following grounds:

(1) Fraud or deception in procuring the license;

(2) Conviction of a felony by a court of competent jurisdiction;

(3) Gross incompetency;

(4) Fraud or deceit in the performance of official duties;

(5) For violation of any of the provisions of this chapter or any of the rules ~~or regulations~~ promulgated by the board under the authority of this chapter.

The board may reinstate any revoked or suspended license upon such terms as it may impose.

SECTION 2. 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 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) The fee for the original registration of interns not to exceed twenty-five dollars ($25.00).

(7) Fees under subsection (2) or (3) of this section shall be in addition to the application fee.

(~~7~~8) All fees paid pursuant to this section shall be nonrefundable.

Approved March 13, 2003.

## CHAPTER 51
## (H.B. No. 25)

AN ACT

RELATING TO NURSING HOME ADMINISTRATORS; AMENDING SECTION 54-1609, IDAHO CODE, TO PROVIDE FOR THE ENDORSEMENT OF LICENSES BASED UPON THE SUBMISSION OF EVIDENCE THAT THE APPLICANT MEETS QUALIFICATIONS AS ESTABLISHED BY BOARD RULE.

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

SECTION 1. That Section 54-1609, Idaho Code, be, and the same is hereby amended to read as follows:

54-1609. 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 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~~ the applicant meets those qualifications established by the rules of the board.

Approved March 13, 2003.

## CHAPTER 52
## (H.B. No. 138)

AN ACT

RELATING TO IMPLEMENTS OF HUSBANDRY; AMENDING SECTION 49-1010, IDAHO CODE, TO PROVIDE THAT LIMITATIONS AS TO SIZE OF VEHICLES SHALL NOT APPLY TO ANY TRAILER NOT WIDER THAN THE IMPLEMENT OF HUSBANDRY USED IN THE TRANSPORTATION OF IMPLEMENTS OF HUSBANDRY FOR AGRICULTURAL OPERATIONS, TO DELETE THE TWENTY-FIVE MILE PER HOUR SPEED LIMIT FOR FARM TRACTORS OR IMPLEMENTS OF HUSBANDRY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-1010, Idaho Code, be, and the same is hereby amended to read as follows:

49-1010. SIZE OF VEHICLES AND LOADS. No vehicle shall exceed the dimensions specified below, except that certain devices determined by the board as necessary for the safe and efficient operation of motor vehicles, including energy conservation devices, shall be excluded from the calculation of width or length.

(1) The width of a vehicle, including any load thereon, except as noted below, shall not exceed ..... 8 1/2 feet.

(a) The limitations as to size of vehicles stated in this section shall not apply to farm tractors or to implements of husbandry, including any load thereon, or any trailer not wider than the implement of husbandry used in the transportation of implements of husbandry for agricultural operations, and including all equipment used in land leveling operations, when being incidentally operated upon the highway from one (1) farm operation to another during daylight hours.

(b) Notwithstanding the exemption from width limitation for farm tractors included in paragraph (a) of this subsection, the total outside width of any farm tractor being transported on the interstate system in this state, except as permitted by section 49-1004, Idaho Code, shall not exceed ..... 9 feet.

(c) A farm tractor or implement of husbandry, when being incidentally transported upon the highway with a width in excess of the limits of paragraphs (a) and (b) of this subsection, ~~must--not--proceed--at--a-speed-in-excess-of-twenty-five-(25)-miles-per-hour,~~ must display one (1) red or fluorescent orange flag a minimum of twelve (12) by twelve (12) inches on the outermost left projection of the tractor or implement being transported~~,--except--that--the--speed restriction--of-twenty-five-(25)-miles-per-hour-shall-not-apply-when such-tractor-or-implement-of-husbandry--is--being--hauled--on--legal width-highway-vehicles-equipped-as-required-by-law~~.

(2) The height of a vehicle, including the load thereon, shall not exceed ..... 14 feet.

(3) The length of a vehicle, or vehicle combination, except as noted below shall not exceed:

(a) When a single motor vehicle ..... 45 feet.

(b) When a trailer or semitrailer, except as noted below ..... 48 feet.

1. Semitrailers operating on routes determined by the board to have severe curvature, deficient width and/or heavy traffic conditions shall be limited to an overall combination length not to exceed ..... 65 feet.

2. The length of a trailer tongue, or the length of the tongue of a converter gear used to convert a semitrailer to a trailer, shall be excluded from the calculation of a trailer length.

3. Semitrailers operating on routes which are a part of the national network as set forth in ~~the-Code-of-Federal-Regulations,-Title-23,-Part~~ 23 CFR 658, on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network and state highways as set forth by policy and approved by the transportation board shall not exceed a length of ..... 53 feet.

(c) When a motor vehicle and one (1) or more trailers, except as noted in subsections (3)(b), (3)(d) and (3)(e) of this section ..... 75 feet.

(d) When a combination of semitrailer and trailer, or of two (2) semitrailers the length in such combination, including the connecting tongue and excluding the truck tractor except as noted below ..... 61 feet.

When the combination of semitrailer and trailer or of two (2) semitrailers including the connecting tongues exceeds sixty-one (61) feet, the length of such combination including the truck tractor ..... 75 feet.

(e) When a combination of a semitrailer and trailer, or of two (2) semitrailers operating on routes on the national network as set forth in ~~the Code of Federal Regulations, Title 23, Part~~ 23 CFR 658, and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network, the length, including the connecting tongue and excluding the truck tractor, shall not exceed ..... 68 feet.

(f) When a dromedary tractor with semitrailer, stinger-steered by having the kingpin located five (5) feet to the rear of the centroid of the rear axle(s) ..... 75 feet.

(g) When a dromedary tractor with semitrailer, not meeting the stinger-steer requirement as defined in subsection (3)(f) of this section ..... 65 feet.

(h) When an auto transporter or boat transporter, stinger-steered as defined in subsection (3)(f) of this section, excluding front and rear overhang of load ..... 75 feet.

(i) When an auto transporter or boat transporter, not meeting the stinger-steer requirement as defined in subsection (3)(f) of this section, excluding front and rear overhang of load ..... 65 feet.

(j) When a truck tractor with stinger-steered pole trailer or log dolly, connected by a reach or pole, or a combination used for transporting long loads such as poles, pipes, logs or structural members generally capable of sustaining themselves as beams between supporting bunks or connections ..... 75 feet.

(4) The overhang or extension of a load shall not extend:

(a) Beyond the front of a vehicle, more than ..... 4 feet.

(b) Beyond the last axle, more than ..... 15 feet.

(c) Beyond the left fender of a passenger vehicle, more than ..... 0 feet.

(d) Beyond the right fender of a passenger vehicle, more than ..... 6 inches.

(e) To the front and rear combined of an auto transporter or boat transporter, more than ..... 7 feet.

(5) Noncargo-carrying devices necessary for the safe and efficient operation of the vehicle, as determined by the board, shall not be included in measurement for length.

(6) No combination shall include more than three (3) units except when a saddlemount combination ..... 75 feet.

(7) Vehicle combinations consisting of not more than four (4) vehicle units with an overall length in excess of the limits of subsection (3) of this section and with an overall combination length not to exceed one hundred ~~and~~ five (105) feet, may be operated by permit on routes designated for such operations by the public highway agency having jurisdiction over that highway system.

Approved March 13, 2003.

CHAPTER 53
(H.B. No. 182)

AN ACT

RELATING TO THE DISPOSITION OF UNCLAIMED VETERANS REMAINS; AMENDING CHAPTER 11, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1144, IDAHO CODE, TO AUTHORIZE THE RELEASE OF THE UNCLAIMED CREMATED REMAINS OF VETERANS TO THE IDAHO DIVISION OF VETERANS SERVICES OR AN IDAHO CHAPTER OF A NATIONALLY CHARTERED VETERANS SERVICES ORGANIZATION, TO PROVIDE PROCEDURES AND TO PROVIDE FOR THE RELEASE OF LIABILITY UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 65-202, IDAHO CODE, TO AUTHORIZE THE IDAHO DIVISION OF VETERANS SERVICES TO ACCEPT THE CREMATED REMAINS OF DECEASED PERSONS ELIGIBLE FOR INTERMENT AT THE STATE VETERANS CEMETERY, TO APPLY FOR UNITED STATES DEPARTMENT OF VETERANS AFFAIRS BENEFITS FOR DECEASED VETERANS AND TO INTER ELIGIBLE DECEASED PERSONS IN THE STATE VETERANS CEMETERY.

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

SECTION 1. 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 54-1144, Idaho Code, and to read as follows:

54-1144. UNCLAIMED REMAINS OF VETERANS. (1) The division of veterans services may assume control over the cremated remains of a deceased person if:

(a) The decedent's remains have not been disposed of pursuant to a prearranged funeral plan as set forth in section 54-1139, Idaho Code;

(b) The persons vested with the right to control the disposition of the remains of a deceased person pursuant to section 54-1142, Idaho Code, have not made final arrangements for the disposition of the remains within one (1) year following the deceased person's death or have not exercised control over those remains for a period of one (1) year; and

(c) The division of veterans services certifies that the deceased person is eligible for interment at the state veterans cemetery as an armed forces member pursuant to the rules of the state veterans cemetery.

(2) An Idaho chapter of a nationally chartered veterans services organization may assume control over the cremated remains of a deceased person if:

(a) The decedent's remains have not been disposed of pursuant to a prearranged funeral plan as set forth in section 54-1139, Idaho Code;

(b) The persons vested with the right to control the disposition of the remains of a deceased person pursuant to section 54-1142, Idaho Code, have not made final arrangements for the disposition of the remains within one (1) year following the deceased person's death or have not exercised control over those remains for a period of one (1) year; and

(c) The Idaho chapter of a nationally chartered veterans services organization certifies that:

(i) The deceased person is an armed forces member as defined in the rules of the state veterans cemetery;

(ii) The Idaho chapter of a nationally chartered veterans services organization shall be solely responsible for the costs of interment, including the application for and receipt of any available governmental benefits.

(3) There shall be no liability of a funeral establishment, mortuary, cemetery, crematory, or a related entity, a licensed mortician, or licensed funeral director, or any employee or agent thereof who transfers the cremated remains of a deceased person to the division of veterans services or an Idaho chapter of a nationally chartered veterans services organization pursuant to the provisions of this section.

(4) There shall be no liability of the state of Idaho or any employee or agent thereof related to the transfer of the cremated remains of a deceased person to an Idaho chapter of a nationally chartered veterans services organization or the interment of such remains pursuant to the provisions of this section.

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 veterans of the armed forces of the United States, to:

(1) Oversee the management and operation of the veterans homes in the state and the state veterans cemetery, and provide care to veterans of the armed forces of the United States under such rules as the administrator may from time to time adopt.

(2) Extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such disabled or destitute wartime veterans as the commission shall determine to be reasonably required under such rules as the administrator may, from time to time, adopt.

(3) 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 the administrator is hereby directed to cause such benefits to be deposited in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(4) Prescribe, with the approval of the commission, the qualifications of all personnel in accordance with the Idaho personnel system law. The administrators in charge of state veterans homes and the office of veterans advocacy shall be considered nonclassified exempt employees pursuant to the provisions of chapter 53, title 67, Idaho Code, and shall serve at the pleasure of the administrator of the division of veterans services.

(5) Accept gifts, grants, contributions and bequests of funds, and personal property to the state of Idaho for the benefit of veterans of the armed forces of the United States.

(6) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of services to veterans

of the armed forces of the United States.

(7) Administer, with the advice and approval of the commission, moneys in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(8) In his discretion, assume control of the cremated remains of deceased persons qualified for interment in the state veterans cemetery, apply for burial and plot allowance benefits paid by the United States department of veterans affairs for such deceased persons and inter in the state veterans cemetery the cremated remains of deceased persons qualified for interment in the state veterans cemetery.

Approved March 13, 2003.

## CHAPTER 54
## (H.B. No. 22)

### AN ACT

RELATING TO BARBERS; AMENDING SECTION 54-504, IDAHO CODE, TO EXPAND EXEMPTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-507, IDAHO CODE, TO REQUIRE APPROVED BARBER SCHOOLS OR COLLEGES TO DELIVER A BOND TO THE STATE OF IDAHO IN THE SUM OF TWENTY THOUSAND DOLLARS AND TO PROVIDE A COPY OF THE BOND ANNUALLY TOGETHER WITH THE APPLICATION FOR SCHOOL LICENSE RENEWAL; AMENDING SECTION 54-513, IDAHO CODE, TO DELETE EXEMPTION LANGUAGE AND TO PROVIDE REFERENCE TO LICENSED BARBERS OR BARBER-STYLISTS; AND AMENDING SECTION 54-518, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING FOR A TEMPORARY PERMIT FEE.

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

SECTION 1. That Section 54-504, Idaho Code, be, and the same is hereby amended to read as follows:

54-504. EXCEPTIONS. (1) The ~~following persons are exempt from the~~ provisions of this chapter ~~while in the proper discharge of their professional duties~~ shall not apply in the following instances:

~~1.~~(a) Persons authorized by the laws of the state to practice as a ~~registered~~ nurse or any of the healing arts while in the proper discharge of their professional duties;

~~2.~~(b) Persons who are licensed to practice cosmetology in this state~~.~~, provided hHowever, the provisions of this section shall not be construed to authorize such persons ~~specified under paragraph 2 of this section~~ to practice barbering~~,~~ except those acts that are permitted under the Idaho cosmetology law; and

(c) Persons practicing in their own home on members of their immediate family without compensation.

(2) The provisions of section 54-513, Idaho Code, shall not apply to licensed parties performing barber or barber-styling services for persons unable by reason of ill health, medical confinement or involuntary incarceration to go to a barber establishment.

SECTION 2. 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 operate or be licensed as a school of barbering, unless the entrance requirements are equal to those which are required under section 54-506, Idaho Code. An approved college may teach special courses, but as a prerequisite to graduation the college must provide:

(1) A course of instruction for barber-stylists of not less than one thousand eight hundred (1,800) 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, 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 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, certified, or licensed unless said college is 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.

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 license to the effect that the college is approved by the board.

A license issued to a college must be renewed annually on July first of each year. Should a college fail or refuse to renew a 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 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 the sum of twenty thousand dollars ($20,000) in a form approved by the board, and ~~renew the same~~ provide a copy of the bond annually~~, in the sum of two thousand dollars ($2,000),~~ together with the application for school license renewal. The bond shall be 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 3. That Section 54-513, Idaho Code, be, and the same is hereby amended to read as follows:

54-513. PERFORMANCE OF SERVICES TO BE LIMITED TO LICENSED SHOPS AND SCHOOLS OR COLLEGES. It shall be unlawful to practice barbering in other than a properly licensed barbershop or barber school or college ~~except the performing of barber services by licensed parties for persons unable by reason of ill health to go to a barbershop and~~ except that a ~~registered~~ licensed barber or barber-stylist may work in a properly licensed cosmetology shop and except that a barber instructor may work in a properly licensed cosmetology school.

SECTION 4. 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, and examinations as required under this chapter shall be fixed by rules of the board in amounts not to exceed the following:

(1) Original licenses and annual renewals thereof:
approved barber college within the state, original license/annual renewals.....$200.00
approved barber college located outside the state, original license/annual renewals.....100.00
barbershop original license/annual renewals.....50.00
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:
barber.....$ 75.00
teacher 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 licenses expire on June 30.

Approved March 13, 2003.

## CHAPTER 55
## (H.B. No. 164)

### AN ACT

RELATING TO MAGISTRATES; AMENDING SECTION 1-2220, IDAHO CODE, TO PROVIDE THAT A MAGISTRATE MAY, NOT LESS THAN NINETY DAYS PRIOR TO THE HOLDING OF THE GENERAL ELECTION NEXT PRECEDING THE EXPIRATION OF HIS TERM OF OFFICE, FILE IN THE OFFICE OF THE COUNTY CLERK A DECLARATION OF CANDIDACY TO SUCCEED HIMSELF.

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

SECTION 1. That Section 1-2220, Idaho Code, be, and the same is hereby amended to read as follows:

1-2220. RETENTION OR NONRETENTION OF MAGISTRATE BY VOTE. Any magistrate appointed pursuant to the provisions of section 1-2205, Idaho Code, and section 1-2207(2), Idaho Code, shall stand for office in the first general election next succeeding the expiration of the eighteen (18) month period established pursuant to section 1-2207, Idaho Code. Any magistrate may, not less than ~~sixty (60)~~ ninety (90) days prior to the holding of the general election next preceding the expiration of his term of office, file in the office of the county clerk of the county for which he is a resident magistrate, accompanied by a filing fee of forty dollars ($40.00), a declaration of candidacy to succeed himself. If a declaration is not so filed by any magistrate, the vacancy resulting from the expiration of his term of office shall be filled by appointment as herein provided, except that any magistrate who does not file shall be ineligible for appointment within the same judicial district until two (2) years following the expiration of his last term of office have expired. If such a declaration is filed, his name shall be submitted at the next general election to the voters eligible to vote within the county for which he is appointed, on a nonpartisan judicial ballot, without party designation, which shall read:

"Shall Magistrate .... (Here insert the name of the magistrate) of .... (Here insert the name of the county) County of the .... (Here insert the judicial district number) Judicial District be retained in office?" (Here provision is to be made for voting "Yes" or "No.")

The votes shall be canvassed as provided in chapter 12, title 34, Idaho Code.

If a majority of those voting on the question vote against retaining him in office, upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in section 1-2205, Idaho Code, except that the magistrate not retained in office shall be ineligible for appointment within the same judicial district

until two (2) years following the expiration of his last term of office have expired.

If a majority of those voting on the question vote for retaining him in office, the county clerk shall issue him a certificate of election as provided in section 34-1209, Idaho Code, and said magistrate shall, unless removed for cause, remain in office for an additional term of four (4) years, and at the expiration of each such four (4) year term shall be eligible for retention in office by election in the manner herein prescribed.

Approved March 13, 2003.

## CHAPTER 56
## (H.B. No. 165)

AN ACT

RELATING TO THE IDAHO CODE COMMISSION; AMENDING SECTION 73-204, IDAHO CODE, TO PROVIDE THAT MEMBERS OF THE CODE COMMISSION'S COMPENSATION SHALL NOT BE CONSIDERED SALARY FOR PUBLIC EMPLOYEE RETIREMENT SYSTEM PURPOSES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 73-204, Idaho Code, be, and the same is hereby amended to read as follows:

73-204. COMPENSATION AND EXPENSE OF COMMISSION -- EMPLOYMENT OF ASSISTANCE. Each member of the commission shall receive as compensation for his services the sum of twenty-five dollars ($25.00) for each day's attendance at a meeting and each day's performance of the duties of the commission and shall receive his actual and necessary expenses, incurred in performing his duties as such commission. Payment of said compensation shall not be considered salary as defined in section 59-1302(31), Idaho Code. The commission is hereby authorized to employ and fix the compensation of adequate legal, clerical and other assistance.

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, 2003.

Approved March 13, 2003.

## CHAPTER 57
## (H.B. No. 166)

AN ACT

RELATING TO PETITION FOR RECALL OF AN OFFICER; AMENDING SECTION 34-1702, IDAHO CODE, TO PROVIDE IF NO DISTRICT ELECTION HAS BEEN HELD IN THE LAST SIX YEARS, THE PETITION FOR RECALL OF AN OFFICER MUST BE

SIGNED BY TWENTY PERCENT OF THE NUMBER OF ELECTORS REGISTERED TO VOTE IN THE DISTRICT AT THE TIME THE PETITION IS FILED AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 34-1712, IDAHO CODE, TO PROVIDE IF THE OFFICER WAS APPOINTED OR WAS NOT REQUIRED TO STAND FOR ELECTION, THEN A MAJORITY OF THE VOTES CAST IN THE RECALL ELECTION SHALL BE THE NUMBER NECESSARY FOR RECALL.

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

SECTION 1. That Section 34-1702, Idaho Code, be, and the same is hereby amended to read as follows:

34-1702. REQUIRED SIGNATURES ON PETITION. A petition for recall of an officer shall be instituted by filing with the appropriate official a verified written petition requesting such recall.

(1) If the petition seeks recall of any of the officers named in subsection (1)(a) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors equal in number to twenty ~~per-cent~~ percent (20%) of the number of electors registered to vote at the last general election held to elect a governor.

(2) If the petition seeks recall of any of the officers named in subsection (1)(b) of section 34-1701, Idaho Code, the petition shall be filed with the secretary of state, and must be signed by registered electors of the legislative district equal in number to twenty ~~per--cent~~ percent (20%) of the number of electors registered to vote at the last general election held in the legislative district at which the member was elected.

(3) If the petition seeks recall of any of the officers named in subsection (2)(a) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk, and must be signed by registered electors of the county equal in number to twenty ~~per-cent~~ percent (20%) of the number of electors registered to vote at the last general election held in the county for the election of county officers at which the officer was elected.

(4) If the petition seeks recall of any of the officers named in subsection (3) of section 34-1701, Idaho Code, the petition shall be filed with the city clerk, and must be signed by registered electors of the city equal in number to twenty ~~per-cent~~ percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers.

(5) If the petition seeks recall of any of the officers named in subsection (4) of section 34-1701, Idaho Code, the petition shall be filed with the county clerk of the county wherein the district is located. If the district is located in two (2) or more counties, the clerk in each county shall perform the functions within that county. The petition must be signed by registered electors of the district equal in number to fifty ~~per-cent~~ percent (50%) of the number of electors who cast votes in the last election of the district. If no district election has been held in the last six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district at the time the petition is filed.

SECTION 2. That Section 34-1712, Idaho Code, be, and the same is hereby amended to read as follows:

34-1712. GENERAL ELECTION LAWS CONTROL. (1) The provisions relating to general elections, including the payment of expenses of conducting the recall election, shall govern special recall elections except where otherwise provided for.

(2) Whenever a special recall election is ordered, notice must be issued and posted in the same manner as for a general election.

(3) To recall any officer, a majority of the votes cast at the special recall election must be in favor of such recall, and additionally, the number of votes cast in favor of the recall must equal or exceed the votes cast at the last general election for that officer. If the officer was appointed or was not required to stand for election, then a majority of the votes cast in the recall election shall be the number necessary for recall.

(4) If recalled, an officer shall be recalled as of the time when the results of the special recall election are proclaimed, and a vacancy in the office shall exist.

(5) If an officer is recalled from his office the vacancy shall be filled in the manner provided by law for filling a vacancy in that office arising from any other cause.

Approved March 13, 2003.

## CHAPTER 58
## (H.B. No. 223)

### AN ACT

RELATING TO DISPOSAL OF COUNTY PROPERTY; AMENDING SECTION 31-808, IDAHO CODE, TO PROVIDE CONDITIONS TO GOVERN DISPOSAL BY THE BOARD OF COUNTY COMMISSIONERS OF TITLE TO MINERAL RIGHTS SEVERED FROM PROPERTY.

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

SECTION 1. That Section 31-808, Idaho Code, be, and the same is hereby amended to read as follows:

31-808. SALE OF COUNTY PROPERTY -- GENERAL PROCEDURE -- SALE OF PROPERTY ACQUIRED THROUGH TAX DEED -- PROCEDURE AFTER ATTEMPTED AUCTION -- EXCHANGE OF COUNTY PROPERTY -- SALE OF CERTAIN ODD-LOT PROPERTY -- SALE, EXCHANGE OR DONATION OF PROPERTY TO OTHER UNITS OF GOVERNMENT. (1) A board of county commissioners shall have the power and authority to sell or offer for sale at public auction any real or personal property belonging to the county not necessary for its use. However, personal property not exceeding two hundred fifty dollars ($250) in value may be sold at private sale without notice or public auction. Prior to offering the property for sale, the board of county commissioners shall advertise notice of the auction in a newspaper, as defined in section 60-106, Idaho Code, either published in the county or having a general circulation in the county, not less than ten (10) calendar days prior to the

auction. If the property to be sold is real property, the notice to be published shall contain the legal description as well as the street address of the property. If the property is outside the corporate limits of a city and does not have a street address, then the description shall also contain the distance and direction of the location of the real property from the closest city. If the property to be sold is acquired by tax deed, the notice required to be published shall include, next to the description of the property, the name of the taxpayer as it appears in the delinquent tax certificate upon which the tax deed was issued. The property shall be sold to the highest bidder. However, the board of county commissioners may reserve the right to reject any and all bids and shall have discretionary authority to reject or accept any bid which may be made for an amount less than the total amount of all delinquent taxes, late charges, costs and interest which may have accrued against any property so offered for sale, including the amount specified in the tax deed to the county.

(2) Proceeds from the sale of county property not acquired by tax deed shall be paid into the county treasury for the general use of the county. If the property to be sold has been acquired by tax deed, pursuant to the provisions of chapter 10, title 63, Idaho Code, the proceeds from the sale, after reimbursement to the county for the cost of advertising and sale, shall be apportioned to the taxing districts in which the property is situated according to the levy applied to the year of delinquency upon which the tax deed was issued to the county.

(3) Any property sold may be carried on a recorded contract with the county for a term not to exceed ten (10) years and at an interest rate not to exceed the rate of interest specified in section 28-22-104(1), Idaho Code. The board of county commissioners shall have the authority to cancel any contract if the purchaser fails to comply with any of the terms of the contract and the county shall retain all payments made on the contract. The title to all property sold on contract shall be retained in the name of the county until full payment has been made by the purchaser. However, the purchaser shall be responsible for payment of all property taxes during the period of the contract.

(4) Any sale of property by the county shall vest in the purchaser all of the right, title and interest of the county in the property, including all delinquent taxes which have become a lien on the property since the date of issue of the tax deed, if any.

(5) In addition to the purchase price, a purchaser of county property, including property acquired by tax deed, shall pay all fees required by law for the transfer of property. No deed for any real estate purchased pursuant to the provisions of this section shall be delivered to a purchaser until such deed has been recorded in the county making the sale.

(6) Should the county be unable to sell at a public auction any real or personal property belonging to the county, including property acquired by tax deed, it may sell the property without further notice by public or private sale upon such terms and conditions as the county deems necessary. Distribution of the proceeds of sale shall be as set forth in subsection (2) of this section.

(7) The board of county commissioners may at its discretion, when in the county's best interest, exchange and do all things necessary to exchange any of the real property now or hereafter held and owned by the county for real property of equal value, public or private, to consoli-

date county real property or aid the county in the control and management or use of county real property.

(8) The board of county commissioners may, by resolution, declare certain parcels of real property as odd-lot property, all or portions of which are not needed for public purposes and are excess to the needs of the county. For purposes of this subsection, odd-lot property is defined as that property that has an irregular shape or is a remnant and has value primarily to an adjoining property owner. Odd-lot property may be sold to an adjacent property owner for fair market value that is estimated by a land appraiser licensed to appraise property in the state of Idaho. If, after thirty (30) days' written notice, an adjoining property owner or owners do not desire to purchase the odd-lot property, the board of county commissioners may sell the property to any other interested party for not less than the appraised value. When a sale of odd-lot property is agreed to, a public advertisement of the pending sale shall be published in one (1) edition of the newspaper as defined in subsection (1) of this section, and the public shall have fifteen (15) days to object to the sale in writing. The board of county commissioners shall make the final determination regarding the sale of odd-lot property in an open meeting.

(9) In addition to any other powers granted by law, the board of county commissioners may at their discretion, grant to or exchange with the federal government, the state of Idaho, any political subdivision or taxing district of the state of Idaho or any local historical society which is incorporated as an Idaho nonprofit corporation which operates primarily in the county or maintains a museum in the county, with or without compensation, any real or personal property or any interest in such property owned by the county or acquired by tax deed, after adoption of a resolution by the board of county commissioners that the grant or exchange of property is in the public interest. Notice of such grant or exchange shall be as provided in subsection (1) of this section and the decision may be made at any regularly or specially scheduled meeting of the board of county commissioners. The execution and delivery by the county of the deed conveying an interest in the property shall operate to discharge and cancel all levies, liens and taxes made or created for the benefit of the state, county or any other political subdivision or taxing district and to cancel all titles or claims of title including claims of redemption to such real property asserted or existing at the time of such conveyance. However, if the property conveyed is subject to a lien for one (1) or more unsatisfied special assessments, the lien shall continue until all special assessments have been paid in full. At no time shall a lien for a special assessment be extinguished prior to such special assessment having been paid in full. Any property conveyed to any local historical society by the county shall revert to the county when the property is no longer utilized for the purposes for which it was conveyed.

(10) When the county has title to mineral rights severed from the property to which they attach, and the mineral rights have value of less than twenty-five dollars ($25.00) per acre, the board of county commissioners may act to return the mineral rights to the land from which they were severed in the following manner: the proposed action must appear on the agenda of a regular meeting of the board of county commissioners; and the motion to make the return must be adopted unanimously by the board voting in open meeting.

(11) A highway district or single countywide highway district shall follow the provisions of this section when selling real or personal property which has a value in excess of five thousand dollars ($5,000) belonging to it but not necessary for its use. The proceeds from such sale shall be paid to the highway district or single countywide highway district for its use.

Approved March 13, 2003.

## CHAPTER 59
## (S.B. No. 1029)

### AN ACT

RELATING TO LIMITATION ON LIABILITY OF VOLUNTEERS, OFFICERS AND DIRECTORS OF NONPROFIT CORPORATIONS AND ORGANIZATIONS; AMENDING SECTION 6-1605, IDAHO CODE, TO PROVIDE A CORRECT STATUTORY CITATION TO THE IDAHO NONPROFIT CORPORATION ACT.

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

SECTION 1. That Section 6-1605, Idaho Code, be, and the same is hereby amended to read as follows:

6-1605. LIMITATION ON LIABILITY OF VOLUNTEERS, OFFICERS AND DIRECTORS OF NONPROFIT CORPORATIONS AND ORGANIZATIONS. (1) In any nonprofit corporation or organization as defined in section 6-1601(6), Idaho Code, officers, directors, and volunteers who serve the nonprofit corporation or organization without compensation shall be personally immune from civil liability arising out of their conduct as an officer, director, or volunteer, if such conduct is within the course and scope of the duties and functions of the individual officer, director or volunteer and at the direction of the corporation or organization. The provisions of this section shall not eliminate or limit, and no immunity is hereby granted for the liability of an officer, director or volunteer:

(a) For conduct which is willful, wanton, or which involves fraud or knowing violation of the law;

(b) To the extent of coverage for such conduct under a policy of liability insurance, whether the policy is purchased by the corporation or organization, the individual officer, director, volunteer or some third party;

(c) For any intentional breach of a fiduciary duty or duty of loyalty owed by the officer, director or volunteer to the corporation, organization or the members thereof;

(d) For acts or omissions not in good faith or which involve intentional misconduct, fraud or a knowing violation of law;

(e) For any transaction from which the officer, director or volunteer derived an improper personal benefit;

(f) For any violation of the provisions of section~~s--30-321--and 30-322~~ 30-3-82, Idaho Code; or

(g) For damages which result from the operation of a motor vehicle.

(2) Reimbursement of an officer, director or volunteer of a nonprofit corporation or organization for costs and expenses actually

incurred shall not be considered compensation.

(3) Nothing in this section shall be construed to supersede, abrogate, or limit any immunities or limitation of liability otherwise provided by law.

Approved March 13, 2003.

## CHAPTER 60
## (S.B. No. 1030)

AN ACT

RELATING TO SUMMARY ADMINISTRATION OF ESTATES IN WHICH A SURVIVING SPOUSE IS THE SOLE BENEFICIARY; AMENDING SECTION 15-3-1205, IDAHO CODE, TO PROVIDE THAT THE PETITIONER, OR THE SURVIVING SPOUSE, OR BOTH, NEED NOT APPEAR IN PERSON AT SUCH HEARING, NOR MUST AN ATTORNEY FOR THE PETITIONER SPOUSE APPEAR IN PERSON AT SUCH HEARING AND TO PROVIDE THAT UPON PROPER MOTION MADE BY THE PETITIONER, THE PETITIONER OR THE ATTORNEY FOR THE PETITIONER, OR BOTH, MAY APPEAR TELEPHONICALLY, OR ALTERNATIVELY MAY SUBMIT ONE OR MORE AFFIDAVITS IN ADVANCE OF THE HEARING CERTIFYING THAT NOTICE OF HEARING WAS GIVEN AS REQUIRED BY LAW AND THAT NO OBJECTION TO THE ENTERING OF THE DECREE HAS BEEN RECEIVED BY THE PETITIONER OR THE ATTORNEY FOR THE PETITIONER.

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

SECTION 1. That Section 15-3-1205, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-1205. SUMMARY ADMINISTRATION OF ESTATES IN WHICH A SURVIVING SPOUSE IS THE SOLE BENEFICIARY. (a) Upon the testate or intestate death of a person leaving a surviving spouse as the sole devisee or beneficiary, the surviving spouse (or any person claiming title to any property through or under such surviving spouse) may file a verified petition setting out marriage and the death of a person leaving a surviving spouse as the sole devisee or heir. If the decedent died testate, the petition must be accompanied by the original of the last will and testament of the decedent. Notice of hearing shall be given pursuant to the provisions of section 15-1-401, Idaho Code.

(b) If it shall appear at such hearing that the decedent and the person claimed to be the surviving spouse were duly married and that the surviving spouse is the sole heir or devisee, a decree shall be made to that effect. This decree shall thereafter have the same effect as a formal decree approving or determining distribution. The petitioner, or the surviving spouse, or both, need not appear in person at such hearing, nor must an attorney for the petitioner spouse appear in person at such hearing. Upon proper motion made by the petitioner, the petitioner or the attorney for the petitioner, or both, may appear telephonically, or alternatively may submit one (1) or more affidavits in advance of the hearing certifying that notice of hearing was given as required by law and that no objection to the entering of the decree has been received by the petitioner or the attorney for the petitioner.

(c) In the event that the surviving spouse (or person claiming through or under the surviving spouse) shall elect to proceed under this section, the surviving spouse shall assume and be liable for any and all indebtedness that might be a claim against the estate of the decedent and there will be no administration of the estate of the decedent.

Approved March 13, 2003.

CHAPTER 61
(S.B. No. 1031)

AN ACT

RELATING TO DECEDENT'S ESTATES; REPEALING SECTION 15-6-107, IDAHO CODE, RELATING TO RIGHTS OF CREDITORS IN DECEDENT'S ESTATE PROCEEDINGS; AMENDING PART 1, CHAPTER 6, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-6-107, IDAHO CODE, TO PROVIDE THE LIABILITY OF NONPROBATE TRANSFEREES FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES, TO DEFINE "NONPROBATE TRANSFER," TO PROVIDE THE LIMITS OF LIABILITY OF THE NONPROBATE TRANSFEREE, TO PROVIDE THE ORDER OF LIABILITY OF SUCH TRANSFEREES, TO ALLOW APPORTIONMENT OF LIABILITY IN VARIOUS INSTRUMENTS, TO PROVIDE TIME LIMITS WITHIN WHICH AN ACTION MUST BE BROUGHT AND CONDITIONS PRECEDENT FOR SUCH AN ACTION, TO PROVIDE FOR RELEASE OF LIABILITY FOR CERTAIN THIRD PARTY HOLDERS OF INTERESTS AND TO PROVIDE FOR PROPORTIONATE LIABILITY OF TRANSFEREES IN CERTAIN SITUATIONS.

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

SECTION 1. That Section 15-6-107, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Part 1, Chapter 6, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-6-107, Idaho Code, and to read as follows:

15-6-107. LIABILITY OF NONPROBATE TRANSFEREES FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES. (1) In this section, "nonprobate transfer" means a valid transfer effective at death, other than of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor to apply it to discharge claims against the transferor's probate estate.

(2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to the decedent's probate estate for allowed claims against the decedent's probate estate and statutory allowances to the decedent's surviving spouse, minor children and dependent children to the extent the decedent's probate estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency

described in subsection (2) of this section in the following order:

(a) As provided in the decedent's will or any other governing instrument;

(b) To the extent of the value of the nonprobate transfer received or controlled by the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances;

(c) Other nonprobate transferees, in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section shall abate as necessary to satisfy the liability as if all of the trust instruments were a single will and the interests were devises under it.

(5) A provision made in one (1) instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one (1) instrument conflicts with a provision in another, the later one prevails.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, wherever the transferee is located.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received from the surviving spouse or one acting for a minor or dependent child, to the extent that statutory allowances are affected, or a creditor, a written demand for the proceeding. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within two (2) years after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty (60) days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section on any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to that asset imposed by subsections (2) and (3) of this section.

Approved March 13, 2003.

## CHAPTER 62
## (S.B. No. 1032)

### AN ACT

RELATING TO THE DEATH OR DISQUALIFICATION OF A SOLE SHAREHOLDER; AMENDING SECTION 30-1309A, IDAHO CODE, TO PROVIDE A PROPER STATUTORY CITATION TO SECTIONS OF THE IDAHO NONPROFIT CORPORATION ACT.

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

SECTION 1. That Section 30-1309A, Idaho Code, be, and the same is hereby amended to read as follows:

30-1309A. DEATH OR DISQUALIFICATION OF SOLE SHAREHOLDER. If a corporation organized under this chapter has only one (1) shareholder, and that shareholder becomes disqualified under section 30-1309, Idaho Code, or dies, the disqualified shareholder or the personal representative of the deceased shareholder may, notwithstanding other provisions of this chapter, exercise the voting rights of the outstanding shares only for the purpose of dissolving the corporation pursuant to sections 30-1-~~82~~1401 through 30-1-~~93~~1440, Idaho Code, consolidating or merging the corporation pursuant to section 30-1312, Idaho Code, or converting the corporation to a corpor~~ation for~~ profit under the Idaho business corporation act, chapter 1, title 30, Idaho Code.

Approved March 13, 2003.

## CHAPTER 63
## (S.B. No. 1033)

### AN ACT

RELATING TO EXEMPT PROPERTY IN A DECEDENT'S ESTATE; AMENDING SECTION 15-2-403, IDAHO CODE, TO PROVIDE THAT IN A DECEDENT'S ESTATE WHEN THERE IS NO SURVIVING SPOUSE, THE DECEDENT'S CHILDREN ARE ENTITLED JOINTLY TO THE SAME VALUE OF EXEMPT PROPERTY UNLESS THE DECEDENT'S WILL PROVIDES OTHERWISE.

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

SECTION 1. That Section 15-2-403, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-403. EXEMPT PROPERTY. In addition to any homestead or homestead allowance, the decedent's surviving spouse is entitled from the estate to value, not exceeding ten thousand dollars ($10,000) in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value unless the decedent's will provides otherwise. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than ten thousand dollars ($10,000),

or if there is not ten thousand dollars ($10,000) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the ten thousand dollar ($10,000) value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided in the will, or by intestate succession, or by way of elective share.

Approved March 13, 2003.

## CHAPTER 64
## (S.B. No. 1034)

AN ACT

RELATING TO DELEGATION OF POWERS BY A PARENT OR GUARDIAN; AMENDING SECTION 15-5-104, IDAHO CODE, TO PROVIDE THAT WHEN A PARENT OR GUARDIAN OF A MINOR OR WARD DELEGATES TO ANOTHER PERSON POWERS REGARDING THE CARE, CUSTODY OR PROPERTY OF THE MINOR OR WARD, THE DELEGATION MAY INCLUDE POWERS FOR MEDICAL CARE AND EDUCATIONAL CARE OF THE MINOR OR WARD AND THAT IF THE DELEGATION RELATES TO A MINOR AND IS TO A GRANDPARENT OR SIBLING OF THE MINOR, OR SIBLING OF EITHER PARENT OF THE MINOR, THAT THE DELEGATION STAYS IN EFFECT UNTIL THE TIME PERIOD OR DATE OR CONDITION FOR AUTOMATIC EXPIRATION OF THE POWER, TO PROVIDE THAT IF THE POWER DOES NOT CONTAIN ANY TIME PERIOD OR DATE OR CONDITION FOR AUTOMATIC EXPIRATION, IT IS IN EFFECT FOR THREE YEARS, TO PROVIDE THAT THE POWER MAY BE REVOKED IN WRITING DELIVERED TO THE GRANDPARENT OR SIBLING, TO PROVIDE THAT THE POWER DOES NOT NEED TO BE NOTARIZED OR RECORDED TO BE VALID, BUT THAT IF THE POWER IS RECORDED, THE REVOCATION OF THE POWER MUST ALSO BE RECORDED TO BE EFFECTIVE AND TO PROVIDE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 15-5-104, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, or in the case of military personnel serving beyond the territorial limits of the United States for a period not exceeding twelve (12) months, any of ~~his~~ the parent's or guardian's powers regarding care, custody, or property of the minor ~~child~~ or ward including, but not limited to, powers for medical care and educational care of the minor or ward, except ~~his~~ the parent's or guardian's power to consent to marriage or adoption of a minor or ward. The delegation for a minor to a grandparent of the minor, or to a sibling of the minor, or to a sibling of either parent of the minor, shall continue in effect

until the time period, or date, or condition set forth in the power of attorney for automatic expiration of the power of attorney occurs. If the power of attorney does not provide a time period, or date, or condition for automatic expiration of the power, the power of attorney shall continue in effect for a period of three (3) years. The power may be revoked prior to the expiration of the three (3) year period, or prior to the time period, or date, or condition for automatic expiration, in a writing delivered to the grandparent or sibling by the delegating parent or guardian. The power of attorney does not need to be notarized or recorded to be valid. However, if the power is recorded, any revocation of the power by a writing must also be recorded before the revocation is effective.

Approved March 13, 2003.

## CHAPTER 65
## (S.B. No. 1047)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2003, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE AND TO REQUIRE ACTIVE LICENSEES WHO SELL, LIST, BUY OR NEGOTIATE OR OFFER TO SELL, LIST, BUY OR NEGOTIATE THE PURCHASE OR SALE OF A MOBILE HOME, MANUFACTURED HOME OR FLOATING HOME ON BEHALF OF ANOTHER FOR COMPENSATION OR THE PROMISE OR EXPECTATION OF COMPENSATION SHALL COMPLY WITH IDAHO REAL ESTATE LICENSE LAW REGARDLESS OF WHETHER THE ACTIVITY WOULD OTHERWISE REQUIRE AN IDAHO REAL ESTATE LICENSE; AMENDING SECTION 54-2013, IDAHO CODE, TO PROVIDE THAT LICENSEES SEEKING TO OBTAIN OR RENEW ACTIVE LICENSES SHALL CERTIFY COMPLIANCE WITH INSURANCE REQUIREMENTS, TO PROVIDE THAT LICENSEES NOT PARTICIPATING IN THE COMMISSION'S INSURANCE PROGRAM SHALL OBTAIN A CERTIFICATE OF COVERAGE AND TO REQUIRE THE PRODUCTION OF THE CERTIFICATE FOR INSPECTION UPON REQUEST; AMENDING SECTION 54-2018, IDAHO CODE, TO PROVIDE THAT FEES ARE NONREFUNDABLE AFTER A LICENSE OR LICENSE CHANGE HAS BECOME EFFECTIVE; AMENDING SECTION 54-2023, IDAHO CODE, TO REVISE CONTINUING EDUCATION REQUIREMENTS RELATING TO DUPLICATE CREDIT; AMENDING SECTION 54-2035, IDAHO CODE, TO DELETE LANGUAGE RELATING TO CERTIFICATION MAINTENANCE REQUIREMENTS AND TO REVISE RECERTIFICATION REQUIREMENTS; AMENDING SECTION 54-2054, IDAHO CODE, TO CLARIFY THAT THE PAYMENT OF COMMISSIONS, FEES OR COMPENSATION BY A BROKER TO A LEGAL BUSINESS ENTITY WHOSE SHAREHOLDERS, MEMBERS OR OTHER PERSONS HAVING SIMILAR OWNERSHIP INTEREST ARE ALL ACTIVE REAL ESTATE LICENSEES IS NOT PROHIBITED AND TO PROVIDE THAT SALES ASSOCIATES MAY PAY COMMISSIONS, COMPENSATION OR FEES TO OTHER SALES ASSOCIATES LICENSED WITH THE SAME BROKER IF AUTHORIZED BY THE BROKER; AND AMENDING SECTION 54-2055, IDAHO CODE, TO CLARIFY THAT ACTIVE LICENSEES MUST CONDUCT CERTAIN TRANSACTIONS THROUGH THE BROKER WITH WHOM THEY ARE LICENSED.

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

SECTION 1. That Section 54-2003, Idaho Code, be, and the same is hereby amended to read as follows:

54-2003. EXCEPTIONS TO LICENSURE -- ACTIVE LICENSEES -- TRANSACTIONS INVOLVING PERSONAL PROPERTY. (1) Exceptions to licensure. Except as otherwise stated below, an Idaho real estate license is not required for the following:

(a) The purchase, option, exchange or sale of any interest in real property, or business opportunity for a person's own account or use;

(b) The acquisition, exchange or other disposition of any interest in real property or business opportunity by its owner or a regular employee of the owner, acting within the scope of his or her employment;

(c) The sale, exchange, purchase or other disposition of any interest in real property or business opportunity by a duly authorized attorney in fact whose power of attorney is granted for the purpose of consummating a single transaction involving the conveyance of a single or undivided interest in a parcel of real property or in a business opportunity;

(d) The acquisition or other disposition of any interest in real property or business opportunity by the following parties only if such acquisition or disposition is undertaken in the performance of their duties as:

(i) A receiver, trustee in bankruptcy, legal guardian or conservator;

(ii) An administrator, executor or personal representative of an estate;

(iii) Any person selling pursuant to the default provisions of a deed of trust, or any duly authorized agent thereof.

(e) The acquisition or other disposition of any interest in real property or business opportunity by an attorney at law in connection with client representation, and if the attorney is not regularly engaged in the conduct or business of real estate broker or salesperson.

(2) Active real estate licensees. An actively licensed real estate broker, associate broker or salesperson must comply with this chapter, regardless of whether the licensee otherwise qualifies for any of the exceptions of subsection (1) of this section.

(3) Transactions involving personal property. An active licensee who, while acting on behalf of another, for compensation or for a promise or expectation of compensation, sells, lists, buys or negotiates, or offers to sell, list, buy or negotiate, the purchase or sale of a mobile home, manufactured home or floating home as defined by Idaho law, shall comply with this chapter regardless of whether such activity would otherwise require an Idaho real estate license.

(4) Exceptions to licensure shall not be used in any way to evade the purposes of this chapter. Any such attempt to evade this chapter shall be considered the unlicensed and unlawful practice of real estate.

SECTION 2. That Section 54-2013, Idaho Code, be, and the same is hereby amended to read as follows:

54-2013. ERRORS AND OMISSIONS INSURANCE. (1) Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry and maintain errors and omissions insurance to cover all licensed activities under the provisions of this chapter.

(2) The commission shall make the insurance required under the pro-

visions of this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with chapter 57, title 67, Idaho Code. The exact premium shall be set by the commission by motion.

(3) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee.

(4) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(5) The commission shall determine the terms and conditions of coverage required under the provisions of this section including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

(6) ~~A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission ten (10) days prior to the license renewal date by each~~ A licensee seeking to obtain or renew an active license shall certify to the commission that he is in compliance with the insurance requirements of this section. A licensee who elects not to participate in the insurance program administered by the commission shall obtain a certificate of coverage, signed by an authorized agent or employee of the insurance carrier, reflecting proof of insurance meeting the requirements established by the commission. Upon request by the commission the licensee shall produce the certificate for inspection.

(7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, not to exceed one hundred forty dollars ($140) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

(8) The commission is also specifically empowered to charge and collect an administrative fee in addition to the premium paid from each licensee who obtains errors and omissions insurance through the commission contract, which fee shall not exceed ten dollars ($10.00) per licensee. This administrative fee shall be of an amount sufficient to raise that revenue required to administer the provisions of this section. The limit in subsection (7) of this section applies only to premium cost and not to any administrative fee charged.

SECTION 3. 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 -- FEES NONREFUNDABLE. (1) Initial license period. Each new 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) License renewal. Each license shall be renewable for a period of two (2) years by timely submitting a completed application~~,~~. Applications must be received at the commission office on or before 5 p.m. of the expiration date.

(a) If renewing an active license, the application shall include:

(i) Evidence of having met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(ii) Proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and

(iii) Payment of all renewal fees established by this chapter or by the commission.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the commission by rule.

(3) Late renewal. If the licensee fails to submit a completed application for renewal or pay the renewal fee on or before the expiration date, the commission may accept a later application or payment of the fee, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided that between the license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of 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) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not associated with a designated broker and who holds a current license that is not revoked, suspended or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the commission in the form and manner approved by the commission. 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. 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) If activating as a sales associate, associating with a designated Idaho broker and having the broker submit an application in the form and manner approved by the commission;

(b) If activating as a designated broker, establishing an office in the manner required by this chapter and submitting an application in the form and manner approved by the commission;

(c) Paying the required fee;

(d) 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

(e) Providing evidence of having successfully completed the continuing education requirements, 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) Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the commission, in the form and manner approved by 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 issuing a new license certificate and, if an active licensee, he shall have the broker submit the written notice of change to the commission. Upon receipt of the new license certificate or upon its effective date, whichever is later, the broker shall remove from public view any license certificate bearing the licensee's former name.

(6) Signature required. No license shall be valid unless the license certificate is signed by the licensee.

(7) Effective dates. A request for licensure or for license changes shall become effective when the properly completed application, attachments and any required fee are received at and approved by the commission. An application that is 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 received at and actually approved by the commission.

(8) Fees nonrefundable. No licensee shall be entitled to a refund of any fee after the license or license change has become effective.

SECTION 4. 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 the required number of classroom hours of commission-approved or certified continuing education coursework as provided in this section, plus one (1) commission-approved core course. Failure to provide proof of meeting the continuing education requirements as set forth in this section 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 the application.

(1) Required number of classroom hours. The required number of classroom hours are as follows:

(a) Renewing active license. A licensee renewing on active status effective prior to July 1, 2003, must successfully complete at least eight (8) classroom hours of continuing education on or before the license expiration date. A licensee renewing on active status effective on or after July 1, 2003, must successfully complete at least sixteen (16) classroom hours of continuing education on or before

the license expiration date.

(b) Change from inactive to active. A licensee changing from inactive to active status effective prior to July 1, 2003, must successfully complete at least eight (8) classroom hours of continuing education during the current inactive license period. A licensee changing from inactive to active status effective on or after July 1, 2003, must successfully complete at least sixteen (16) classroom hours of continuing education during the current inactive license period.

(2) No duplicate credit. ~~Credit for completion of any approved continuing education course curriculum will not be granted twice within the same license period~~ No licensee may obtain continuing education credit for completing:

(a) Any core course curriculum for which he has previously received continuing education credit; or

(b) Any course curriculum for which he has received continuing education credit in the same license period.

(3) Excess credits. The classroom hours shall apply to the license period in which such course 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.

(4) Commission-ordered education. No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action.

(5) Obtaining continuing education classroom hours. In order to obtain continuing education classroom hours, a licensee may:

(a) Successfully complete a commission-approved continuing education course;

(b) Successfully complete a commission-approved continuing education challenge exam;

(c) Attend an entire regularly-scheduled meeting of the commission. The licensee shall provide at least seven (7) days' advance notice to the education section of the commission of his intent to attend the meeting. Failure to provide advance notice shall result in no continuing education hours being credited. A maximum of three (3) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;

(d) Successfully complete a commission-approved broker prelicense course, or a commission-approved continuing education challenge exam, in advanced real estate study. Continuing education credit may be obtained for retaking the same broker prelicense course or challenge exam only if completed after five (5) years of completing the previous course or challenge exam; or

(e) Provide to the commission a transcript or course completion certificate of successful completion of any of the following courses, in accordance with all of the continuing education requirements of this section, without commission preapproval of the curriculum, instructors or providers:

(i) Courses developed by national professional organizations that are required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice; and

(ii) Courses approved by and offered in satisfaction of another professional or occupational licensing authority's edu-

cation requirements, if within the approved topic areas established by the commission.

(6) 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 retain the original license expiration date. Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

SECTION 5. That Section 54-2035, Idaho Code, be, and the same is hereby amended to read as follows:

54-2035. TERM OF INSTRUCTOR CERTIFICATION AND RENEWAL. (1) Certification. Each instructor certification issued by the commission shall be for a term of two (2) years. The exact expiration date will be shown on the instructor certificate. ~~In order to maintain certification, each instructor shall:~~

~~(a) Return a properly completed renewal application on a form provided by the commission, along with all necessary attachments and renewal fees to the commission office prior to the expiration date, for commission approval;~~

~~(b) Have taught, or assistant taught during the preceding two (2) years at least twenty (20) hours of each council-certified course for which the instructor wishes to continue to be certified; and~~

~~(c) Have attended a commission-sponsored instructor development seminar or received other acceptable training in methods of teaching adults during the preceding two (2) years.~~

(2) Recertification.

(a) In order to be recertified, each instructor shall:

(i) Return a properly completed recertification application on a form provided by the commission, along with all necessary attachments and fees, to the commission office prior to the expiration date for commission approval;

(ii) Have adequately taught or assistant taught, during the preceding two (2) years, at least twenty (20) hours of each course for which recertification is sought. The adequacy of instructor teaching performance shall be determined by the commission based upon any or all of the following:

1. Evaluations received from students;

2. Direct observation of the instructor's performance by

a commission representative; or

3. Review of the outline and reference materials provided for the course; and

(iii) Have attended a commission-sponsored instructor development seminar or received other acceptable training in methods of teaching adults during the preceding two (2) years.

(b) Recertification shall not be effective until the commission formally approves the application for renewal. An instructor's failure to obtain approved recertification prior to the expiration of the certification will result in no credit being given for any course taught by the instructor whose certification has expired prior to conclusion of the course.

SECTION 6. That Section 54-2054, Idaho Code, be, and the same is hereby amended to read as follows:

54-2054. COMPENSATION, COMMISSIONS AND FEES -- PROHIBITED CONDUCT. (1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to a ~~corporation~~ legal business entity, all of whose shareholders, ~~and directors~~ members or other persons having a similar ownership interest are active real estate licensees. An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter, or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

(4) Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to inter-

fere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(5) Double contracts prohibited. No licensed broker or salesperson shall use, propose the use of, agree to the use of, or knowingly permit the use of a double contract, as defined in section 54-2004, Idaho Code, in connection with any regulated real estate transaction. Such conduct by a licensee shall be deemed flagrant misconduct and dishonorable and dishonest dealing and shall subject the licensee to disciplinary action by the commission.

(6) Kickbacks and rebates prohibited. No licensed real estate broker or salesperson shall receive a kickback or rebate for directing any transaction to any individual for financing. A licensee shall not receive a kickback or unearned fee for directing any transaction to any lending institution, escrow or title company, as those practices are defined and prohibited by the real estate settlement procedures act. However, a licensee legally receiving any fee or rebate from any person providing direct services to either the buyer or the seller in connection with a regulated real estate transaction is required to disclose the licensee's intent to receive such fee, rebate or compensation in writing to all parties to the transaction prior to closing.

(7) Compensation from more than one party. No licensed real estate broker or salesperson shall charge or accept compensation from more than one (1) party in any one (1) transaction, without first making full disclosure in writing of the broker's intent to do so, to all parties involved in the transaction.

(8) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate, for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction. It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

(9) All fees must be paid through broker. No sales associate shall accept any commission, compensation or fee for the performance of any acts requiring a real estate license from any person except the real estate broker with whom the sales associate is licensed. However, <u>if</u>

authorized by the broker, a sales associate may pay all or any portion of the accepted commission, compensation or fee to any other sales associate who is licensed with the same broker. A~~a~~ broker may pay a former sales associate for services performed while the sales associate was actively licensed with that broker, regardless of the former sales associate's license status at the time the commission or fee is actually paid.

SECTION 7. That Section 54-2055, Idaho Code, be, and the same is hereby amended to read as follows:

54-2055. LICENSEES DEALING WITH THEIR OWN PROPERTY. (1) Any actively licensed Idaho broker, sales associate, or legal business entity shall comply with this entire chapter when that licensee is buying, selling or otherwise acquiring or disposing of the licensee's own interest in real property in a regulated real estate transaction.

(2) A licensee shall disclose in writing to any buyer or seller that the licensee holds an active Idaho real estate license, if the licensee directly, indirectly, or through a third party, sells or purchases an interest in real property for personal use or any other purpose; or acquires or intends to acquire any interest in real property or any option to purchase real property.

(3) Each actively licensed person buying or selling real property or any interest therein, in a regulated real estate transaction, must conduct the transaction through ~~an--actively--licensed--responsible~~ the broker with whom he is licensed, whether or not the property is listed.

Approved March 13, 2003.

## CHAPTER 66
## (S.B. No. 1048)

### AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2012, IDAHO CODE, TO REVISE MINIMUM REQUIREMENTS FOR INDIVIDUAL PRIMARY IDAHO LICENSES; AMENDING SECTIONS 54-2015, 54-2017 AND 54-2026, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS; AND AMENDING SECTION 54-2033, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. 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) Not have been convicted of any felony in a state or federal court; provided that after a period of five (5) years from the date the person was convicted or completed any term of probation, sentence or confinement or period of parole, whichever is later, the applicant may make written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

(ii) During the review, the commission shall consider the following factors or evidence:

1. The severity or nature of the felony;
2. The period of time that has passed since the felony under review;
3. The number or pattern of felonies or other similar incidents;
4. The circumstances surrounding the crime that would help determine the risk of repetition;
5. The relationship of the crime to the licensed practice of real estate; and
6. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(g) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;
(~~g~~h) 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~~i) Be fingerprinted ~~by an authorized law enforcement agency, and file the fingerprints with the commission~~ for the purpose of ~~deter-~~

~~mining~~ a national criminal history check to determine whether the ~~qualifications~~ applicant is qualified for licensure. ~~are--fulfilled. The-fingerprints-will-be-forwarded-to-the-federal-bureau-of-investigation---or---the--Idaho--department--of--law--enforcement.~~ If the fingerprints are returned to the commission as illegible the applicant shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission. All fees charged by the commission and the law enforcement agency for fingerprint services shall be paid by the applicant;

(~~i~~j) 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~~k) 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~~l) 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~~m) 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, pro-

vided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(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 2. 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 subsection (1)(~~f~~g) 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 individual who holds an active license in good standing in another state or jurisdiction may, upon written request to the commission, obtain a certificate of waiver of the national portion of the exam required for Idaho licensure. 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 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 3. That Section 54-2017, Idaho Code, be, and the same is hereby amended to read as follows:

54-2017. RECIPROCAL IDAHO LICENSES. The commission may issue a reciprocal Idaho real estate license to a qualified person who holds an active primary license in another state or jurisdiction if a written reciprocal licensing agreement exists between Idaho and the other state or jurisdiction. Each reciprocal license issued shall be limited to and governed by the terms of the applicable written agreement between Idaho and the other jurisdiction.

(1) Any reciprocal licensing agreement with Idaho shall require that the person seeking an Idaho reciprocal license make proper application, pay all required fees, and:

(a) Be currently and actively licensed as a designated broker in the applicant's primary state or jurisdiction, or be licensed under a designated broker who holds a current, active Idaho reciprocal license;

(b) Provide satisfactory proof of holding an active license, in good standing, as defined in the agreement, at the time of application;

(c) File an irrevocable consent to service as described in section 54-2012(1)(~~i~~j), Idaho Code, on the form approved and furnished by the Idaho real estate commission;

(d) Provide satisfactory proof of errors and omissions insurance covering the applicant's licensed activities in Idaho; and that

(2) A reciprocal license shall be issued and maintained as the same type and status as the licensee's primary license.

SECTION 4. That Section 54-2026, Idaho Code, be, and the same is hereby amended to read as follows:

54-2026. CERTIFICATION OF COURSE PROVIDERS. (1) Degree-granting institutions. Degree-granting, accredited colleges and universities in any state or jurisdiction shall be deemed to be approved course providers in Idaho. However, course content must still be approved for the real estate education course to receive credit toward prelicense or continuing education licensing requirements in Idaho.

(2) Other course providers. All other course providers desiring to offer real estate courses for credit toward Idaho prelicense or continuing education requirements must first meet the following qualifications and receive certification. Each applicant seeking certification as a course provider shall comply with the following:

(a) File an application for certification in the form and manner required by the commission, along with proper fees, at least two (2) months prior to contemplated date of opening or first accredited course offering;

(b) Designate a "director" or "individual in charge," who shall be responsible for the course provider's operation and its real estate courses, and with whom the commission may communicate. Unless this requirement is waived upon special review of the commission in the manner stated below, the individual in charge must not have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or

jurisdiction. The designated individual in charge must 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 a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing in a court of proper jurisdiction.

(c) File a properly executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and in substantial accordance with section 54-2012(1)(~~i~~j), Idaho Code. The commission, in its discretion, may make such additional investigation and inquiry relative to the applicant for provider certification as it deems advisable and, if good cause exists, may deny or accept the application for certification.

SECTION 5. That Section 54-2033, Idaho Code, be, and the same is hereby amended to read as follows:

54-2033. INSTRUCTOR QUALIFICATIONS. (1) Qualified instructors at degree-granting institutions. A qualified or full-time instructor or professor of an accredited college or university in any state or jurisdiction and who teaches real estate-related courses is deemed to be an approved instructor of such courses, in Idaho, for the purposes of this chapter.

(2) Other instructor applicants. All other individuals wishing to teach real estate courses for credit toward Idaho prelicense or continuing education requirements must first meet the following additional qualifications and receive separate certification for each course to be taught:

(a) Unless this requirement is waived upon special review of the commission in the manner stated below, no individual instructor seeking certification may have had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons or have been refused a renewal of a license issued by the state of Idaho or any other state or jurisdiction. Further, the individual may 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 court of proper jurisdiction.

(b) Each applicant for certification shall also:

(i) Submit a properly completed application for instructor certification in the form and manner required by the commission, with all proper fees;

(ii) File a properly executed "irrevocable consent to service of process" in the manner and form prescribed by the commission and according to section 54-2012(1)(~~i~~j), Idaho Code;

(iii) Qualify as at least one (1) of the following:

1. An attorney at law actively licensed in any state or jurisdiction with at least five (5) years of active practice in the areas of study proposed to be taught, and who has also successfully completed a commission-approved instructor training course or procedure, including a student teaching period;

2. An individual currently approved or certified and in

good standing as a real estate instructor for the same or similar course material in any other state or jurisdiction;

3. An individual who is appointed to teach a nationally recognized real estate course which is generally accepted in other states or jurisdictions; or

4. An individual with at least five (5) years active real estate-related experience who has also successfully completed a commission-approved instructor training procedure, including a student teaching period.

Approved March 13, 2003.

## CHAPTER 67
## (S.B. No. 1054)

AN ACT

RELATING TO HIGHWAYS AND BRIDGES; AMENDING SECTION 40-106, IDAHO CODE, TO REVISE THE DEFINITION OF "EXPENDITURE."

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

SECTION 1. That Section 40-106, Idaho Code, be, and the same is hereby amended to read as follows:

40-106. DEFINITIONS -- E.

(1) "Erect" means to construct, build, raise, assemble, place, affix, create, paint, draw or in any other way bring into being or establish, but does not include any of the foregoing activities when performed incident to the change of an advertising message or customary maintenance of a sign. With respect to certain easements held by the state restricting the erection of structures on certain lands, the state of Idaho and the department shall be deemed to have waived such restrictions with regard only to each sign erected prior to October 22, 1965.

(2) "Expenditure" means the awarding of a contract, franchise or authority to another by a district, and every manner and means whereby the highway district disburses district funds or obligates itself to disburse district funds. "Expenditure" does not include disbursement of district funds to regularly employed highway district employees, officials or agents, <u>or for the performance of personal services to the district,</u> or for the acquisition of personal property through a contract that has been competitively bid by the state of Idaho, one of its subdivisions, or an agency of the federal government.

(3) "Expense of the public" means the expenditure of funds for roadway maintenance by any governmental agency, including funds expended by any agency of the federal government, so long as the agency allows public access over the roadway on which the funds were expended and such roadway is not located on federal or state-owned land.

Approved March 13, 2003.

CHAPTER 68
(S.B. No. 1055)

AN ACT

RELATING TO HIGHWAY DISTRICTS; AMENDING SECTION 31-808, IDAHO CODE, TO DELETE REQUIREMENT OF HIGHWAY DISTRICTS TO DISPOSE OF REAL OR PERSONAL PROPERTY VALUED AT OVER FIVE THOUSAND DOLLARS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION OF LAW; AMENDING SECTION 40-1308, IDAHO CODE, TO AUTHORIZE HIGHWAY DISTRICTS TO PAY FOR EMERGENCIES OR CALAMITIES IN ACCORDANCE WITH EXISTING HIGHWAY DISTRICT LAW AND TO DELETE REFERENCE TO PAYMENT OF JUDGMENTS AND LIABILITIES IN ACCORDANCE WITH THE LAW FOR TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES; AMENDING SECTION 40-1309, IDAHO CODE, TO CLARIFY CORPORATE POWERS OF HIGHWAY DISTRICTS WITH REGARD TO DISPOSAL OF REAL OR PERSONAL PROPERTY EXCEEDING FIVE THOUSAND DOLLARS IN VALUE AND TO PROVIDE THAT NO EMPLOYEES OF A HIGHWAY DISTRICT OR FAMILIES OF HIGHWAY DISTRICT COMMISSIONERS, DIRECTORS OR EMPLOYEES MAY BE PERSONALLY INTERESTED IN HIGHWAY DISTRICT PURCHASES OR CONTRACTS; AMENDING SECTION 40-1310, IDAHO CODE, TO PROVIDE ADDITIONAL POWERS AND DUTIES OF HIGHWAY DISTRICT COMMISSIONERS REGARDING PURCHASE OF EQUIPMENT AT PUBLIC AUCTION; AMENDING SECTION 40-1314, IDAHO CODE, TO PROVIDE FOR PUBLICATION OF PROPOSED COMMISSIONER SALARIES AS A SEPARATE LINE ITEM IN THE ANNUAL BUDGET AND TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTIONS 40-1404 AND 40-1404A, IDAHO CODE, TO PROVIDE FOR COMPENSATION OF HIGHWAY DISTRICT AND COUNTYWIDE HIGHWAY DISTRICT COMMISSIONERS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 40-1314, IDAHO CODE.

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

SECTION 1. That Section 31-808, Idaho Code, be, and the same is hereby amended to read as follows:

31-808. SALE OF COUNTY PROPERTY -- GENERAL PROCEDURE -- SALE OF PROPERTY ACQUIRED THROUGH TAX DEED -- PROCEDURE AFTER ATTEMPTED AUCTION -- EXCHANGE OF COUNTY PROPERTY -- SALE OF CERTAIN ODD-LOT PROPERTY -- SALE, EXCHANGE OR DONATION OF PROPERTY TO OTHER UNITS OF GOVERNMENT. (1) A board of county commissioners shall have the power and authority to sell or offer for sale at public auction any real or personal property belonging to the county not necessary for its use. However, personal property not exceeding two hundred fifty dollars ($250) in value may be sold at private sale without notice or public auction. Prior to offering the property for sale, the board of county commissioners shall advertise notice of the auction in a newspaper, as defined in section 60-106, Idaho Code, either published in the county or having a general circulation in the county, not less than ten (10) calendar days prior to the auction. If the property to be sold is real property, the notice to be published shall contain the legal description as well as the street address of the property. If the property is outside the corporate limits of a city and does not have a street address, then the description shall also contain the distance and direction of the location of the real property from the closest city. If the property to be sold is acquired by tax deed, the notice required to be published shall include, next to

the description of the property, the name of the taxpayer as it appears in the delinquent tax certificate upon which the tax deed was issued. The property shall be sold to the highest bidder. However, the board of county commissioners may reserve the right to reject any and all bids and shall have discretionary authority to reject or accept any bid which may be made for an amount less than the total amount of all delinquent taxes, late charges, costs and interest which may have accrued against any property so offered for sale, including the amount specified in the tax deed to the county.

(2) Proceeds from the sale of county property not acquired by tax deed shall be paid into the county treasury for the general use of the county. If the property to be sold has been acquired by tax deed, pursuant to the provisions of chapter 10, title 63, Idaho Code, the proceeds from the sale, after reimbursement to the county for the cost of advertising and sale, shall be apportioned to the taxing districts in which the property is situated according to the levy applied to the year of delinquency upon which the tax deed was issued to the county.

(3) Any property sold may be carried on a recorded contract with the county for a term not to exceed ten (10) years and at an interest rate not to exceed the rate of interest specified in section 28-22-104(1), Idaho Code. The board of county commissioners shall have the authority to cancel any contract if the purchaser fails to comply with any of the terms of the contract and the county shall retain all payments made on the contract. The title to all property sold on contract shall be retained in the name of the county until full payment has been made by the purchaser. However, the purchaser shall be responsible for payment of all property taxes during the period of the contract.

(4) Any sale of property by the county shall vest in the purchaser all of the right, title and interest of the county in the property, including all delinquent taxes which have become a lien on the property since the date of issue of the tax deed, if any.

(5) In addition to the purchase price, a purchaser of county property, including property acquired by tax deed, shall pay all fees required by law for the transfer of property. No deed for any real estate purchased pursuant to the provisions of this section shall be delivered to a purchaser until such deed has been recorded in the county making the sale.

(6) Should the county be unable to sell at a public auction any real or personal property belonging to the county, including property acquired by tax deed, it may sell the property without further notice by public or private sale upon such terms and conditions as the county deems necessary. Distribution of the proceeds of sale shall be as set forth in subsection (2) of this section.

(7) The board of county commissioners may at its discretion, when in the county's best interest, exchange and do all things necessary to exchange any of the real property now or hereafter held and owned by the county for real property of equal value, public or private, to consolidate county real property or aid the county in the control and management or use of county real property.

(8) The board of county commissioners may, by resolution, declare certain parcels of real property as odd-lot property, all or portions of which are not needed for public purposes and are excess to the needs of the county. For purposes of this subsection, odd-lot property is defined as that property that has an irregular shape or is a remnant and has

value primarily to an adjoining property owner. Odd-lot property may be sold to an adjacent property owner for fair market value that is estimated by a land appraiser licensed to appraise property in the state of Idaho. If, after thirty (30) days' written notice, an adjoining property owner or owners do not desire to purchase the odd-lot property, the board of county commissioners may sell the property to any other interested party for not less than the appraised value. When a sale of odd-lot property is agreed to, a public advertisement of the pending sale shall be published in one (1) edition of the newspaper as defined in subsection (1) of this section, and the public shall have fifteen (15) days to object to the sale in writing. The board of county commissioners shall make the final determination regarding the sale of odd-lot property in an open meeting.

(9) In addition to any other powers granted by law, the board of county commissioners may at their discretion, grant to or exchange with the federal government, the state of Idaho, any political subdivision or taxing district of the state of Idaho or any local historical society which is incorporated as an Idaho nonprofit corporation which operates primarily in the county or maintains a museum in the county, with or without compensation, any real or personal property or any interest in such property owned by the county or acquired by tax deed, after adoption of a resolution by the board of county commissioners that the grant or exchange of property is in the public interest. Notice of such grant or exchange shall be as provided in subsection (1) of this section and the decision may be made at any regularly or specially scheduled meeting of the board of county commissioners. The execution and delivery by the county of the deed conveying an interest in the property shall operate to discharge and cancel all levies, liens and taxes made or created for the benefit of the state, county or any other political subdivision or taxing district and to cancel all titles or claims of title including claims of redemption to such real property asserted or existing at the time of such conveyance. However, if the property conveyed is subject to a lien for one (1) or more unsatisfied special assessments, the lien shall continue until all special assessments have been paid in full. At no time shall a lien for a special assessment be extinguished prior to such special assessment having been paid in full. Any property conveyed to any local historical society by the county shall revert to the county when the property is no longer utilized for the purposes for which it was conveyed.

~~(10) A highway district or single countywide highway district shall follow the provisions of this section when selling real or personal property which has a value in excess of five thousand dollars ($5,000) belonging to it but not necessary for its use. The proceeds from such sale shall be paid to the highway district or single countywide highway district for its use.~~

SECTION 2. That Section 40-1308, Idaho Code, be, and the same is hereby amended to read as follows:

40-1308. POWER TO LEVY TAXES FOR COMPREHENSIVE INSURANCE, PROSECUTING AND DEFENDING ACTIONS, JUDGMENTS AND LIABILITIES. Every highway district has the power to levy and collect taxes as necessary to:

(1) Pay for a comprehensive insurance plan as provided in section 6-927, Idaho Code;

(2) Defray all expenses of prosecuting and defending actions; ~~and~~

(3) Pay any judgments and liabilities incurred against it ~~as provided in section 6-928, Idaho Code~~; and

(4) Pay for emergencies or calamities as provided in section 40-820, Idaho Code.

SECTION 3. That Section 40-1309, Idaho Code, be, and the same is hereby amended to read as follows:

40-1309. CORPORATE POWERS OF HIGHWAY DISTRICTS. Each highway district has power:

(1) To sue and be sued.

(2) To purchase and hold lands, make contracts, purchase and hold personal property as may be necessary or convenient for the purposes of this chapter, and to sell and exchange any real or personal property other than public lands which by the constitution and laws of the state are placed under the jurisdiction of the state land board. Personal property, no longer useful to the district, not exceeding five thousand dollars ($5,000) in value may be sold by the highway commissioners at a private sale or at any regular board meeting without advertisement. Before disposing of all other personal or real property exceeding five thousand dollars ($5,000) in value, t~~T~~he highway district commissioners shall first adopt a resolution finding that all other such personal or real property to be sold or exchanged is no longer useful to the district; that a public hearing is to be held, of which hearing notice shall be published in accordance with the provisions of section 40-206, Idaho Code, and at which hearing any person interested may appear and show cause that the sale or exchange should not be made. The hearing and sale shall not be conducted at the same regular meeting. Highway district commissioners, ~~and~~ highway directors, employees, and their families must be personally disinterested, directly or indirectly, in the purchase of property for the use of the highway district, or in the sale of any property belonging to the highway district, or in any contract made by the highway district or other person on behalf of the highway district unless otherwise authorized by law.

(3) To levy and apply ad valorem taxes for purposes under its exclusive jurisdiction as are authorized by law.

SECTION 4. That Section 40-1310, Idaho Code, be, and the same is hereby amended to read as follows:

40-1310. POWERS AND DUTIES OF HIGHWAY DISTRICT COMMISSIONERS. (1) The commissioners of a highway district have exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways within their highway system, whether directly or by their own agents and employees or by contract. Except as otherwise provided in this chapter in respect to the highways within their highway system, a highway district shall have all of the powers and duties that would by law be vested in the commissioners of the county and in the district directors of highways if the highway district had not been organized. Where any highway within the limits of the highway district has been designated as a state highway, then the board shall have exclusive supervision, jurisdiction and control over the des-

ignation, location, maintenance, repair and reconstruction of it. The highway district shall have power to manage and conduct the business and affairs of the district; establish and post speed and other regulatory signs; make and execute all necessary contracts; have an office and employ and appoint agents, attorneys, officers and employees as may be required, and prescribe their duties and fix their compensation. Highway district commissioners and their agents and employees have the right to enter upon any lands to make a survey, and may locate the necessary works on the line of any highways on any land which may be deemed best for the location.

(2) The highway district shall also have the right to acquire either by purchase, or other legal means, all lands and other property necessary for the construction, use, maintenance, repair and improvement of highways in their system. The highway district may change the width or location, or straighten lines of any highway in their system, and if in the constructing, laying out, widening, changing, or straightening of any highways, it shall become necessary to take private property, the district director of highways, with the consent and on order of the highway district commissioners, shall cause a survey of the proposed highway to be made, together with an accurate description of the lands required. He shall endeavor to agree with each owner of property for the purchase of a right-of-way over the lands included within the description. If the director is able to agree with the owner of the lands, the highway district commissioners may purchase the land and pay for it out of the funds of the highway district, and the lands purchased shall then be conveyed to the highway district for the use and purpose of highways.

(3) Whenever the director of highways shall be unable to agree with any person for the purchase of land, or that person shall be unknown or a nonresident of the county in which the highway district is situated, or a minor, or an insane or incompetent person, the director shall have the right, subject to the order of the highway district commissioners, to begin action in the name of the highway district in the district court of the county in which the district is situated, to condemn the land necessary for the right-of-way for the highway, under the provisions of chapter 7, title 7, Idaho Code. An order of the highway district commissioners entered upon its minutes that the land sought to be condemned is necessary for a public highway and public use shall be prima facie evidence of the fact.

(4) The highway district has the power to contract for and pay out any special rewards and bounties as may appear expedient or useful in securing proper highway construction and maintenance, and to accept, on behalf of the district, aid or contributions in the construction or maintenance of any highway; to construct or repair, with the consent of the corporate authorities of any city within the district, any highway within a city, upon the division of the cost as may be agreed upon; or to join with the state or any body politic or political subdivision, or with any person in the construction or repair of any highway and to contract for an equitable division of the cost; and all counties, cities, highway districts and other bodies politic and political subdivisions are authorized to contract with any highway district acting through its highway district commissioners in exercise of the powers granted.

(5) The highway district has the power to receive highway petitions and lay out, alter, create and abandon and vacate public highways and public rights-of-way within their respective districts under the provi-

sions of sections 40-202, 40-203 and 40-203A, Idaho Code. Provided however, when a public highway, public street and/or public right-of-way is part of a platted subdivision which lies within an established county/city impact area or within one (1) mile of a city if a county/city impact area has not been established, consent of the city council of the affected city, when the city has a functioning street department with jurisdiction over the city streets, shall be necessary prior to the granting of acceptance or vacation of said public street or public right-of-way by the highway district board of commissioners.

(6) The highway district is empowered to take conveyance or other assurances, in the name of the highway district, for all property acquired by it under the provisions of this chapter for the purposes of this title. The highway district may institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper in order to carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities provided in this chapter. In all courts, actions, suits or proceedings, the highway district may sue, appear and defend, in person or by attorneys, and in the name of the highway district.

(7) The highway district is empowered to hold, use, acquire, sell, manage, occupy and possess property. The highway district may create highway subdistricts, which must be carefully and distinctly defined and described. Highway subdistricts may be revised or modified by the highway district commissioners, as changes in conditions demand.

(8) The highway district board of commissioners shall have the exclusive general supervisory authority over all public highways, public streets and public rights-of-way under their jurisdiction, with full power to establish design standards, establish use standards, pass resolutions and establish regulations in accordance with the provisions of title 49, Idaho Code, and control access to said public highways, public streets and public rights-of-way.

(9) By July 1, 2000, and every five (5) years thereafter, the highway district board of commissioners shall have published in map form and made readily available the location of all public rights-of-way under its jurisdiction. Any highway district board of commissioners may be granted an extension of time with the approval of the legislature by adoption of a concurrent resolution.

(10) In its discretion, the highway district may purchase equipment at a public auction, if the highway district board of commissioners has made a finding that such equipment may be purchased at a competitive price. Prior to the public auction, the highway district commissioners shall, at a regular meeting of the district or at a special hearing, notice of which is published in accordance with the provisions of section 40-206, Idaho Code, review any documentation available as to the items to be auctioned at the public sale and determine which items the district may bid on, and establish a maximum amount the district will bid for such item.

SECTION 5. 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) It shall be the duty of the board of highway district commissioners of each highway district to fix the annual sala-

ries of the highway district commissioners commencing on October 1 and for the next ensuing year. The proposed commissioner salaries shall be published ~~in--accordance--with--the-provisions-of-section-40-206,-Idaho Code,-and-for-notice--purposes-of-that-section,--the--proposed--salaries shall-be-treated-as-if-they-were-an-override-or-bond-election-hearing~~ as a separate line item in the highway district's annual budget.

(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~~ salary and benefits 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~~ salary and benefits 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 6. That Section 40-1404, Idaho Code, be, and the same is hereby amended to read as follows:

40-1404. APPOINTMENT OF FIRST HIGHWAY DISTRICT COMMISSIONERS IN CERTAIN COUNTYWIDE HIGHWAY DISTRICTS -- SUBDISTRICTS -- ELECTIONS, TERMS AND SALARIES OF COMMISSIONERS. For counties with a population of two hundred thousand (200,000) persons or less, if there is a majority affirmative vote at the election the county commissioners, at their next meeting shall organize the countywide highway district. The county shall be subdivided by the county commissioners into three (3) subdistricts, designated subdistricts number one, two and three, as nearly equal in population as practicable, and one (1) highway commissioner shall represent each subdistrict and be a resident of the subdistrict. The governor shall appoint the first countywide highway district commissioners. Where one (1) or more highway districts have been in existence at the time of the creation of the countywide highway district, the governor shall appoint, whenever practicable, at least one (1) of the former highway district commissioners as they shall qualify by reason of residence in the territorial limits of the subdistricts of the countywide highway district as a commissioner of the countywide highway district. County commissioners and city council members shall not be eligible to hold office as a countywide highway district commissioner. The originally appointed commissioners shall serve until the next general election when two (2) members shall be elected for two (2) years and one (1) member shall be elected for a term of four (4) years, the commissioner from subdistrict number one being elected for a term of four (4) years. The four (4) year term shall be allotted thereafter in rotation to subdistricts number two, three and one. A qualified voter of the countywide

highway district shall be eligible to vote for each of the countywide highway district commissioners, and the election shall be conducted as provided by Idaho statutes relating to holding elections at the county level.

The highway commissioners shall take office on January 1 of the year immediately following their election, and each may be compensated in accordance with the provisions of section 40-1314, Idaho Code, or receive a salary not to exceed six hundred dollars ($600) per calendar month with the exception of the president of the highway commissioners who may receive a salary not to exceed seven hundred dollars ($700) per calendar month.

SECTION 7. 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 be compensated in accordance with the provisions of section 40-1314, Idaho Code, or receive a salary not to exceed one thousand two hundred dollars ($1,200) per calendar month with the exception of the president of the highway commissioners who may receive a salary not to exceed one thousand four hundred dollars ($1,400) per calendar month.

Approved March 13, 2003.

CHAPTER 69
(S.B. No. 1071)

AN ACT

RELATING TO CITY FINANCES; AMENDING SECTION 50-1017, IDAHO CODE, TO PROVIDE THAT PRIOR TO PAYMENT ALL CLAIMS AGAINST THE CITY SHALL BE APPROVED BY THE CITY COUNCIL AND THE CITY COUNCIL SHALL ESTABLISH AND MAINTAIN AN ADEQUATE AND REASONABLE SYSTEM OF INTERNAL ACCOUNTING CONTROLS; AMENDING SECTION 50-1018, IDAHO CODE, TO AUTHORIZE PAYMENT OF CLAIMS BY ELECTRONIC MEANS UPON APPROVAL; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 50-1017, Idaho Code, be, and the same is hereby amended to read as follows:

50-1017. PRESENTATION OF CLAIMS. All claims against the city shall be approved by the city council prior to the payment of such claims and the city council shall establish and maintain an adequate and reasonable system of internal accounting controls. No costs shall be recovered against such city in any action brought against it for any unliquidated claim which has not been presented to the city council for payment, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed with interest due.

SECTION 2. That Section 50-1018, Idaho Code, be, and the same is hereby amended to read as follows:

50-1018. PAYMENT OF CLAIMS. Upon ~~allowance~~ approval of claims by the council, payment may be ordered by warrant or by electronic means, signed by or authorized by the mayor and clerk or by check or by electronic means signed by or authorized by the mayor and treasurer. The order for their payment shall specify the particular fund or appropriation out of which they are payable, as specified in the annual appropriation bill. In the absence of sufficient funds, the council may, by resolution, order payment of claims by money borrowed by either:

(1) Registered warrants as provided in section 31-2125, Idaho Code, or

(2) By issuing its tax anticipation notes as provided in section 63-3102, Idaho Code, or

(3) Short term borrowing not involved with the tax effort in anticipation of approved federal or state grants.

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 13, 2003.

## CHAPTER 70
## (S.B. No. 1112)

AN ACT

RELATING TO THE STATE MILITIA; AMENDING SECTION 46-605, IDAHO CODE, TO PROVIDE THAT OFFICERS AND ENLISTED PERSONNEL IN ACTIVE SERVICE OF THE STATE MAY ACCEPT, IN LIEU OF CERTAIN PAY ENTITLEMENTS, GREATER PAY AND ALLOWANCES AVAILABLE FROM OTHER GOVERNMENT DEPARTMENTS OR AGENCIES.

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

SECTION 1. That Section 46-605, Idaho Code, be, and the same is hereby amended to read as follows:

46-605. PAY ON ACTIVE DUTY. When the national guard or any part thereof is ordered on active duty in the service of the state, the enlisted personnel, the commissioned officers and warrant officers so ordered shall be entitled to pay of fifty-five dollars ($55.00) per day or shall be entitled to the same pay as enlisted personnel, officers and warrant officers of like grade and length of service in the armed forces of the United States, whichever sum is greater, and they shall be entitled to the same allowances as enlisted personnel, officers and warrant officers of like grade and length of service in the armed forces of the United States. All payments of pay and allowances under this section shall be made by the adjutant general. No deductions shall be made from the pay of officers or enlisted personnel in active service of the state for dues or other financial obligations imposed by any bylaw, rules or regulations of a civil character. When lodging or meals, or both, cannot be provided by the state, the adjutant general may pay a per diem in addition to the pay and allowances. Nothing in this section shall preclude officers or enlisted personnel in active service of the state from accepting, in lieu of the pay entitlement provided above, greater pay and allowances that may be available from any other government department or agency through cooperative agreement or otherwise.

Approved March 13, 2003.

## CHAPTER 71
## (H.B. No. 20)

AN ACT

RELATING TO HEALTH AND SAFETY; AMENDING SECTION 39-2001, IDAHO CODE, TO REMOVE BARBER SHOPS, HAIRDRESSING PARLORS AND RETAIL COSMETIC DEALERS FROM THE JURISDICTION OF THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE; AND AMENDING SECTION 39-2003, IDAHO CODE, TO DELETE LANGUAGE REQUIRING BARBER SHOPS, HAIRDRESSING PARLORS AND RETAIL COSMETICS DEALERS TO OBTAIN A CERTIFICATE OF COMPLIANCE FROM THE DIRECTOR AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 39-2001, Idaho Code, be, and the same is hereby amended to read as follows:

39-2001. JURISDICTION OF DIRECTOR. In the interest of the public health and to prevent the spread of contagious and infectious diseases, the director of the department of health and welfare is charged with the sanitary supervision of all ~~barber-shops,-hairdressing--parlors,--retail cosmetics--dealers,~~ public bathhouses, public bathrooms and public bathing places in the state of Idaho.

SECTION 2. That Section 39-2003, Idaho Code, be, and the same is hereby amended to read as follows:

39-2003. CERTIFICATE OF COMPLIANCE. Upon any such establishment herein being found to be in a sanitary condition, by the director, and complying with the ~~regulations~~ rules provided for in ~~the-preceding~~ section 39-2002, Idaho Code, a certificate shall be issued by said director without any cost, good for the year in which it is issued, which shall be kept posted in a conspicuous place. The owner, lessee, or manager of any ~~barber-shop,-hairdressing-parlor,-retail--cosmetics--dealer,~~ public bathroom, bathhouse~~,~~ or bathing resort who operates his business in violation of this provision shall be guilty of a misdemeanor and punished as provided in ~~the-preceding~~ section 39-2002, Idaho Code.

Approved March 17, 2003.

## CHAPTER 72
## (H.B. No. 21)

### AN ACT

RELATING TO THE BOARD OF PODIATRY; AMENDING SECTION 54-606, IDAHO CODE, TO PROVIDE THAT THE EXAMINATION FEE SHALL NOT EXCEED SIX HUNDRED DOLLARS, TO DELETE LANGUAGE REFERENCING FEES OF A NATIONAL EXAMINING ENTITY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-613, IDAHO CODE, TO DELETE A REFERENCE TO EXAMINATION FEES.

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

SECTION 1. That Section 54-606, Idaho Code, be, and the same is hereby amended to read as follows:

54-606. STATE BOARD OF PODIATRY -- EXAMINATION FOR LICENSES. Every person, except as hereinafter provided, desiring to commence the practice of podiatry within this state, shall make written application to the state board of podiatry, upon forms to be prescribed and furnished by the board, for a license so to do. Such applications shall be accompanied by a fee as established by board rule not to exceed four hundred dollars ($400). Each applicant shall be at least twenty-one (21) years of age, of good moral character, have completed an accredited podiatric residency, as defined by board rule, and be a graduate of some reputable school of podiatry accredited by the board. A reputable school of podiatry for the purposes herein shall mean a school of podiatry requiring

for graduation the graduation from an accredited high school, credits granted for at least two (2) full years of general college study in a college or university of recognized standing, and four (4) full years of study in such school of podiatry or its equivalent.

Except as herein otherwise provided, each applicant shall be examined by the board to determine his knowledge of the subjects taught in reputable schools of podiatry, and which examinations shall include the following subjects: Anatomy, histology, pathology, bacteriology, physiology, surgery, roentgenology, podiatric medicine, chemistry, dermatology, materia medica, diagnosis, therapeutics, clinical and orthopedic podiatry, limited in scope to podiatry. Additional subjects may be prescribed from time to time by the board. Examinations may be in one (1) or more of the following formats: written, oral and practical. A candidate for licensure may be required to take and pass one (1) or more examinations as set forth in board rule.

The board shall also collect a separate fee from all applicants for examination. The examination fee shall ~~equal--that--charged--by-the national--examining--entity~~ not exceed six hundred dollars ($600), together with an additional twenty-five dollar ($25.00) administration fee.

No applicant shall be granted a license who shall fail to obtain a satisfactory score as established by the board on all the subjects examined upon. Should any applicant fail on such examination and by reason thereof be refused a license, he shall be entitled within six (6) months of such refusal to a ~~re-examination~~ reexamination upon payment of an additional fee as established by board rule not to exceed four hundred dollars ($400) to the board; provided, however, that two (2) such ~~re-examinations~~ reexaminations shall exhaust his privilege under his original application.

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

54-613. LICENSE 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. The applicant must satisfy in all other respects the requirements for licensure in this act 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 March 17, 2003.

## CHAPTER 73
## (H.B. No. 28)

AN ACT

RELATING TO RESIDENTIAL MORTGAGE PRACTICES; AMENDING SECTION 26-3102, IDAHO CODE, TO REVISE APPLICATION OF TERMINOLOGY, TO REVISE DEFINITIONS AND TO DEFINE TERMS; AMENDING SECTION 26-3106, IDAHO CODE, TO PROVIDE REMEDIES FOR VIOLATIONS OF FEDERAL LAW AND REGULATIONS AND

TO PROVIDE CLARIFYING LANGUAGE; AMENDING SECTION 26-3108, IDAHO CODE, TO REVISE GROUNDS FOR DENIAL OF LICENSES, TO REQUIRE THE LICENSURE OF HOME OFFICES, TO REVISE PROVISIONS RELATING TO THE LICENSURE OF HOME AND BRANCH OFFICES, TO REQUIRE DISCLOSURE OF CERTAIN INFORMATION AND TO PROVIDE CIVIL IMMUNITY FOR APPLICANTS OR THEIR AGENTS IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 26-3109, IDAHO CODE, TO REVISE LICENSE REVOCATION AND SUSPENSION PROVISIONS; AMENDING SECTION 26-3110, IDAHO CODE, TO DELETE A REFERENCE TO TRUST ACCOUNTS, TO INCREASE THE SURETY BOND AMOUNT REQUIRED FOR BRANCH OFFICES, AND TO DELETE LANGUAGE REQUIRING LICENSEES TO DEPOSIT FEES IN TRUST ACCOUNTS AND TO SUBMIT FORMS RELATING TO TRUST ACCOUNTS AND AUTHORIZING ACCESS TO SUCH TRUST ACCOUNTS; AMENDING SECTION 26-3111, IDAHO CODE, TO REQUIRE LICENSEES TO FILE A RENEWAL FORM WITH THE DIRECTOR; AMENDING SECTION 26-3114, IDAHO CODE, TO PROHIBIT PERSONS REQUIRED TO HAVE A LICENSE FROM ENGAGING IN CERTAIN ACTIVITIES AND TO PROHIBIT CERTAIN AGREEMENTS UNLESS WRITTEN CONFIRMATION IS DELIVERED TO THE BORROWER; AMENDING SECTION 26-3116, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AND AMENDING CHAPTER 31, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-3117, IDAHO CODE, TO PROHIBIT STATE POLITICAL SUBDIVISIONS FROM REGULATING THE FINANCIAL OR LENDING ACTIVITIES OF CERTAIN PERSONS AND TO PROVIDE FOR APPLICATION OF THE PROHIBITION.

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

SECTION 1. That Section 26-3102, Idaho Code, be, and the same is hereby amended to read as follows:

26-3102. DEFINITIONS. As used in this chapter and in rules promulgated pursuant to this chapter:

(1) "Act" means this Idaho residential mortgage practices act.

(2) "Agent" means a person who acts with the consent and on behalf of a licensee, and is subject to the licensee's direct or indirect control, and may include an independent contractor.

(3) "Borrower" means the person who has applied to a lender for a residential mortgage loan or on whose behalf the activities set forth in subsections (12~~7~~) and (13~~8~~) of this section are conducted.

(3~~4~~) "Department" means the department of finance of the state of Idaho.

(4~~5~~) "Director" means the director of the department of finance.

(5~~6~~) "Licensee" means a person licensed pursuant to this chapter to engage in the activities regulated by this act.

(6~~7~~) "Mortgage banker" means any person, other than an exempt person, who makes residential mortgage loans to borrowers, and performs the activities described in subsection (12~~7~~) of this section.

(7~~8~~) "Mortgage broker" means any person, other than an exempt person, who performs the activities described in subsection (13~~8~~) of this section with respect to a residential mortgage loan. For the purposes of this chapter, the term "mortgage broker" does not include persons who are mortgage bankers.

(8~~9~~) "Mortgage brokerage agreement" means a written agreement in which a mortgage broker agrees to obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan.

(~~9~~10) "Person" means an individual, sole proprietorship, partnership, corporation, or other association of individuals, however organized.

(11) "Real estate settlement procedures act" means the act set forth in 12 U.S.C. section 2601 et seq., as amended to and including January 1, 2003. or a subsequent date if so defined by administrative rule.

(12) "Regulation X" means regulation X as promulgated by the U.S. department of housing and urban development and codified in 24 CFR part 3500 et seq., as amended to and including January 1, 2003, or a subsequent date if so defined by administrative rule.

(13) "Regulation Z" means regulation Z as promulgated by the board of governors of the federal reserve system and codified in 12 CFR part 226 et seq., as amended to and including January 1, 2003, or a subsequent date if so defined by administrative rule.

(1~~0~~4) "Residential mortgage loan" means a loan made primarily for personal, family, or household use and primarily secured by a security interest on residential real property located in this state.

(1~~1~~5) "Residential real property" means real property located in this state improved by a one (1) to four (4) family dwelling. ~~used--as the primary home or residence of one (1) or more persons or located in a platted subdivision.~~

(16) "Truth in lending act" means the act set forth in 15 U.S.C. section 1601 et seq., as amended to and including January 1, 2003, or a subsequent date if so defined by administrative rule.

(1~~2~~7) "Mortgage banking activities" means for compensation or gain, either directly or indirectly, accepting or offering to accept applications for residential mortgage loans, assisting or offering to assist in the preparation of an application for a residential mortgage loan.

(1~~3~~8) "Mortgage brokering activities" means for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans.

SECTION 2. That Section 26-3106, Idaho Code, be, and the same is hereby amended to read as follows:

26-3106. REMEDIES AVAILABLE TO THE DEPARTMENT. (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the truth in lending act, the real estate settlement procedures act, regulation X, regulation Z, or of this chapter or any rule or order ~~thereunder~~ this chapter, he may in his discretion bring an action in any court of competent jurisdiction, and upon a showing of any violation there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining temporarily or permanently, any act or practice violating any provision of this chapter or any rule promulgated pursuant thereto, and to enforce compliance under this chapter or any rule or order hereunder;

(b) An order that the person violating any provision of this chapter, or a rule or order hereunder pay a civil penalty to the department in an amount not to exceed five thousand dollars ($5,000) for

each violation;

(c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees;

(d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this chapter;

(e) An order granting other appropriate remedies including restitution to borrowers for excess charges or actual damages.

(2) If the director finds that a person has violated or is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may, in his discretion, order the person to cease and desist from the violations.

SECTION 3. That Section 26-3108, Idaho Code, be, and the same is hereby amended to read as follows:

26-3108. LICENSE TO DO BUSINESS AS A MORTGAGE BANKER OR MORTGAGE BROKER. (1) The director shall receive and act on all applications for licenses to do business as a mortgage banker or mortgage broker. Applications shall be filed in the manner prescribed by the director, shall contain such information as the director may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of two hundred dollars ($200). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(2) An application for license ~~shall~~ may be denied ~~unless~~ if the director finds that:

(a) The financial responsibility, character, and fitness of the license applicant, and of the officers and directors thereof, if the applicant is a corporation, partners thereof if the applicant is a partnership, members or managers thereof if the applicant is a limited liability company, and individuals designated in charge of the applicant's places of business, are not such as to warrant belief that the business will be operated honestly and fairly within the purposes of this chapter;

(b) The individuals designated in charge of applicant's places of business does not have a minimum of three (3) years' experience in residential mortgage lending;

(c) The applicant ~~has~~ does not have a net worth of at least ten thousand dollars ($10,000);

(d) The applicant has ~~not~~ been convicted of any felony or a misdemeanor involving ~~moral turpitude~~ any aspect of the financial services business, ~~nor has~~ or a court has accepted a finding of guilt on the part of the applicant~~,~~ of any felony or a misdemeanor involving ~~moral turpitude~~ any aspect of the financial services business; ~~and~~

(e) The applicant has ~~not~~ had a license, substantially equivalent to a license under this chapter and issued by ~~another~~ any state, denied, revoked or suspended under the law of such state;

(f) The applicant has filed an application for a license which is false or misleading with respect to any material fact;

(g) The applicant or any partner, officer, director, manager, employee or agent of the applicant has violated this chapter or any rule or order lawfully made pursuant to this chapter;

(h) The applicant or any partner, officer, director, manager,

employee or agent of the applicant has violated any other law of this state, or federal laws or regulations pertaining to the mortgage banking or mortgage brokering activities set forth in section 26-3102, Idaho Code; or

(i) The applicant has not provided information on the application as reasonably required by the director pursuant to subsection (1) of this section.

(3) The director is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (2) of this section.

(4) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied, or objections filed;

(b) The director has not issued a license within sixty (60) days after the application for the license was filed. If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application or that objections have been filed and the substance thereof.

(5) Every licensee shall have licensed and shall maintain a home office as a principal location for the transaction of mortgage business. The director may, on application, issue additional branch licenses to the same licensee upon compliance with all the provisions of this chapter governing the issuance of a single license. A separate license shall be required for each place of business from which mortgage brokering activities or mortgage banking activities are directly or indirectly conducted. The individual in charge of each place of business must satisfy the requirements of subsections (2)(b), (d) and (e) of this section. Each license shall remain in full force and effect unless ~~annual~~ the licensee does not satisfy the renewal ~~fees are not paid~~ requirements of section 26-3111(2), Idaho Code, or the license is relinquished, suspended, or revoked; provided however, branch licenses shall be terminated upon the relinquishment or revocation of a home office license.

(6) No licensee shall change the location of any place of business, consolidate two (2) or more locations, or close any location, without giving the director at least fifteen (15) days' prior written notice.

(7) A licensee shall not engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license.

(8) The director may suspend action upon a license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which would disqualify that applicant if convicted.

(9) An applicant shall make complete disclosure of all information required in the application, including information concerning officers, directors, partners, members, managers, employees or agents. An applicant, or an individual acting on behalf of the applicant, is not liable in any civil action other than a civil action brought by a governmental

agency, related to an alleged untrue statement made pursuant to this section unless it is shown by clear and convincing evidence that:

(a) The applicant, or an individual acting on behalf of the applicant, knew at the time that the statement was made that it was false in any material respect; or

(b) The applicant, or an individual acting on behalf of the applicant, acted in reckless disregard as to the statement's truth or falsity.

SECTION 4. That Section 26-3109, Idaho Code, be, and the same is hereby amended to read as follows:

26-3109. REVOCATION OR SUSPENSION OF LICENSE. (1) If the department has reason to believe that grounds exist for revocation or suspension of a license, the department may initiate a contested case against ~~the license--of--the~~ a mortgage banker or mortgage broker, and any partner, officer, director, manager, employee or agent whose activities constitute the basis for revocation or suspension, in accordance with chapter 52, title 67, Idaho Code. The director may, after proceedings pursuant to chapter 52, title 67, Idaho Code, suspend the license for a period not to exceed six (6) months, or revoke the license, if he finds that:

(a) The licensee or any partner, officer, director, manager, employee or agent of the licensee has violated this chapter or any rule or order lawfully made pursuant to this chapter; or

(b) The licensee or any partner, officer, director, manager, employee or agent of the licensee has violated any other laws of this state, or federal laws or regulations pertaining to the mortgage banking or mortgage brokering activities set forth in section 26-3102, Idaho Code; or

(c) Facts or conditions exist which would clearly have justified the director in refusing to grant a license had these facts or conditions been known to exist at the time the license was issued; or

(d) The licensee or any partner, officer, director, manager, employee or agent of the licensee has been convicted of any felony or a misdemeanor involving ~~moral-turpitude~~ any aspect of the financial services business, or a court has accepted a finding of guilt on the part of the licensee or partner, officer, director, manager, employee or agent of the licensee, of any felony or a misdemeanor involving ~~moral-turpitude~~ any aspect of the financial services business; or

(e) The licensee or any partner, officer, director, manager, employee or agent of the licensee has had a license substantially equivalent to a license under this chapter, and issued by another state, denied, revoked or suspended under the laws of such state; or

(f) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(g) The licensee fails to maintain a net worth of ten thousand dollars ($10,000).

(2) If the director finds that probable cause for revocation of a license exists and that enforcement of this chapter and the public

interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(3) Any licensee may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed, and may not occur after the filing of a complaint for revocation of the license.

(4) The director may, in his discretion, reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the department in refusing to grant a license.

SECTION 5. That Section 26-3110, Idaho Code, be, and the same is hereby amended to read as follows:

26-3110. SURETY BONDS. ~~AND TRUST ACCOUNTS.~~ (1) All licensees, with or without an office located in this state, shall maintain a surety bond to the state of Idaho in accordance with this section. The bond to be maintained shall be in the amount of ten thousand dollars ($10,000). This amount shall be increased by additional sums of ~~five~~ ten thousand dollars (~~$5~~10,000) for each licensed branch office~~, in addition to an initial office, that the licensee maintains within the state of Idaho. In the event that a licensee has violated any of the provisions of this chapter, any other governing state law, any governing federal law, or in the event that a court of competent jurisdiction has found that a licensee has damaged any person, then the bond shall be forfeited and paid by the surety to the state of Idaho for the benefit of any person damaged by the licensee~~. The bond shall be a continuing obligation of the issuing surety. The surety's liability under the bond for any claims made thereunder either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Idaho. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department.

(2) ~~Each licensee shall deposit all fees allowed by section 26-3113, Idaho Code, paid to the licensee by borrowers in a trust account established at a bank, savings and loan association, or credit union located in the state of Idaho. Funds held in a trust account may only be withdrawn in accordance with a written agreement with the borrower~~ In the event that a licensee or any employee or agent of a licensee has violated any of the provisions of this chapter or of a rule or order lawfully made pursuant to this chapter, or federal law or regulation pertaining to the mortgage banking or mortgage brokering activities set forth in section 26-3102, Idaho Code, and has damaged any person by such violation, then the bond shall be forfeited and paid by the surety to the state of Idaho for the benefit of any person so damaged.

~~(3) Each licensee shall file with the director, on a form approved by the director, a statement identifying the name of the financial institution, account number, and name of account for the trust account maintained.~~

~~(4) Each licensee shall authorize the director or a duly authorized representative of the director, on a form approved by the director, to examine the licensee's trust account at such times as the director may direct.~~

SECTION 6. That Section 26-3111, Idaho Code, be, and the same is hereby amended to read as follows:

26-3111. RECORDS -- ANNUAL REPORTS -- RENEWAL OF LICENSE. (1) Every licensee shall maintain records in conformity with generally accepted accounting principles in a manner that will enable the director to determine whether the licensee is complying with the provisions of this chapter. The recordkeeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where residential mortgage loans are made, if the director is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than five (5) years after making the final entry relating to the loan.

(2) On or before August 31 of each year, every licensee shall pay an annual license renewal fee of one hundred dollars ($100), and file with the director a renewal form containing such information as the director may require and a composite annual report for the residential mortgage loans made or brokered by him.

SECTION 7. That Section 26-3114, Idaho Code, be, and the same is hereby amended to read as follows:

26-3114. PROHIBITED PRACTICES. No licensee or person required to have a license shall:

(1) Obtain any exclusive dealing or exclusive agency agreement from any borrower;

(2) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;

(3) Accept any fees at closing which were not previously disclosed fully to the borrower;

(4) Obtain any agreement or instrument in which blanks are left to be filled in after execution;

(5) Engage in any misrepresentation in connection with a residential mortgage loan;

(6) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;

(7) Make any false promises likely to influence or persuade, or pursue a course of misrepresentations and false promises through agents, solicitors, advertising or otherwise; ~~nor~~

(8) Misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars or the nature thereof, regarding a transaction to which it is a party~~.~~; nor

(9) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless written confirmation of the agreement is ~~in writing--and--is--signed--by--the--parties~~ delivered to the borrower as required by rule pursuant to this chapter.

SECTION 8. That Section 26-3116, Idaho Code, be, and the same is hereby amended to read as follows:

26-3116. INITIAL LICENSING AND COMPLIANCE. A person who conducts any of the activities set forth in subsections (1~~2~~7) and (1~~3~~8) of section 26-3102, Idaho Code, on the effective date of this act shall, within sixty (60) days following the effective date of this act, apply to the department for a license.

SECTION 9. That Chapter 31, Title 26, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 26-3117, Idaho Code, and to read as follows:

26-3117. RELATIONSHIP TO OTHER LAWS. (1) All political subdivisions of this state shall be prohibited from enacting and enforcing ordinances, resolutions, regulations and rules pertaining to the financial or lending activities of persons who:

(a) Are subject to the jurisdiction of the department, including those whose activities are subject to this chapter;

(b) Are subject to the jurisdiction or regulatory supervision of the board of governors of the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal deposit insurance corporation, the federal trade commission or the United States department of housing and urban development; or

(c) Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in paragraph (a) or (b) of this subsection or who assist or facilitate such transactions.

(2) The requirements of this subsection shall apply to all ordinances, resolutions and rules pertaining to financial or lending activities, including any ordinances, resolutions or rules disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

Approved March 17, 2003.

## CHAPTER 74
## (H.B. No. 29)

### AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; AMENDING SECTION 28-41-302, IDAHO CODE, TO UPDATE DATE REFERENCES FOR PURPOSES OF DEFINING THE FEDERAL CONSUMER CREDIT PROTECTION ACT.

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

SECTION 1. That Section 28-41-302, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-302. FEDERAL CONSUMER CREDIT PROTECTION ACT -- DEFINED. In this act "Federal Consumer Credit Protection Act" means the consumer

credit protection act, Public Law 90-321; 82 Stat. 146, as amended, to and including January 1, 2002~~2~~3, or a subsequent date if so defined by administrative rule, and includes regulations issued pursuant to that act, as amended to and including January 1, 2002~~2~~3, or a subsequent date if so defined by administrative rule.

Approved March 17, 2003.

## CHAPTER 75
## (H.B. No. 36)

### AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2108, IDAHO CODE, TO PROVIDE THAT THE BOARD SHALL ESTABLISH BY RULE FEES FOR EXPEDITED, EXCEPTIONAL, RESUBMITTAL OR EMERGENCY PROCESSING OF LICENSE APPLICATIONS, A FEE CREDIT FOR ELECTRONIC FILING OF APPLICATIONS AND A FEE FOR THE USE OF CREDIT CARDS CORRESPONDING TO THE COST TO THE AGENCY OF PROCESSING THE CARD USE.

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

SECTION 1. That Section 36-2108, Idaho Code, be, and the same is hereby amended to read as follows:

36-2108. APPLICATION FOR LICENSE -- CONTENTS -- FEE -- QUALIFICATIONS -- TERM -- BOND. (a) Each applicant for an outfitter's or guide's license shall make application for such license upon a form to be prescribed and furnished by the board.

1. All applications for an outfitter's license shall be signed by the applicant, under oath or affirmation that all information supplied by him in the application form is true and correct as he verily believes and shall be duly notarized. Such applications shall include, but are not limited to, a worded description of the boundaries of the operating area in which such activity will be conducted.

2. All applications for a guide's license shall be signed by the applicant. Such application shall contain the written endorsement of the outfitter(s) by whom the applicant will be employed.

(b) Applications shall be made to and filed with the board and, unless arrangements have been made otherwise with the board, accompanied by proof of eligibility for a bond payable to the person or persons employing the licensee and in a form approved by the board in the sum of ten thousand dollars ($10,000) for outfitters, to be executed by a qualified surety, duly authorized to do business in this state, conditioned that for the current license year said applicant, his agents and employees, if said license is issued to him, shall conduct his business as an outfitter without fraud or fraudulent representation, and will faithfully perform his contracts with and duties to his patrons; said bond shall be filed with the board before issuance of the license as provided herein.

(c) The board, in its discretion, may make such additional investigation and inquiry relative to the applicant and his qualifications as

it shall deem advisable, provided that final decision by the board upon an application submitted by an applicant who has held during the preceding license year a license of the same kind for which application is made shall not be later than March 31 of the year in which the board receives all materials required to be submitted in order to complete a license application or thirty (30) days from the date the board receives all such materials, whichever is later; and upon an application submitted by an applicant not holding during the preceding license year a license of the same kind or embracing the same activity(ies) or area for which application is made, not later than March 31 of the year in which the board receives all materials required to be submitted in order to complete a license application or ninety (90) days from the date the board receives all such materials, whichever is later.

(d) After the board has acted favorably upon an application, the applicant shall pay a license fee, as hereinafter provided, to the board.

1. The license fee shall be paid prior to the issuance of a license.

2. The license fee shall be used for the investigation of applicants, for enforcement of this act, and for the administration costs of the board.

3. The license fee for resident and nonresident outfitters shall be three hundred dollars ($300); the license fee for a designated agent as defined in section 36-2102(b), Idaho Code, shall be one hundred twenty dollars ($120); and the license fee for resident and nonresident guides shall be ninety-five dollars ($95.00). A penalty fee in the amount of fifty dollars ($50.00) may be charged in addition to the regular outfitter's license fee for any such renewal applicant whose application is not complete by the end of the outfitter's license year; this does not apply to a new applicant for an outfitter's license. A seventy-five dollar ($75.00) fee shall be charged for every amendment to an outfitter's license other than an incidental amendment, and a ten dollar ($10.00) fee shall be charged for every incidental amendment to an outfitter's license and every amendment to a guide's license.

4. A one-time application fee for outfitters not to exceed four hundred dollars ($400), a one-time application fee for designated agents not to exceed fifty dollars ($50.00), and a one-time application fee for guides not to exceed ten dollars ($10.00) shall be established annually by the board and shall be used for application related expenses. The board shall establish by rule a policy to refund unused application fees <u>and shall establish by rule fees for expedited, exceptional, resubmittal or emergency processing of license applications, a fee credit for electronic filing of applications and a fee for the use of credit cards corresponding to the cost to the agency of processing the card use.</u>

Approved March 17, 2003.

CHAPTER 76
(H.B. No. 38)

AN ACT
RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2109, IDAHO CODE, TO PROVIDE THAT LICENSES MAY BE ISSUED FOR MULTIPLE YEARS.

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

SECTION 1. That Section 36-2109, Idaho Code, be, and the same is hereby amended to read as follows:

36-2109. FORM AND TERM OF LICENSE -- NOTICE OF DENIAL. (a) Upon concurrence of a majority, the board, in its discretion may issue a license to any applicant who has filed an application in proper form with the board, including but not limited to payment of the license fee and furnishing of bond. Said license shall be in the form prescribed by the board, and shall be valid for the licensing year ~~in~~ or years for which issued from the date issued until the end of the license year ~~in~~ or years for which it is issued; provided, that no outfitter's or guide's license may be sold, assigned or otherwise transferred either by any holder thereof or by the operation of law except as provided in this chapter. The board may prescribe by rule that limitations or qualifications placed upon an outfitter's or guide's license as provided in this chapter shall be indicated on the face of the license or as an attachment to the license which shall be considered a part of the license.

(b) A license granted by the board including any attachment thereto shall specify the activities licensed and the exact territorial limits of the outfitter's area of operation and shall specify the species of game to be hunted. In so approving and/or licensing any outfitter's or guide's activity, the board shall consider the following matters, among others:

1. The length of time in which the applicant has operated in that area;
2. The extent to which the applicant is qualified by reason of experience, equipment or resources to operate in that area;
3. The applicant's previous safety record;
4. The accessibility of the area, the particular terrain~~,~~ and the weather conditions normal to that area during the outfitter's or guide's season;
5. The total amount of outfitter's area requested by any applicant giving due consideration to the effect which such area license grant would have upon the environment, the amount of game which can be harvested, and the number of persons which can be adequately served in the area.

(c) The board shall refuse to issue any license to any applicant for an outfitter's or guide's license who the board finds is not a competent person of good moral character, less than eighteen (18) years of age and does not possess a working knowledge of the game and fishing laws of the state of Idaho and the regulations of the United States forest service. The board shall also refuse to issue an outfitter's license to any applicant who the board finds does not have sufficient financial responsibility to conduct adequately the business of an outfitter. The

board shall refuse to issue any license to a firm, partnership, corporation or other organization or any combination thereof which fails to have at least one (1) designated agent conducting its outfitting business who meets all of the qualifications and requirements of a licensed outfitter. The board may also refuse to grant an outfitter's or guide's license to any applicant for violation of any of the provisions hereinafter specified in this chapter as grounds for revocation or suspension of an outfitter's or guide's license. If the application is denied, the board shall notify the applicant, in writing, of the reasons for such denial within ten (10) days and if the applicant shall correct, to the satisfaction of the board, such reasons within thirty (30) days of receipt of such notice and if, thereafter, a majority of the board concur, the board may issue a license to the applicant.

(d) No license shall be issued by the board until a majority thereof has reported favorably thereon; except, an application for a license identical to a license held during the previous year may be issued on approval by one (1) board member providing there is no adverse information on file regarding the applicant.

Approved March 17, 2003.

## CHAPTER 77
## (H.B. No. 40)

AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2108, IDAHO CODE, TO REVISE THE TIME BY WHICH THE BOARD MUST ACT ON AN APPLICATION AND TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 36-2108, Idaho Code, be, and the same is hereby amended to read as follows:

36-2108. APPLICATION FOR LICENSE -- CONTENTS -- FEE -- QUALIFICATIONS -- TERM -- BOND. (a) Each applicant for an outfitter's or guide's license shall make application for such license upon a form to be prescribed and furnished by the board.

1. All applications for an outfitter's license shall be signed by the applicant, under oath or affirmation that all information supplied by him in the application form is true and correct as he verily believes and shall be duly notarized. Such applications shall include, but are not limited to, a worded description of the boundaries of the operating area in which such activity will be conducted.

2. All applications for a guide's license shall be signed by the applicant. Such application shall contain the written endorsement of the outfitter(s) by whom the applicant will be employed.

(b) Applications shall be made to and filed with the board and, unless arrangements have been made otherwise with the board, accompanied by proof of eligibility for a bond payable to the person or persons employing the licensee and in a form approved by the board in the sum of ten thousand dollars ($10,000) for outfitters, to be executed by a qual-

ified surety, duly authorized to do business in this state, conditioned that for the current license year said applicant, his agents and employees, if said license is issued to him, shall conduct his business as an outfitter without fraud or fraudulent representation, and will faithfully perform his contracts with and duties to his patrons; said bond shall be filed with the board before issuance of the license as provided herein.

(c) The board, in its discretion, may make such additional investigation and inquiry relative to the applicant and his qualifications as it shall deem advisable, provided that final decision by the board upon an application submitted by an applicant who has held during the preceding license year a license of the same kind for which application is made, ~~shall--not--be-later-than-March-31-of-the-year-in-which-the-board receives-all-materials-required-to-be-submitted-in-order-to--complete--a license-application-or-thirty-(30)-days-from-the-date-the-board-receives all--such-materials,-whichever-is-later;~~ and upon an application submitted by an applicant not holding during the preceding license year a license of the same kind or embracing the same activity(ies) or area for which application is made, shall be made not later than ~~March-31~~ the end of the license year in which the board receives all materials required to be submitted in order to complete a license application or ninety (90) days from the date the board receives all such materials, whichever is later.

(d) After the board has acted favorably upon an application, the applicant shall pay a license fee, as hereinafter provided, to the board.

1. The license fee shall be paid prior to the issuance of a license.

2. The license fee shall be used for the investigation of applicants, for enforcement of this ~~act~~ chapter, and for the administration costs of the board.

3. The license fee for resident and nonresident outfitters shall be three hundred dollars ($300); the license fee for a designated agent as defined in section 36-2102(b), Idaho Code, shall be one hundred twenty dollars ($120); and the license fee for resident and nonresident guides shall be ninety-five dollars ($95.00). A penalty fee in the amount of fifty dollars ($50.00) may be charged in addition to the regular outfitter's license fee for any such renewal applicant whose application is not complete by the end of the outfitter's license year; this does not apply to a new applicant for an outfitter's license. A seventy-five dollar ($75.00) fee shall be charged for every amendment to an outfitter's license other than an incidental amendment, and a ten dollar ($10.00) fee shall be charged for every incidental amendment to an outfitter's license and every amendment to a guide's license.

4. A one-time application fee for outfitters not to exceed four hundred dollars ($400), a one-time application fee for designated agents not to exceed fifty dollars ($50.00), and a one-time application fee for guides not to exceed ten dollars ($10.00) shall be established annually by the board and shall be used for application related expenses. The board shall establish by rule a policy to refund unused application fees.

Approved March 17, 2003.

## CHAPTER 78
## (H.B. No. 43)

AN ACT

RELATING TO FOREST PRACTICES ADMINISTRATION; AMENDING SECTION 38-134, IDAHO CODE, TO ALLOW THE STATE BOARD OF LAND COMMISSIONERS TO INCREASE THE ANNUAL ASSESSMENT FOR PRIVATE OWNERS OF FOREST LANDS WHOSE TOTAL ACRES OF FOREST LANDS ARE TWENTY-SIX ACRES OR MORE FROM FIVE CENTS PER ACRE TO A MAXIMUM OF TEN CENTS PER ACRE.

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

SECTION 1. That Section 38-134, Idaho Code, be, and the same is hereby amended to read as follows:

38-134. FOREST PRACTICES ACT ADMINISTRATION — FUNDING. The director of the department of lands is charged in section 38-1305, Idaho Code, to administer and enforce the forest practices act on all private forest lands within the state. Funding for this activity shall come from an annual budget request from the general account and from an annual assessment to be paid by every private owner of forest land in the state. The assessment for private owners of forest lands whose total acres of forest lands are twenty-five (25) acres or fewer shall be a sum of one dollar and twenty-five cents ($1.25), and for private owners of forest lands whose total acres of forest lands are twenty-six (26) acres or more, the assessment shall be determined by the state board of land commissioners not exceed ~~five~~ ten cents (~~5~~10¢) an acre per year. The assessment shall be collected in the same fashion and at the same time as the forest protection assessment desc~~ribed in~~ section 38-111, Idaho Code.

Approved March 17, 2003.

## CHAPTER 79
## (H.B. No. 46)

AN ACT

RELATING TO ASSESSMENTS ON OWNERS OF LAND FOR FOREST PROTECTION; AMENDING SECTION 38-111, IDAHO CODE, TO ALLOW THE STATE BOARD OF LAND COMMISSIONERS TO INCREASE THE ASSESSMENT FOR PRIVATE OWNERS OF FOREST LANDS WHOSE TOTAL ACRES OF FOREST LANDS ARE TWENTY-SIX ACRES OR MORE FROM FORTY-FIVE CENTS PER ACRE TO A MAXIMUM OF SIXTY CENTS PER ACRE AND TO INCREASE THE IMPROVED LOT OR PARCEL SURCHARGE FROM TEN DOLLARS TO A MAXIMUM OF TWENTY DOLLARS FOR EACH IMPROVED LOT OR PARCEL.

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

SECTION 1. That Section 38-111, Idaho Code, be, and the same is hereby amended to read as follows:

38-111. PROTECTION BY OWNER -- ASSESSMENTS -- BUDGET OF PROTECTIVE DISTRICTS. Every owner of forest lands in the state shall furnish or provide therefor, throughout the closed season, protection against the starting, existence or spread of fires thereon, or therefrom, in conformity with reasonable rules and standards for adequate protection, to be established by the state board of land commissioners. An owner of forest lands who maintains a membership in good standing in a forest protective association operating under agreement with the state board of land commissioners, which association maintains a standard of protection approved by said board and who pays the assessments to the association in the amounts required in this section, shall be deemed to have fully complied herewith. In the event the owner of any forest land shall neglect or fail to furnish the protection required in this section, the director of the department of lands shall provide such patrol and protection therefor at actual cost to the owner of forest lands. For private owners of forest lands whose total acres of forest lands are twenty-six (26) acres or more, the state board of land commissioners shall establish this cost ~~shall~~ not to exceed ~~forty-five~~ sixty cents (~~45~~60¢) an acre per year. For private owners of forest lands whose total acres of forest lands are twenty-five (25) acres or fewer, the minimum assessment per year shall be equal to the per acre cost multiplied by twenty-five (25).

In addition to any other assessment prescribed in this chapter, the state board of land commissioners shall establish a surcharge ~~shall~~ to be levied and assessed in ~~the~~ an amount ~~of ten~~ not to exceed twenty dollars ($~~1~~20.00) for each improved lot or parcel, to defray the cost of fire suppression on forest land caused by the existence of the improvements.

In the event an assessment is made in an amount less than the maximum hereinbefore provided, and an actual loss occurs which exceeds the amount budgeted and for which assessments have been made, the director of the department of lands, with the approval of the board, may require an additional assessment to be made and paid, which together with the original assessment shall not exceed the maximum assessment set forth in this section. Such additional assessment shall be levied and collected in the same manner as herein provided for the collection of such original assessments. The liability provided in this section shall be calculated for each forest protection district or association separately, and shall be calculated solely upon the charges assignable to fire control or presuppression of fires within each district or association.

Each forest protective association actively engaged in forest protection under agreement with the state board of land commissioners shall each year prepare in detail, a budget of all estimated operating costs for the next calendar year and shall submit this budget to the board for approval before June 30 of the current year.

Except for the provisions of section 38-122, Idaho Code, and cases of proven negligence by the landowner or his agent, no other charges or assessments for fire protection shall be made or assessed or collected from those forest landowners participating as provided herein.

Approved March 17, 2003.

CHAPTER 80
(H.B. No. 56)

AN ACT

RELATING TO THE REVENUE BOND PROGRAM OF THE WATER RESOURCE BOARD; AMENDING SECTION 42-1734, IDAHO CODE, TO REVISE CERTAIN POWERS AND DUTIES OF THE WATER RESOURCE BOARD; AND AMENDING SECTION 42-1742, IDAHO CODE, TO PROVIDE THAT ANY LOAN REPAYMENTS TO THE IDAHO WATER RESOURCE BOARD MAY BE DEPOSITED INTO A SPECIAL FUND OR FUNDS TO BE USED FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON CERTAIN BONDS.

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

SECTION 1. 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 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 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, provided that any amounts received from loan repayments regardless of the source of funds for the loan may be pledged, 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 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 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 2. That Section 42-1742, Idaho Code, be, and the same is hereby amended to read as follows:

42-1742. SPECIAL FUNDS. Bonds issued under the provisions of this act shall be payable solely out of revenues of the Idaho water resource board. Such bonds shall be authorized by resolution, which resolution shall create a special fund or funds into which the Idaho water resource board shall obligate and bind the board to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the available revenue of the board sufficient to pay the principal of and interest on such bonds as the same shall become due and, if deemed necessary, to maintain adequate reserves therefor. No appropriated moneys shall be paid into such special fund or funds provided that any loan repayments to the Idaho water resource board, regardless of the source of funds for the loan, may be deposited to such fund or funds. Such fund or funds shall be drawn upon for the sole purpose of paying the principal of and interest on bonds issued pursuant to this act.

The bonds shall be negotiable instruments within the provisions and intent of the negotiable instrument laws of this state even though they shall be payable solely from such special fund or funds. The bonds and any coupons attached thereto shall state upon their face that they are payable solely from such special fund or funds. If the board fails to set aside and pay into such fund or funds the payments provided for in such resolution, the holder of any such bonds may bring suit to compel compliance with the provisions of the resolution.

Approved March 17, 2003.

## CHAPTER 81
## (H.B. No. 76)

### AN ACT

RELATING TO COLLECTION OF UNPAID TAXES BY DISTRAINT ON PERSONAL PROPERTY; AMENDING SECTION 63-3057, IDAHO CODE, TO PERMIT THE STATE TAX COMMISSION TO PETITION THE DISTRICT COURT FOR A WRIT OF POSSESSION IN AID OF COLLECTION OF UNPAID TAXES AND TO TAKE CUSTODY AND RESPONSIBILITY FOR THE PROPERTY FROM THE SHERIFF WHO HAS ACTED UNDER THE WRIT.

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

SECTION 1. That Section 63-3057, Idaho Code, be, and the same is hereby amended to read as follows:

63-3057. DISTRAINT ON PERSONAL PROPERTY. (1) In addition to all other remedies or actions provided by this act, it shall be lawful for the tax commission, or any of its agents or deputies, to collect any taxes (the word "taxes," as used in this section including any deficiencies in respect of such taxes) with such interest, penalties, and other additional amounts as are permitted by law, by distraint and sale, in the manner provided herein, of the property of any person liable to pay any taxes, interest, penalties, or other additional amounts, who neglects or refuses to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof, and who has not appealed from the assessment of such taxes, interest, penalties and other additional amounts pursuant to the provisions of the act or who has not satisfied or discharged any lien filed under this act. The term "property" as used herein shall be construed to mean personal property, both tangible and intangible, any right, title, and interest to such personal property and shall include, without limitation, stocks, securities, bank accounts, and evidences of debt.

(2) In conjunction with the remedy provided in subsection (1) of this section, the state tax commission may file an action in the district court where a taxpayer resides or has his principal place of business or in which the property subject to distraint under this section is located for a writ of possession under chapter 3, title 8, Idaho Code. In such an action, the sheriff shall designate the state tax commission as the keeper of the property under section 8-305, Idaho Code, and after expiration of the five (5) day period provided in section 8-308, Idaho Code, shall relinquish all custody and responsibility for such property to the state tax commission. The state tax commission may proceed in regard to such property as provided for property seized under a warrant issued by the commission under this chapter.

Approved March 17, 2003.

## CHAPTER 82
## (H.B. No. 124)

AN ACT

RELATING TO INVESTMENT OF IRRIGATION DISTRICT FUNDS; AMENDING SECTION 43-1507, IDAHO CODE, TO CORRECT A CODE CITATION, TO PERMIT INVESTMENT OF SURPLUS FUNDS IN CERTAIN ADDITIONAL WARRANTS OR BONDS, TO INCLUDE REFERENCE TO WARRANTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 43-1507, Idaho Code, be, and the same is hereby amended to read as follows:

43-1507. INVESTMENT OF CERTAIN FUNDS AUTHORIZED. In addition to the authority conferred upon the board of directors of an irrigation district by section 57-6~~01~~127, Idaho Code, such board shall have the authority to invest the surplus funds of such district, ~~collected--for the--purpose-of-paying-an-outstanding-obligation-to-the-United-States-of America-or-for-the-payment-of-outstanding--bonds--of--said--district--or funds--in-an-emergency-fund-created-by-the-directors,~~ in the negotiable, general obligation bonds or other evidences of indebtedness of the United States or of this state or in local improvement district bonds or warrants authorized by chapter 17, title 50, or chapter 25, title 43, Idaho Code, in lieu of depositing the same in designated depositories as provided by the ~~P~~public ~~D~~depository ~~L~~law and to dispose of such bonds, warrants, or evidences of indebtedness as and when said board may direct.

Approved March 17, 2003.

CHAPTER 83
(H.B. No. 127)

AN ACT
RELATING TO ANIMAL DISEASE CONTROL; AMENDING CHAPTER 2, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-207A, IDAHO CODE, TO AUTHORIZE THE DIVISION OF ANIMAL INDUSTRIES TO PROMULGATE RULES FOR THE REGULATION AND PROHIBITION OF CERTAIN PRIVATE FEEDING OF BIG GAME ANIMALS WITH THE COOPERATION OF THE DEPARTMENT OF FISH AND GAME.

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

SECTION 1. That Chapter 2, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-207A, Idaho Code, and to read as follows:

25-207A. PRIVATE FEEDING OF BIG GAME ANIMALS -- RULES FOR DISEASE CONTROL. (1) In order to provide for disease control and the protection of health and human safety, the division of animal industries is authorized to promulgate rules for the regulation and prohibition of the private feeding of big game animals.

(2) The division shall cooperate with the department of fish and game in the designation of such areas and the promulgation of rules necessary to facilitate such regulation.

(3) Rulemaking authority pursuant to the provisions of this section shall only apply to regulate or prohibit persons who purposely or knowingly provide supplemental feed to big game animals in a manner that results in an artificial concentration of such animals that may potentially contribute to the transmission of disease.

(4) Rulemaking authority pursuant to the provisions of this section shall not apply to supplemental feeding activities conducted by the department of fish and game.

Approved March 17, 2003.

CHAPTER 84
(H.B. No. 151)

AN ACT

RELATING TO PLANNING AND ZONING COMMISSIONS; AMENDING SECTION 67-6504, IDAHO CODE, TO PROVIDE THAT NO PERSON SHALL SERVE MORE THAN TWO FULL CONSECUTIVE TERMS WITHOUT SPECIFIC CONCURRENCE BY TWO-THIRDS OF THE GOVERNING BOARD ADOPTED BY MOTION AND RECORDED IN THE MINUTES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 67-6504, Idaho Code, be, and the same is hereby amended to read as follows:

67-6504. PLANNING AND ZONING COMMISSION -- CREATION -- MEMBERSHIP -- ORGANIZATION -- RULES -- RECORDS -- EXPENDITURES -- STAFF. A city council or board of county commissioners, hereafter referred to as a governing board, may exercise all of the powers required and authorized by this chapter in accordance with this chapter. If a governing board chooses to exercise the powers required and authorized by this chapter it need not follow the procedural requirements established hereby solely for planning and zoning commissions. If a governing board does not elect to exercise the powers conferred by this chapter, it shall establish by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, a planning commission and a zoning commission or a planning and zoning commission acting in both capacities, which may act with the full authority of the governing board, excluding the authority to adopt ordinances or to finally approve land subdivisions. The powers of the board of county commissioners conferred by this chapter shall apply to the unincorporated area of the county. Legally authorized planning, zoning, or planning and zoning commissions existing prior to enactment of this chapter shall be considered to be duly constituted under this chapter. Within this chapter use of the term "planning and zoning commission" shall include the term "planning commission," "zoning commission" and "planning and zoning commission."

(a) Membership -- Each commission shall consist of not less than three (3) nor more than twelve (12) voting members, all appointed by a mayor or chairman of the county board of commissioners and confirmed by majority vote of the governing board. An appointed member of a commission must have resided in the county for at least two (2) years prior to his appointment, and must remain a resident of the county during his service on the commission. Not more than one-third (1/3) of the members of any commission appointed by the chairman of the board of county commissioners may reside within an incorporated city of ~~fifteen~~ one thousand five hundred (1,500) or more population in the county. At least one-half (1/2) of the members of any commission appointed by the chairman of the board of county commissioners must reside outside the boundaries of any city's area of impact. The ordinance establishing a commission to exercise the powers under this chapter shall set forth the number of members to be appointed. The term of office for members shall be not less than three (3) years, nor more than six (6) years, and the

length of term shall be prescribed by ordinance. No person shall serve more than two (2) full consecutive terms without specific concurrence by two-thirds (2/3) of the governing board adopted by motion and recorded in the minutes. Vacancies occurring otherwise than through the expiration of terms shall be filled in the same manner as the original appointment. Members may be removed for cause by a majority vote of the governing board. Members shall be selected without respect to political affiliation and may receive such mileage and per diem compensation as provided by the governing board. If a governing board exercises these powers, its members shall be entitled to no additional mileage or per diem compensation.

(b) Organization -- Each commission shall elect a chairman and create and fill any other office that it may deem necessary. A commission may establish subcommittees, advisory committees or neighborhood groups to advise and assist in carrying out the responsibilities under this chapter. A commission may appoint nonvoting ex officio advisors as may be deemed necessary.

(c) Rules, Records, and Meetings -- Written organization papers or bylaws consistent with this chapter and other laws of the state for the transaction of business of the commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits, and actions taken shall be maintained. All meetings and records shall be open to the public. At least one (1) regular meeting shall be held each month for not less than nine (9) months in a year. A majority of currently-appointed voting members of the commission shall constitute a quorum.

(d) Expenditures and Staff -- With approval of a governing board through the legally required budgetary process, the commission may receive and expend funds, goods, and services from the federal government or agencies and instrumentalities of state or local governments or from civic and private sources and may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by a commission shall be within the amounts appropriated by a governing board. Within such limits, any commission is authorized to hire or contract with employees and technical advisors, including, but not limited to, planners, engineers, architects, and legal assistants.

Approved March 17, 2003.

## CHAPTER 85
## (H.B. No. 175)

### AN ACT

RELATING TO LIFE INSURANCE TRADE PRACTICES; AMENDING CHAPTER 13, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1336, IDAHO CODE, TO REQUIRE PAYMENT OF THE PROCEEDS OF BENEFITS UNDER A LIFE INSURANCE POLICY WITHIN A SPECIFIED TIME PERIOD, TO PROVIDE FOR THE PAYMENT OF INTEREST ON DEATH BENEFITS IF TIMELY PAYMENT IS NOT MADE, TO PROVIDE THE RATE OF INTEREST AND TO PROVIDE THAT THE REQUIREMENT OF THE PAYMENT OF INTEREST APPLIES ONLY TO LUMP SUM PAYMENTS.

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

SECTION 1. That Chapter 13, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-1336, Idaho Code, and to read as follows:

41-1336. LIFE INSURANCE -- PAYMENT OF INTEREST ON BENEFITS. (1) An insurer shall pay the proceeds of any benefits under a policy of life insurance not more than thirty (30) days after the insurer has received satisfactory proof of death of the insured. Except as provided in subsection (2) of this section, if the proceeds are not paid within the thirty (30) day period, the insurer shall also pay interest on the proceeds from the date of death of the insured to the date when the proceeds are paid.

(2) If satisfactory proof of death is received more than one hundred eighty (180) days after the death of the insured and the death benefits are not paid within thirty (30) days after satisfactory proof of death has been received by the insurer, interest shall accrue from the date on which satisfactory proof was received by the insurer to the date when proceeds are paid.

(3) The rate of interest to be paid by the insurer under subsections (1) and (2) of this section shall be the current rate of interest on death proceeds on deposit with the insurer; provided however, that if the insurer holds its deposits in a noninterest-bearing account or in an account bearing less than two percent (2%) interest per annum, the rate of interest to be paid shall be the one (1) month United States government securities treasury constant maturity rate as disclosed in the federal reserve statistical release publication H.15, selected interest rates, as of the first of the month preceding the date of death, plus two (2) percentage points.

(4) A payment of interest shall not be required under this section in any case in which the beneficiary elects to receive the proceeds under the policy by any means other than a lump sum payment.

Approved March 17, 2003.

## CHAPTER 86
## (H.B. No. 176)

AN ACT

RELATING TO THE MINIMUM ANNUITY NONFORFEITURE INTEREST RATE FOR INDIVIDUAL DEFERRED ANNUITIES; AMENDING SECTION 41-1927A, IDAHO CODE, TO PROVIDE FOR A REDUCED MINIMUM RATE OF INTEREST UNTIL JULY 1, 2005 AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-1927A, Idaho Code, be, and the same is hereby amended to read as follows:

41-1927A. STANDARD NONFORFEITURE LAW FOR INDIVIDUAL DEFERRED ANNUITIES. (1) This section shall be known as the standard nonforfeiture law for individual deferred annuities.

(2) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation

established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the insurer issuing the contract.

(3) In the case of contracts issued on or after the operative date of this section as defined in subsection (12) of this section, no contract of annuity, except as stated in subsection (2) of this section shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the director are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract.

(a) That upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (5), (6), (7), (8) and (10) of this section.

(b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (5), (6), (8) and (10) of this section. The insurer shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract. If the insurer defers payment of a cash surrender benefit under this section, the insurer shall pay interest at the rate specified in section 28-22-104(2), Idaho Code, as established and in existence at the time of the surrender demand.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars ($20.00) monthly, the insurer may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract

for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(4) The minimum values as specified in subsections (5), (6), (7), (8) and (10) of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three ~~per--cent~~ percent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of (i) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three ~~per--cent~~ percent (3%) per annum and (ii) the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars ($30.00) and less a collection charge of one dollar and twenty-five cents ($1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five ~~per-cent~~ percent (65%) of the net consideration for the first contract year and eighty-seven and one-half ~~per-cent~~ percent (87 1/2%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five ~~per cent~~ percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two (2) times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five ~~per cent~~ percent (65%).

Notwithstanding the provisions of paragraph (a) of this subsection, the minimum nonforfeiture amount for any contract issued on or after July 1, 2003, and before July 1, 2005 shall be based on a rate of interest of one and one-half percent (1.5%) per annum.

(b) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two (2) exceptions:

1. The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five ~~per--cent~~ percent (65%) of the net consideration for the first contract year plus twenty-two and one-half ~~per-cent~~ percent (22 1/2%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

2. The annual contract charge shall be the lesser of (i) thirty dollars ($30.00) or (ii) ten ~~per-cent~~ percent (10%) of the gross annual considerations.

(c) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety ~~per--cent~~ percent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars ($75.00).

(5) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(6) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one ~~per-cent~~ percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(7) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(8) For the purpose of determining the benefits calculated under subsections (6) and (7) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(9) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(10) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(11) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (5), (6), (7), (8) and (10) of this section, additional benefits payable (i) in the event of total and permanent disability, (ii) as reversionary annuity or deferred reversionary annuity benefits, or (iii) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(12) After the effective date of this section any insurer may file with the director a written notice of its election to comply with the provisions of this section after a specified date before the second anniversary of the effective date of this section. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such insurer, this section shall become operative with respect to annuity contracts thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be the second anniversary of the effective date of this section.

Approved March 17, 2003.

## CHAPTER 87
## (H.B. No. 204)

### AN ACT

RELATING TO ALL-TERRAIN VEHICLES; AMENDING SECTIONS 49-102 AND 63-3622R, IDAHO CODE, TO REVISE THE DEFINITION OF "ALL-TERRAIN VEHICLE" OR "ATV" AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-7101, IDAHO CODE, TO REVISE THE DEFINITION OF "ALL-TERRAIN VEHICLE (ATV)," TO REVISE THE DEFINITION OF "MOTORBIKE" AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-102, Idaho Code, be, and the same is hereby amended to read as follows:

49-102. DEFINITIONS -- A.

(1) "Abandon" means to leave a vehicle on private property without the permission of the person having rights to the possession of the property, or on a highway or other property open to the public for the purposes of vehicular traffic or parking, or upon or within the right-of-way of any highway, for twenty-four (24) hours or longer.

(2) "Abandoned vehicle" means any vehicle observed by an authorized officer or reported by a member of the public to have been left within the limits of any highway or upon the property of another without the consent of the property owner for a period of twenty-four (24) hours or longer, except that a vehicle shall not be considered abandoned if its owner-operator is unable to remove it from the place where it is located and has notified a law enforcement agency and requested assistance.

(3) "Accident" means any event that results in an unintended injury or property damage attributable directly or indirectly to the motion of a motor vehicle or its load, a snowmobile or special mobile equipment.

(4) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or the vehicle moving.

(5) "Administrator" means the federal highway administrator, the chief executive of the federal highway administration, an agency within the U.S. department of transportation.

(6) "Age of a motor vehicle" means the age determined by subtracting the manufacturer's year designation of the vehicle from the year in which the designated registration fee is paid. If the vehicle has the same manufacturer's year designation as the year in which the fee is paid, or if a vehicle has a manufacturer's year designation later than the year in which the fee is paid, the vehicle shall be deemed to be one (1) year old.

(7) "Air-conditioning equipment" means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(8) "Alcohol or alcoholic beverage" means:

(a) Beer as defined in 26 U.S.C. section 5052(a), of the ~~i~~Internal ~~r~~Revenue ~~c~~Code;

(b) Wine of not less than one-half of one ~~per-cent~~ percent (.005%) of alcohol by volume; or

(c) Distilled spirits as defined in section 5002(a)(8), of the ~~i~~Internal ~~r~~Revenue ~~c~~Code.

(9) "Alley" means a public way of limited use intended only to provide access to the rear or side of lots or buildings in urban districts.

(10) "All-terrain vehicle" or "ATV" means any recreation vehicle with ~~two~~ three (~~2~~3) or more tires, weighing under ~~six~~ eight hundred fifty (6850) pounds, forty-eight (48) inches or less ~~than forty-eight (48) inches~~ in width, having a wheelbase of sixty-one (61) inches or less, traveling on low-pressure tires of ~~less than five~~ ten (510) psi or less.~~,--and designed to be ridden by one (1) person.~~ Such vehicles shall be registered under the provisions of section 49-402, Idaho Code, for operation on public highways, unless exempted under the provisions of section 49-426, Idaho Code.

(11) "Amateur radio operator." (See "Radio operator, amateur," section 49-119, Idaho Code)

(12) "Ambulance" means a motor vehicle designed and used primarily for the transportation of injured, sick, or deceased persons, on stretchers, cots, beds, or other devices for carrying persons in a prone position.

(13) "Applicant" means an individual who applies to obtain, transfer, upgrade, or renew a driver's license.

(14) "Approved driver training course" means a training course from a school licensed under the provisions of chapter 21 of this title.

(15) "Approved testing agency" means a person, firm, association, partnership or corporation approved by the director of the Idaho state police which is:

(a) In the business of testing equipment and systems;

(b) Recognized by the director as being qualified and equipped to do experimental testing; and

(c) Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry.

(16) "Armed forces" means the army, navy, marine corps, coast guard and the air force of the United States.

(17) "Authorized emergency vehicle." (See "Vehicle," section 49-123, Idaho Code)

(18) "Authorized officer" means any member of the Idaho state police, or any regularly employed and salaried deputy sheriff, or other county employee designated to perform the function of removing abandoned vehicles or junk vehicles by the board of county commissioners of the county in which a vehicle is located, or any regularly employed and salaried city peace officer or other city employee designated to perform the function of removing abandoned vehicles or junk vehicles by the city council, or a qualified person deputized or appointed by the proper authority as reserve deputy sheriff or city policeman, authorized within the jurisdiction in which the abandoned vehicle or junk vehicle is located.

(19) "Authorized transportation department employee" means any employee appointed by the board to perform duties relating to enforcement of vehicle laws as have been specifically defined and approved by order of the board (see section 40-510, Idaho Code).

(20) "Auto transporter" means a vehicle combination constructed for the purpose of transporting vehicles.

SECTION 2. That Section 63-3622R, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622R. MOTOR VEHICLES, USED MANUFACTURED HOMES, VESSELS, ALL-TERRAIN VEHICLES, TRAILERS, OFF-ROAD MOTORCYCLES AND SNOWMOBILES. There are exempted from the taxes imposed by this chapter:

(a) Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), motorcycles intended for off-road use and snowmobiles, for use outside of this state even though delivery be made within this state, but only when:

(1) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles or trailers will be taken from the point of delivery in this state directly to a point outside this state; and

(2) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles and trailers will be registered immediately under the laws of another state, will be titled in another state if required to be titled in that state, will not be used in this state more than sixty (60) days in any twelve (12) month period, and will not be required to be titled under the laws of this state.

(3) For the purpose of this subsection (a), the term "all-terrain vehicle" or "ATV" means any recreational vehicle with ~~two~~ three (~~2~~3) or more tires, weighing under ~~six~~ eight hundred fifty (~~68~~50) pounds, forty-eight (48) inches or less ~~than forty-eight (48) inches~~ in width, having a wheelbase of sixty-one (61) inches or less, traveling on low-pressure tires of ~~less than seven~~ ten (~~7~~10) psi or less.~~, and designed to be ridden by one (1) person.~~

(4) For the purpose of this section, the term "vessel" means any boat intended to carry one (1) or more persons upon the water which is either:

(i) Sold together with a motor, or

(ii) Eleven (11) feet in length or more, but shall not include canoes, kayaks or inflatable boats, unless such canoes, kayaks or inflatable boats are sold together with a motor.

(b) Sale of used manufactured homes, whether or not such used manufactured homes are sold for use outside this state, and whether or not such used manufactured homes are sold by a dealer. Every manufactured home sale after its sale as a "new manufactured home," as defined in section 63-3606, Idaho Code, is a sale as a used manufactured home.

(c) Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan or similar proportional or pro rata registration system, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under such proportional or pro rata registration system when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any calendar year, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any calendar year.

(d) The use or other consumption of a motor vehicle temporarily donated to a driver's education program sponsored by a nonprofit educational institution as defined in section 63-3622O, Idaho Code.

SECTION 3. That Section 67-7101, Idaho Code, be, and the same is hereby amended to read as follows:

67-7101. DEFINITIONS. In this chapter:

(1) "All-terrain vehicle (ATV)" means any recreation vehicle with ~~two~~ three (~~2~~3) or more tires, under ~~six~~ eight hundred fifty (~~68~~50) pounds and forty-eight (48) inches or less ~~than forty-eight (48) inches~~ in width, having a wheelbase of sixty-one (61) inches or less, traveling on low-pressure tires~~, less than five (5)~~ of ten (10) psi or less.~~, and designed to be ridden by one (1) person.~~

(2) "Board" means the park and recreation board created under authority of section 67-4221, Idaho Code.

(3) "Bona fide snowmobile program" means services or facilities as approved by the department that will benefit snowmobilers such as snowmobile trail grooming, plowing and maintaining snowmobile parking areas and facilities, and trail signing.

(4) "Dealer" means any person who engages in the retail sales of or rental of snowmobiles, motorbikes, or all-terrain vehicles.

(5) "Department" means the Idaho department of parks and recreation.

(6) "Designated parking area" means an area located, constructed, maintained, and signed with the approval of the land manager or owner.

(7) "Director" means the director of the department of parks and recreation.

(8) "Highway." (See section 40-109, Idaho Code, but excepting public roadway as defined in this section).

(9) "Motorbike" means any self-propelled two (2) ~~or three (3)~~ wheeled motorcycle or motor-driven cycle, excluding tractor, designed for or capable of traveling off developed roadways and highways and also referred to as trailbikes, enduro bikes, trials bikes, ~~motorcross~~ motocross bikes or dual purpose motorcycles.

(10) "Operator" means any person who is in physical control of a motorbike, all-terrain vehicle, or snowmobile.

(11) "Owner" means every person holding record title to a motorbike, all-terrain vehicle, or snowmobile and entitled to the use or possession thereof, other than a lienholder or other person having a security interest only.

(12) "Person" means an individual, partnership, association, corporation, or any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(13) "Public roadway" means all portions of any highway which are controlled by an authority other than the Idaho transportation department.

(14) "Snowmobile" means any self-propelled vehicle under one thousand (1,000) pounds unladened gross weight, designed primarily for travel on snow or ice or over natural terrain, which may be steered by tracks, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Idaho.

(15) "Vendor" means any entity authorized by the department to sell recreational registrations.

(16) "Winter recreational parking locations" means designated parking areas established and maintained with funds acquired from the cross-country skiing account.

Approved March 17, 2003.

## CHAPTER 88
## (H.B. No. 216)

### AN ACT

RELATING TO CERTIFIED SHORTHAND REPORTERS; AMENDING SECTION 54-3110, IDAHO CODE, TO REVISE MAXIMUM RENEWAL FEES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-3110, Idaho Code, be, and the same is hereby amended to read as follows:

54-3110. FEES. The board shall be entitled to charge and collect the following fees:

(a) The sum of fifty dollars ($50.00) as an application fee for any temporary or regular certificate.

(b) The sum of fifty dollars ($50.00) as an examination fee for the administration of the reporters' examination to any applicant.

(c) A sum not to exceed ~~forty~~ seventy-five dollars ($~~40~~75.00) as a renewal fee for any regular or temporary certificate.

(d) A sum not to exceed forty dollars ($40.00) as a reinstatement fee for any application for reinstatement of a temporary or regular certificate which has been revoked or suspended.

(e) The failure to renew a certificate annually as provided in this section and sections 54-3108 and 54-3109, Idaho Code, shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the due date shall be increased twenty ~~per--cent~~ percent (20%) for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the renewal fee for each year delinquent.~~, but in no event more than one hundred dollars ($100).~~

Approved March 17, 2003.

## CHAPTER 89
## (H.B. No. 225)

### AN ACT

RELATING TO INCOME TAX CREDITS; AMENDING SECTION 63-3029I, IDAHO CODE, TO CLARIFY THAT THE TAX CREDIT FOR INVESTMENT IN BROADBAND EQUIPMENT IS TRANSFERABLE ONLY BY THE TAXPAYER WHO EARNED THE CREDIT AND TO PROVIDE FOR THE TRANSFER; AMENDING SECTION 63-3029J, IDAHO CODE, TO CLARIFY THAT THE INCENTIVE INVESTMENT TAX CREDIT IS TRANSFERABLE ONLY BY THE TAXPAYER WHO EARNED THE CREDIT; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

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

63-3029I. INCOME TAX CREDIT FOR INVESTMENT IN BROADBAND EQUIPMENT. (1) Subject to the limitations of this section, for taxable years beginning between January 1, 2001, and December 31, 2005, inclusive, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, for qualified expenditures in qualified broadband equipment in Idaho.

(2) The credit permitted in subsection (1) of this section shall be three percent (3%) of the qualified investment in qualified broadband

equipment in Idaho and shall be in addition to the credit for capital investment permitted by section 63-3029B, Idaho Code.

(3) As used in this section the term:

(a) "Qualified investment" shall be as defined in section 63-3029B, Idaho Code.

(b) "Qualified broadband equipment" means equipment that qualifies for the credit for capital investment permitted by section 63-3029B, Idaho Code, and is capable of transmitting signals at a rate of at least two hundred thousand (200,000) bits per second to a subscriber and at least one hundred twenty-five thousand (125,000) bits per second from a subscriber, and

(i) In the case of a telecommunications carrier, such qualifying equipment shall be necessary to the provision of broadband service and an integral part of a broadband network. "Telecommunications carrier" has the meaning given such term by section 3(44) of the communications act of 1934, as amended, but does not include a commercial mobile service provider.

(ii) In the case of a commercial mobile service carrier, such qualifying equipment shall extend from the subscriber side of the mobile telecommunications switching office to a transmitting/receiving antenna, including such antenna, on the outside of the structure in which the subscriber is located. "Commercial mobile service carrier" means any person authorized to provide commercial mobile radio service to subscribers as defined in section 20.3 of title 47, Code of Federal Regulations (10-1-99 ed.), as amended.

(iii) In the case of a cable or open video system operator, such qualifying equipment shall extend from the subscriber's side of the headend to the outside of the structure in which the subscriber is located. The terms "cable operator" and "open video system operator" have the meanings given such terms by sections 602(5) and 653, respectively, of the communications act of 1934, as amended.

(iv) In the case of a satellite carrier or a wireless carrier other than listed above, such qualifying equipment is only that equipment that extends from a transmitting/receiving antenna, including such antenna, which transmits and receives signals to or from multiple subscribers to a transmitting/receiving antenna on the outside of the structure in which the subscriber is located. "Satellite carrier" means any person using the facilities of a satellite or satellite services licensed by the federal communications commission and operating a fixed-satellite service or direct broadcast satellite services to provide point-to-multipoint distribution of signals. "Other wireless carrier" means any person, other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video operator, or satellite carrier, providing broadband services to subscribers through the radio transmission of energy.

(v) In the case of packet switching equipment, such packet equipment installed in connection with other qualifying equipment listed in subsections (2)(b)(i) through (2)(b)(iv) of this section, provided it is the last in a series of equipment that transmits signals to a subscriber or the first in a series of

equipment that transmits signals from a subscriber. "Packet switching" means controlling or routing the path of a digital transmission signal which is assembled into packets or cells.

(vi) In the case of multiplexing and demultiplexing equipment, such equipment only to the extent that it is deployed in connection with providing broadband services in locations between packet switching equipment and the structure in which the subscriber is located. "Multiplexing" means the transmission of two (2) or more signals over a communications circuit without regard to the communications technology.

(vii) Any property not primarily used to provide services in Idaho to public subscribers is not qualified broadband equipment.

(4) No equipment described in subsections (2)(b)(i) through (2)(b)(vi) of this section shall qualify for the credit provided in subsection (1) of this section until the taxpayer applies to and obtains from the Idaho public utilities commission an order confirming that the installed equipment is qualified broadband equipment. Applications submitted to the commission shall be governed by the commission's rules of procedure. The commission may issue procedural orders necessary to implement this section.

(5) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (7) of this section shall not, in any one (1) taxable year, exceed the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Seven hundred fifty thousand dollars ($750,000).

When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(6) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (7) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (5) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(8) In the event that qualified broadband equipment upon which the credit allowed by this section has been used ceases to qualify for the credit allowed by section 63-3029B, Idaho Code, or is subject to recapture of that credit, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(9) (a) Subject to the requirements of this subsection, a taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer all or a portion of the unused credit to:

(i) Another taxpayer required to file a return under this chapter; or

(ii) To an intermediary for its use or for resale to a taxpayer required to file a return under this chapter.

In the event of either such a transfer, the transferee may claim the credit on the transferee's income tax return originally filed during the calendar ~~year in which~~ the transfer takes place and, in the case of carryover of the credit, on the transferee's returns for the number of years of carryover available to the transferor at the time of the transfer unless earlier exhausted.

(b) Before completing a transfer under this subsection, the transferor shall notify the state tax commission of its intention to transfer the credit and the identity of the transferee. The state tax commission shall provide the transferor with a written statement of the amount of credit available under this section as then appearing in the commission's records and the number of years the credit may be carried over. The transferee shall attach a copy of the statement to any return in regard to which the transferred credit is claimed.

(c) In the event that after the transfer the state tax commission determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit or that the credit is subject to recapture, the commission shall assess the amount of overstated or recaptured credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under this chapter.

(10) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

SECTION 2. That Section 63-3029J, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029J. INCENTIVE INCOME TAX INVESTMENT CREDIT. (1) Subject to the limitations of this section, for taxable year 2001 only, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount allowed by subsection (2) of this section for qualified investments in Idaho. The credit shall be in addition to the credit for capital investment permitted by section 63-3029B, Idaho Code.

(2) The credit permitted in subsection (1) of this section shall be at the percentage rate determined under either subsection (2)(a) or (2)(b) of this section at the election of the taxpayer.

(a) (i) One-half (1/2) of the amount by which the average three-year unemployment rate in the county in which the property is located exceeds six percent (6%). In the case of mobile property, the property shall be located in the county in which it is primarily based.

(ii) For purposes of this section the director of the department of labor shall, on or before the first day of September of each calendar year, establish and certify to the state tax commission the average three-year unemployment rate in each county

in Idaho for the immediately preceding three (3) calendar years. The rates thus certified shall apply to the calculation of the credit under subsection (2)(a)(i) of this section for property qualifying in the taxable year beginning during the next calendar year.

(b) (i) One-tenth of one percent (.1%) for each full percent that the three-year average per capita personal income level in the county in which the property is located is below ninety percent (90%) of the average statewide per capita personal income level.

(ii) For purposes of this section the director of the department of commerce shall, on or before the first day of September of each calendar year, establish and certify to the state tax commission the most current three-year average per capita personal income level in each county in Idaho and the statewide per capita personal income level for the most current preceding three (3) calendar years. The levels thus certified shall apply to the calculation of the credit under subsection (2)(b)(i) of this section for property qualifying in the taxable year beginning during the next calendar year.

(3) As used in this section the term "qualified investment" shall be defined as in section 63-3029B, Idaho Code.

(4) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (6) of this section shall not exceed in any one (1) taxable year the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Five hundred thousand dollars ($500,000).

(5) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (6) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(6) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (4) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(7) In the event that property upon which the credit allowed by this section has been used ceases to qualify for the credit allowed by section 63-3029B, Idaho Code, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(8) (a) Subject to the requirements of this subsection, a taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer the unused credit to another taxpayer required to file a return under this chapter.

(b) Before completing a transfer under this subsection, the transferor shall notify the state tax commission of its intention to transfer the credit and the identity of the transferee. The state

tax commission shall provide the transferor with a written statement of the amount of credit available under this section as then appearing in the commission's records and the number of years the credit may be carried over. The transferor shall provide the transferee with the original statement. The transferee shall attach a copy of the statement to any return in regard to which the transferred credit is claimed.

(c) In the event that after the transfer the state tax commission determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit and shown in the statement described in subsection (8)(b) of this section or that the credit is subject to recapture, the commission shall assess the amount of overstated credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under this chapter.

(9) In addition to other needed rules, the state tax commission may promulgate rules prescribing:

(a) In the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

(b) A requirement that a transferor under subsection (8) of this section, prior to obtaining the written statement provided in subsection (8)(b) of this section, post such bond or security as the state tax commission may require to secure any liability referred to in subsection (8)(c) of this section. Such rules shall provide an opportunity for a taxpayer, upon a showing of financial responsibility, to have the bond waiver, for notice of denial of waiver in accordance with section 63-3045, Idaho Code, and for review in accordance with section 63-3045B, Idaho Code.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2003.

Approved March 17, 2003.

## CHAPTER 90
## (H.B. No. 233)

### AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1410, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE ELECTION OF FIRE PROTECTION DISTRICT COMMISSIONERS.

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

SECTION 1. That Section 31-1410, Idaho Code, be, and the same is hereby amended to read as follows:

31-1410. ELECTION OF COMMISSIONERS. (1) On the first Tuesday following the first Monday of November, following the organization of a

fire protection district, three (3) fire protection district commissioners shall be elected. Every year thereafter, one (1) commissioner shall be elected, except for the fourth year when no election of a fire commissioner shall occur. The board of fire protection commissioners shall have power to make such regulations for the conduct of such election as are consistent with the statutory provisions of chapter 14, title 34, Idaho Code. At their meeting next preceding such election, the board of fire protection commissioners shall divide the district into three (3) subdistricts as nearly equal in population, area and mileage as practicable, to be known as fire protection commissioners subdistricts one (1), two (2) and three (3). Thereafter, at the January meeting of the board of fire protection commissioners preceding any regularly scheduled election, such subdistricts shall be revised but, of the commissioners comprising the board, not more than one (1) commissioner shall be an elector of the same fire protection commissioners subdistrict. The revision of subdistricts shall not disqualify any elected commissioner from the completion of the term for which he or she has been duly elected. At the first election following organization of a fire protection district the commissioner from fire protection subdistrict one (1) shall be elected to a term of one (1) year, the commissioner from subdistrict two (2) shall be elected to a term of two (2) years, and the commissioner from fire protection subdistrict three (3) shall be elected to a term of three (3) years; thereafter the term of office of all commissioners shall be four (4) years. Such elections and all other elections held under this law, shall be held in conformity with the general laws of the state including chapter 14, title 34, Idaho Code.

(2) Upon the unanimous agreement of the existing board of commissioners, a fire protection district whose terms and elections were established by prior law may elect to convert to the election of commissioners as provided in subsection (1) of this section. ~~The--conversion process shall occur in the following manner: the commissioner representing--subdistrict--one--(1) shall be elected to a four (4) year term upon the expiration of the existing term; the commissioner representing--subdistrict--two--(2) shall be elected to a four (4) year term upon expiration of the existing term; and the commissioner representing subdistrict three (3) shall serve one (1) additional year of the existing--term--and shall then be elected to a four (4) year term. Every year thereafter one (1)--commissioner shall be elected~~ A fire district may adopt any conversion schedule reflecting the intent of the schedule provided in subsection (1) of this section, so long as one (1) commissioner is elected each year, except for the fourth year when no election shall be held. The conversion schedule shall not result in the extension of the term of office of any commissioner serving at the time of the conversion.

(3) In any election for fire protection district commissioner, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a subdistrict to be filled, it shall not be necessary for the candidate of that subdistrict to stand for election, and the board of the fire protection district shall declare such candidate elected as commissioner, and the secretary of the district shall immediately make and deliver to such person a certificate of election.

The results of any election for fire protection district commissioner shall be certified to the county clerk of the county or counties in which the district is located.

Approved March 17, 2003.

## CHAPTER 91
## (H.B. No. 247)

AN ACT

RELATING TO THE BROADCAST OF EMERGENCY INFORMATION; AMENDING CHAPTER 3, TITLE 5, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 5-340, IDAHO CODE, TO PROVIDE FOR THE CIVIL IMMUNITY OF RADIO AND TELEVISION BROADCASTING ORGANIZATIONS PARTICIPATING IN THE AMBER ALERT SYSTEM.

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

SECTION 1. That Chapter 3, Title 5, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 5-340, Idaho Code, and to read as follows:

5-340. IMMUNITY OF RADIO AND TELEVISION BROADCASTING ORGANIZATIONS PARTICIPATING IN THE AMBER ALERT SYSTEM. No cause of action shall be maintained for civil damages in any court of this state against any radio or television broadcast organization, or the employees, officers, directors, managers or agents of such radio or television broadcast organization, based on the broadcast of information supplied by state law enforcement officials pursuant to the voluntary broadcast notification system commonly known as the "Amber Alert," which is used to notify the public of missing or abducted children.

Approved March 17, 2003.

## CHAPTER 92
## (H.B. No. 253)

AN ACT

RELATING TO PENALTIES FOR VIOLATION OF RECREATION LAWS; AMENDING SECTION 67-7129, IDAHO CODE, TO PROVIDE FOR INFRACTION PENALTIES FOR VIOLATIONS OF CERTAIN STATUTES OR RULES OF THE DEPARTMENT OF PARKS AND RECREATION.

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

SECTION 1. That Section 67-7129, Idaho Code, be, and the same is hereby amended to read as follows:

67-7129. PENALTIES. Unless otherwise specifically provided, a~~A~~ny violation of the provisions of ~~sections 67-7122 through 67-7128, Idaho Code~~ this chapter or any rule promulgated by the department pursuant to this chapter, shall be ~~deemed a violation subject to a fine of not less than ten dollars ($10.00) and not more than two hundred dollars ($200) plus standard court costs~~ an infraction and be punished as provided in section 18-111, Idaho Code.

Approved March 17, 2003.

CHAPTER 93
(H.B. No. 267)

AN ACT

RELATING TO THE IDAHO BOND BANK AUTHORITY; AMENDING SECTION 67-8705, IDAHO CODE, TO PROVIDE THE AUTHORITY THE POWER AND DUTY TO FACILITATE THE PURCHASE OF NOTES FROM MUNICIPALITIES TO BE UTILIZED BY A MUNICIPALITY IN PURCHASING, LEASING OR LEASE-PURCHASING TANGIBLE PERSONAL PROPERTY WHEN THE NOTE WAS OTHERWISE LEGALLY ISSUED AND AUTHORIZED BY A MUNICIPALITY AND THE PURCHASE OF THE NOTE FROM A MUNICIPALITY DOES NOT VIOLATE THE STATE CONSTITUTION.

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

SECTION 1. That Section 67-8705, Idaho Code, be, and the same is hereby amended to read as follows:

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; or

(h) Facilitating the purchase of notes from municipalities to be utilized by a municipality in purchasing, leasing or lease-purchasing tangible personal property when the note was otherwise legally issued and authorized by a municipality and the purchase of the note from a municipality does not violate the state constitution.

(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.

Approved March 17, 2003.

## CHAPTER 94
## (H.B. No. 268)

### AN ACT

RELATING TO POLITICAL PARTIES; AMENDING SECTION 34-707, IDAHO CODE, TO PROVIDE THAT A STATE CONVENTION SHALL BE HELD BY EACH POLITICAL PARTY IN EACH ELECTION YEAR AT A TIME AND PLACE DETERMINED BY THE STATE CENTRAL COMMITTEE; AND AMENDING SECTION 34-711, IDAHO CODE, TO PROVIDE THAT THE NAMES OF THE PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES AND PRESIDENTIAL ELECTORS OF A POLITICAL PARTY SHALL BE CERTIFIED TO THE SECRETARY OF STATE ON OR BEFORE SEPTEMBER 1 UNLESS A FIVE DAY EXTENSION IS GRANTED BY THE SECRETARY OF STATE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 34-707, Idaho Code, be, and the same is hereby amended to read as follows:

34-707. PARTY CONVENTIONS. A state convention shall be held by each political party in each election year ~~during the final two (2) weeks of the month of June of said year~~ at a time and place determined by the state central committee. The state central committee chairman shall preside and cause notice to be given to each legislative district central committee and each county central committee at the earliest possible date.

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

At their convention each political party may:

(1) Adopt and write a party platform.

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

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

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

SECTION 2. That Section 34-711, Idaho Code, be, and the same is hereby amended to read as follows:

34-711. CERTIFICATION OF CANDIDATES FOR PRESIDENT, ~~VICE-PRESIDENT~~ VICE PRESIDENT AND PRESIDENTIAL ELECTORS. The state chairman of each political party shall certify the names of the presidential and vice-presidential candidates and presidential electors to the secretary of state on or before September 1, unless a five (5) day extension is granted by the secretary of state, in order for them to appear on the general election ballot. The secretary of state shall certify such candidates to the county clerks at the same time as certification of political party candidates nominated for state and federal offices by the voters in the primary election.

Approved March 17, 2003.

## CHAPTER 95
## (S.B. No. 1056)

AN ACT

RELATING TO THE BOARD OF SCALING PRACTICES; AMENDING SECTION 38-1207, IDAHO CODE, TO REDUCE MINIMUM NUMBER OF REQUIRED MEETINGS OF THE BOARD OF SCALING PRACTICES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 38-1207, Idaho Code, be, and the same is hereby amended to read as follows:

38-1207. MEETINGS -- OFFICERS -- QUORUM. The board shall hold a meeting within thirty (30) days after its members are first appointed and thereafter shall hold at least ~~four (4)~~ two (2) regular meetings each year. The rules ~~and regulations~~ may provide for such additional regular meetings and for special meetings. Notice of all meetings shall be given as may be provided in the rules. ~~and regulations.~~ The director of the department of lands shall be chairman of the state board of scaling practices and the board shall annually elect a ~~vicechairman~~ vice-chairman and a secretary, who shall be members of the board. Four (4) members shall constitute a quorum.

Approved March 17, 2003.

CHAPTER 96
(H.B. No. 132)

AN ACT

RELATING TO THE IDAHO PETROLEUM CLEAN WATER TRUST FUND ACT; AMENDING SECTION 9-340F, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS; AMENDING SECTION 41-4903, IDAHO CODE, TO REVISE DEFINITIONS, TO REMOVE THE DEFINITION FOR "MANAGER" AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 41-4904, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO REMOVE LANGUAGE PROVIDING THAT THE MANAGER SHALL BE THE FUND TRUSTEE AND SHALL APPOINT AN ADMINISTRATOR, TO REMOVE LANGUAGE REQUIRING THE REVIEW AND APPROVAL OF CERTAIN APPROPRIATIONS BY THE STATE INSURANCE FUND, TO REMOVE LANGUAGE PROVIDING FOR A LINE OF CREDIT, APPROPRIATIONS AND SUBORDINATED INDEBTEDNESS, TO REMOVE LANGUAGE REQUIRING THE APPROVAL OF THE MANAGER OR TRUSTEE FOR CERTAIN ACTIONS, TO REMOVE LANGUAGE PROVIDING FOR ADMINISTRATOR LIABILITY AND TO PROVIDE CORRECT CODE CITATIONS; AMENDING CHAPTER 49, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-4904, IDAHO CODE, TO PROVIDE FOR THE APPOINTMENT OF A BOARD OF TRUSTEES OF THE FUND AND THE DESIGNATION OF THE STATE INSURANCE FUND AS THE ADMINISTRATOR TO SERVE AT THE PLEASURE OF THE BOARD AND UNLESS REPLACED BY THE BOARD, TO AUTHORIZE THE BOARD TO APPOINT AND EMPLOY PERSONS AS REQUIRED AND TO REQUIRE THE BOARD TO DIRECT THE POLICIES AND OPERATION OF THE FUND FOR SPECIFIED PURPOSES; AMENDING SECTION 41-4905, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 41-4906 AND 41-4907, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 41-4908, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 41-4909, 41-4909A AND 41-4910, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO PROVIDE CORRECT CODE CITATIONS; AMENDING SECTION 41-4910A, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTIONS 41-4911 AND 41-4911A, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO PROVIDE CORRECT CODE CITATIONS; AMENDING SECTIONS 41-4912 AND 41-4913, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 41-4914, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR PERPETUAL APPROPRIATION TO THE TRUST FUND; AMENDING SECTION 41-4915, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 41-4916, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT CODE CITATIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-4917, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 41-4918, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-4919, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO REMOVE OBSOLETE LANGUAGE; AMENDING SECTIONS 41-4920, 41-4921 AND 41-4922, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 41-4923, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REMOVE LANGUAGE REFERENCING A TRUSTEE OF THE TRUST FUND; AMENDING SECTION 41-4924, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 41-4924A, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE A CORRECT CODE CITATION; REPEALING SECTION 41-4926, IDAHO CODE, RELATING TO THE FILING OF DOCUMENT OF ORGANIZATION; AMENDING SECTION 41-4925, IDAHO CODE, TO REDESIGNATE THE SEC-

TION AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 41-4930, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO REMOVE LANGUAGE REFERRING TO THE MANAGER OF THE STATE INSURANCE FUND AS TRUSTEE UNDER CONTRACT TO ADMINISTER FUND OPERATIONS; AMENDING SECTION 41-4931, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-4932, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REMOVE A REFERENCE TO EXCLUSIVE MANAGEMENT CONTRACT AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-4933, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 41-4934, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 41-4935, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-4936, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 41-4937, 41-4938 AND 41-4939, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-4940, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 41-4941, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 41-4942, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REMOVE LANGUAGE REFERENCING MANAGER OVERSIGHT; AMENDING SECTION 41-4943, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 41-4944, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-4945, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-4946, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-4947, IDAHO CODE, TO REDESIGNATE THE SECTION; REPEALING SECTION 41-4948, IDAHO CODE, RELATING TO LEGISLATIVE REVIEW OF THE FUND PROGRAM; AMENDING CHAPTER 49, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-4945, IDAHO CODE, TO PROVIDE FOR IMMUNITY FROM PERSONAL LIABILITY; AMENDING CHAPTER 49, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-4946, IDAHO CODE, TO PROVIDE THAT ACTIONS AGAINST THE FUND, ITS EMPLOYEES AND THE ADMINISTRATOR ARE SUBJECT TO THE IDAHO TORT CLAIMS ACT; AND AMENDING SECTIONS 63-2427A AND 63-2427B, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS.

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 41-490~~4~~5, 41-490~~8~~9, 41-491~~0~~1A, 41-491~~1~~2 or 41-491~~1~~2A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department 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 41-491~~8~~9, 41-492~~4~~5A, 41-493~~1~~28, 41-493~~3~~0, 41-493~~5~~2, 41-494~~0~~37 or 41-494~~1~~38, Idaho Code.

SECTION 2. That Section 41-4903, Idaho Code, be, and the same is hereby amended to read as follows:

41-4903. DEFINITIONS. For the purposes of this chapter:

(1) "Aboveground storage tank" means any one (1) or a combination of tanks, including pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of pipes connected thereto, is less than ten percent (10%) beneath the surface of the ground. This term does not include a heating tank, farm tank or residential tank or any tank with a capacity of one hundred ten (110) gallons or less.

(2) "Accidental release" means any sudden or nonsudden release of petroleum from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

(3) "Administrator" means ~~a--person,--other--than-the-trustee~~ the state insurance fund or any person employed by the board of trustees to replace the state insurance fund, employed by the ~~trustee~~ board to administer the Idaho petroleum clean water trust fund.

(4) "Application fee" means the amount paid or payable by an owner or operator applying for a contract of insurance with the trust fund to

offset the costs of issuing contracts of insurance and other costs of administering this fund.

(5) "Board" means the board of ~~directors of the state insurance fund as established by section 72-901, Idaho Code~~ trustees appointed by the governor.

(6) "Bodily injury" means any bodily injury, sickness, disease or death sustained by any person and caused by an occurrence defined in subsection (19) of this section.

(7) "Contamination" means the presence of petroleum or petroleum products in surface or subsurface soil, surface water, or ground water.

(8) "Commission" means the state tax commission of the state of Idaho.

(9) "Corrective action" means those actions as are reasonably necessary to satisfy applicable federal and state standards in the event of a release into the environment from a petroleum storage tank. Corrective action includes initial corrective action response or actions consistent with a remedial action to clean up contaminated soil and ground water or address residual effects after initial corrective action is taken, as well as actions necessary to monitor, assess and evaluate a release. Corrective action also includes the cost of removing a tank which is releasing or has been releasing petroleum products and the release cannot be corrected without removing the tank; but corrective action does not include the cost of replacing this tank with another tank.

(10) "Department" means the department of insurance of the state of Idaho.

(11) "Director" means the director of the department of insurance.

(12) "Farm tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(13) "Free product" means petroleum or petroleum products in the nonaqueous phase, (e.g., liquid not dissolved in water).

(14) "Fund" or "trust fund" means the Idaho petroleum clean water trust fund.

(15) "Heating tank" means any tank with a capacity of more than one hundred ten (110) gallons situated above ground or underground which is used for storing heating oil for consumptive use on the premises where stored.

(16) "Legal defense costs" means any expense that an owner or operator or the trust fund incurs in defending against claims or actions brought by the federal environmental protection agency or a state agency to require corrective action or to recover the costs of corrective action; or by or on behalf of a third party for bodily injury or property damage caused by a release.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code. If a person subject to the fee imposed by section 41-4908~~9~~(6~~7~~), Idaho Code, is not required to obtain a distributor's license under the provisions of chapter 24, title 63, Idaho Code, such person shall apply to the commission for a limited license for the purpose of complying with the

requirements of this chapter. Such a limited license shall not be valid for any other purpose. No bond shall be required for a limited license. A holder of a limited license is a "licensed distributor" for the purposes of filing reports, paying fees and other actions necessary to the proper administration and enforcement of this chapter.

(18) ~~"Manager" means the duly appointed manager of the state insurance fund of the state of Idaho.~~

~~(19)~~ "Noncommercial purposes" means not for resale, with respect to motor fuels.

(~~20~~19) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which resulted in a release into the environment of petroleum products from a petroleum storage tank.

(2~~1~~0) "Operator" means any person in control, or having responsibility for, the daily operations of a petroleum storage tank.

(2~~2~~1) "Owner" means the owner of a petroleum storage tank, except that "owner" does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect the owner's security interest in the tank.

(2~~3~~2) "Person" means any corporation, association, partnership, one (1) or more individuals, or any governmental unit, or agency thereof, other than federal or state agencies.

(2~~4~~3) "Petroleum" and/or "petroleum products" mean crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure (i.e., at sixty (60) degrees fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). The term includes motor gasoline, gasohol, other alcohol blended fuels, diesel fuel, heating oil and aviation fuel.

(2~~5~~4) "Property damage" means injury or destruction to tangible property caused by an occurrence.

(2~~6~~5) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into ground water, surface water, or surface or subsurface soils.

(2~~7~~6) "Residential tank" means any tank with a capacity of more than one hundred ten (110) gallons but less than one thousand one hundred (1,100) gallons situated above ground or underground which is used for storing motor fuel for noncommercial purposes and which is located on property used primarily for dwelling purposes.

(2~~8~~7) "Site" means a single parcel of property where petroleum or petroleum products are stored in a petroleum storage tank and includes all contiguous land, structures, other appurtenances, surface water, ground water, surface and subsurface soil, and subsurface strata within and beneath the property boundary.

(2~~9~~8) "State" means the state of Idaho or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

(3~~0~~29) "Tank" means a stationary device designed to contain an accumulation of petroleum or petroleum products and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(3~~1~~0) "Trustees" means the trustees of the Idaho petroleum clean water trust fund, who ~~for the purposes of~~ are appointed by the governor pursuant to this chapter. ~~shall be the manager of the state insurance fund of the state of Idaho.~~

(3~~2~~1) "Underground storage tank" means any one (1) or combination of

tanks, including underground pipes connected thereto, that is used to contain an accumulation of petroleum or petroleum products, and the volume of which, including the volume of underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used solely for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility including gathering lines regulated under:

(i) The natural gas pipeline safety act of 1968 (49 U.S.C. app. 1671, et seq.); or

(ii) The hazardous liquid pipeline safety act of 1979 (49 U.S.C. app. 2001, et seq.); or

(iii) State laws comparable to the provisions of the law referred to in paragraph (d)(i) or (d)(ii) of this subsection as an intrastate pipeline facility;

(e) Surface impoundment, pit, pond or lagoon;

(f) Storm water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

(j) Tanks with a capacity of one hundred ten (110) gallons or less.

The term "underground storage tank" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

(3~~3~~2) "Underground storage tank regulations" means regulations for petroleum storage tanks promulgated by the United States environmental protection agency (EPA) pursuant to subtitle I of the solid waste disposal act, as amended by the resource conservation and recovery act, regulations promulgated by the state of Idaho as part of a state program for underground storage tank regulation under subtitle I, or other regulations affecting underground storage tank operations and management, including the international fire code adopted by the state of Idaho.

SECTION 3. That Section 41-4904, Idaho Code, be, and the same is hereby amended to read as follows:

41-4904~~5~~. CREATION, AUTHORIZATION AND MANAGEMENT OF THE IDAHO PETROLEUM CLEAN WATER TRUST FUND. (1) The Idaho petroleum clean water trust fund is hereby created, subject to the direction and supervision of the board, and the ~~manager of the state insurance fund~~ administrator is hereby authorized to utilize this trust fund for the purpose of insuring governmental and private entities who are owners and operators of petroleum storage tanks against the costs of corrective action and compensating third parties that are legally entitled to receive compensation for bodily injury and property damage arising out of accidental releases of petroleum from petroleum storage tanks covered by a contract of insurance between the owner or operator and the trust fund. ~~The man-~~

~~ager shall be the trustee of this fund, and shall appoint an administrator of this fund who shall be an employee of the state insurance fund.~~

(2) Nothing in this chapter shall enlarge or otherwise adversely affect the legal liability of any legal entity insured by the trust fund, and any immunity or other bar to a civil lawsuit under Idaho or federal law shall remain in effect. The fact that the trust fund insures the legal liability of any legal entity and thus may relieve the entity or an employee of the entity from the payment of any judgment arising from a civil lawsuit, shall not be communicated to the trier of fact in such a lawsuit.

(3) The trust fund shall consist of all application fees and all transfer fees collected pursuant to section 41-49~~08~~9, Idaho Code, all other moneys received and paid into the trust fund, property and securities acquired by or through the use of money belonging to the trust fund, money loaned to the trust fund under the terms and agreements of a subordinated note of indebtedness or borrowed surplus as hereinafter defined and authorized, and of interest earned on money and securities owned or in the possession of the trust fund under an agreement that such investment earnings can accrue to the benefit of the trust fund.

(4) The trust fund shall have the powers and privileges of a nonprofit corporate entity and in its name may sue and be sued in any court of competent jurisdiction, and may lease and maintain offices and space for its departmental and operational facilities, subject to the provisions of chapters 6 and 7, title 41, Idaho Code.

(5) ~~(a) The personnel costs, operating expenditures and capital outlay budget of the trust fund shall be subject to review and approval in the appropriation of the state insurance fund, and it is the intent of this chapter that the trust fund be a self-supporting insurance fund, so that no appropriations, loans, or other transfers of state funds need to be made to the trust fund except as follows:~~

~~(i) A temporary line of credit for the initial start-up costs of the trust fund may be obtained as provided in paragraph (b) of this subsection; and~~

~~(ii) A temporary line of credit to offset any temporary shortages in the operating fund balance of the trust fund may be obtained as provided in paragraph (b) of this subsection.~~

~~(b) There is hereby established a temporary line of credit to be drawn from the state general account to the trust fund account in the amount of one million dollars ($1,000,000). This amount of money is continuously appropriated for the purposes of this chapter. The temporary line of credit may be drawn upon by the trust fund only during the first eighteen (18) months after the effective date of this chapter and only for the purpose of financing the initial start-up costs of the trust fund and any temporary shortages in the operating fund balance of the trust fund. The manager may draw upon all or part of the temporary line of credit, as shall be required. The money advanced from the state general account shall be repaid with interest from surplus moneys in the trust fund to the general account within one (1) year from the date the trust fund commences to issue contracts of insurance. Interest of ten percent (10%) per annum shall be calculated upon the principal amount outstanding each month until repaid.~~

~~(c) In the event the trust fund is unable to repay the funds drawn from the state general account under the temporary line of credit~~

~~established under paragraph (b) of this subsection due to the dissolution of the trust fund pursuant to a court order, then an amount necessary to repay the line of credit shall be appropriated by the next regular session of the state legislature.~~

~~(d) Funds obtained from the temporary line of credit shall constitute a subordinated indebtedness subject to the provisions of section 41-4943, Idaho Code.~~

~~(6)~~ The ~~manager of the state insurance fund, as trustee of the trust fund,~~ administrator shall enter into a management and administrative contract with the ~~state insurance~~ trust fund to provide the following services: ~~to the trust fund:~~

(a) Administrative functions including the hiring of qualified personnel and the payment of salaries and wages earned, plus recordkeeping for the personnel hired to provide services for the trust fund.

(b) Accounting and recordkeeping of all receipts and disbursements of the trust fund.

(c) Underwriting functions of the trust fund to issue contracts of liability insurance and charge appropriate application fees under section 41-4908~~9~~, Idaho Code, for such contracts and keep accurate statistical records.

(d) Claims handling functions of the trust fund to process and pay appropriate claims in a prompt, fair and reasonable manner.

(e) Auditing functions of the trust fund to maintain accurate records of receipts and disbursements by the trust fund and accurate reporting of statistics by owners or operators of storage tanks covered by a contract of insurance issued by the trust fund.

(f) Actuarial functions of the trust fund to maintain credible and viable statistics, sufficient operating fund balances, and appropriate loss reserves.

(g) Computer and data processing functions to assist the trust fund in maintaining complete and accurate records in a timely manner and issue loss payments and other disbursements, as well as provide individual statistics and records of storage tanks covered by a contract of insurance issued by the trust fund.

(h) Computer programming functions to maintain a proficient and current data processing system for the trust fund.

(i) Legal services for the trust fund.

(j) Any and all other functions the ~~manager of the state insurance fund as trustee~~ administrator deems prudent and reasonable to assure the successful operation of the trust fund.

(~~7~~6) The Idaho petroleum clean water trust fund shall be administered without liability on the part of the state insurance fund or the state of Idaho beyond the amount of said trust fund.

(8~~7~~) The administrator~~, subject to the approval of the manager of the state insurance fund as trustee,~~ shall have the power to receive and account for all moneys paid into the trust fund, accept and evaluate applications for insurance coverage and issue the contracts of insurance and evaluate, investigate and adjust claims made against the trust fund and make agreements for corrective actions or compensation to third parties for bodily injury or property damage those parties may be legally entitled to receive from the trust fund in accordance with the provisions of this chapter.

(9~~8~~) The administrator~~, with the approval of the trustee,~~ shall

establish underwriting procedures to issue contracts of insurance and claim procedures. The administrator shall be given notice of all applications, hearings and proceedings involving the rights of the trust fund and shall represent the trust fund in all proceedings. The administrator's decisions shall be written, and shall include all reasons for his decisions and shall be subject to judicial review in the district court of Ada county; provided, however, that the administrator and the trust fund shall not be liable for alleged bad faith or other legal theories based on any method or timing of the claims processed on his decision.

(~~10~~9) The ~~manager of the state insurance fund~~ administrator may employ legal counsel or obtain legal counsel through the attorney general concerning all legal matters arising out of the existence and operation of the trust fund, including claims made against the contracts of insurance issued by the administrator of the trust fund.

(1~~1~~0) The ~~manager of the state insurance fund~~ administrator may also employ such employees or contract for such services as are necessary to assist in the administration of the trust fund, and all such administrative expenses incurred by the state insurance fund for the benefit of the trust fund shall be reimbursed by the trust fund.

~~(12) The administrator may, in his official capacity, sue and be sued in all courts of the state, and shall be entitled to a defense by the state of Idaho for any alleged acts of negligence that may arise out of his official duties as administrator and/or as an employee of the state of Idaho.~~

SECTION 4. That Chapter 49, 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 41-4904, Idaho Code, and to read as follows:

41-4904. BOARD OF TRUSTEES OF THE FUND. (1) The governor shall appoint seven (7) persons to be the board of trustees of the Idaho petroleum clean water trust fund. One (1) member shall be a member of the state senate, one (1) member shall be a member of the state house of representatives, one (1) member shall be a representative of the financial community with expertise in the area of insurance, accounting or finance, one (1) member shall be an engineer, geologist or similarly trained scientist with experience in environmental remediation, one (1) member shall be a wholesale distributor of petroleum products who participates in the trust fund and has less than five million (5,000,000) gallons in annual sales, one (1) member shall be a wholesale distributor of petroleum products who participates in the trust fund and has from five million (5,000,000) to ten million (10,000,000) gallons in annual sales, and one (1) member shall be a retailer of petroleum products who participates in the trust fund and has more than ten million (10,000,000) gallons in annual sales. The governor shall appoint a chairman from the seven (7) members. The members shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term, provided that the first two (2) appointments the governor makes after the effective date of this act shall serve a term of two (2) years and the other five (5) members shall serve a term of four (4) years. Thereafter, a member shall serve a term of four (4) years. A certificate of appointment shall be filed in the office of the secretary of state. A majority of the members shall constitute a quorum

for the transaction of business or the exercise of any power or function of the Idaho petroleum clean water trust fund and a majority vote of the members shall be necessary for any action taken by the board of trustees. Members of the board of trustees shall receive a compensation for service as prescribed in section 59-509(h), Idaho Code.

(2) The administrator of the fund shall be the state insurance fund unless replaced by the board of trustees with another person. The administrator shall serve at the pleasure of the board of trustees. The board of trustees may appoint and employ such other persons as may be required by the board and shall prescribe the duties and compensation of each such person.

(3) It shall be the duty of the board of trustees to direct the policies and operation of the fund to assure that it is run as an efficient insurance company, remains actuarially sound and maintains the public purposes for which the Idaho petroleum clean water trust fund was created.

SECTION 5. That Section 41-4905, Idaho Code, be, and the same is hereby amended to read as follows:

41-49056. LIMITS OF LIABILITY FOR CONTRACTS OF INSURANCE ISSUED BY THE ADMINISTRATOR. (1) Contracts of insurance issued by the administrator shall contain the following per occurrence and annual aggregate limits of liability for paying the costs of corrective action and compensating third parties who are legally entitled to receive compensation for bodily injury and property damage arising out of accidental releases from covered petroleum storage tanks:

(a) For owners or operators of heating tanks, farm tanks or residential tanks, no more than one hundred thousand dollars ($100,000) per occurrence and no more than one hundred thousand dollars ($100,000) annual aggregate;

(b) For nonmarketers of petroleum products who are owners or operators of above ground and underground storage tanks and who consume ten thousand (10,000) gallons or less of petroleum products each month, no more than five hundred thousand dollars ($500,000) per occurrence and no more than one million dollars ($1,000,000) annual aggregate;

(c) For owners or operators of one (1) to one hundred (100) covered underground petroleum storage tanks, no more than one million dollars ($1,000,000) per occurrence and no more than one million dollars ($1,000,000) annual aggregate;

(d) For owners or operators of one hundred and one (101) or more covered underground petroleum storage tanks, no more than one million dollars ($1,000,000) per occurrence and no more than two million dollars ($2,000,000) annual aggregate; and

(e) For owners or operators of covered above ground petroleum storage tanks, no more than one million dollars ($1,000,000) per occurrence and no more than one million dollars ($1,000,000) annual aggregate.

(2) Legal defense costs shall be disregarded for purposes of determining whether the limits specified in subsection (1) of this section have been reached.

(3) Benefits provided by the trust fund shall be primary and shall not be construed to be excess over and above any other valid and col-

lectible insurance.

(4) If an owner or operator owns or operates more than one (1) of the types of petroleum storage tanks listed in subsection (1) of this section, then the limit of liability applicable to the type of petroleum storage tank from which the accidental release occurred shall apply. In no event shall any of the limits of liability in subsection (1) of this section be combined to exceed the highest per occurrence and annual aggregate limits of liability for any single category in subsections (1)(a) through (1)(e) of this section applicable to an insured owner or operator.

SECTION 6. That Section 41-4906, Idaho Code, be, and the same is hereby amended to read as follows:

41-4906~~7~~. OWNER OR OPERATOR FINANCIAL RESPONSIBILITY. (1) The owner or operator shall reimburse the trust fund for all dollars expended, excluding legal defense costs, up to but not exceeding the following amounts:

(a) With respect to a heating tank - one hundred dollars ($100) per annum;

(b) With respect to a farm tank or residential tank - two thousand dollars ($2,000) per annum;

(c) With respect to an above ground storage tank or underground storage tank, as defined in section 41-4903, Idaho Code - ten thousand dollars ($10,000) per annum.

(2) Payments by the trust fund shall not be made contingent on prior payment of the reimbursement herein required.

SECTION 7. That Section 41-4907, Idaho Code, be, and the same is hereby amended to read as follows:

41-4907~~8~~. EXCLUSIVENESS OF REMEDY. If compensation is made from the trust fund to a third party for property damage or personal injury, then that third party shall not recover again for the damage actually compensated by the trust fund pursuant to the collateral source doctrine or any other rule of law permitting duplicate recovery.

SECTION 8. That Section 41-4908, Idaho Code, be, and the same is hereby amended to read as follows:

41-4908~~9~~. SOURCE OF TRUST FUND -- APPLICATION FEES -- APPLICATION FOR ENROLLMENT -- TRANSFER FEES. (1) Every owner or operator of an underground storage tank may, if he desires to apply to the trust fund to insure the underground tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars ($25.00) for each tank for which application for coverage is made.

(2) Every owner or operator of an aboveground storage tank may, if he desires to apply to the trust fund to insure the aboveground tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars ($25.00) for each tank for which application for coverage is made.

(3) Every owner or operator of a farm tank or residential tank may, if he desires to apply to the trust fund to insure the tank, make appli-

cation for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars ($25.00) for each tank for which application for coverage is made.

(4) Every owner or operator of a heating tank may, if he desires to apply to the trust fund to insure the tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed five dollars ($5.00) for each tank for which application for coverage is made.

(5) The application for insurance shall be made to the administrator on forms furnished and prescribed by ~~him~~ the administrator for the purpose of eliciting reasonably available information as to the type and use of the storage tank, the type of business enterprise of the tank owner or operator, the age of the storage tank, the materials used in the construction of the tank and the inside and outside protective coatings and other corrosion protective measures, leak detection methods, spill and overfill prevention methods of the tank, the location of the tank and its proximity to roads and buildings, the foundation and type of material used as a bedding and fill for the tank, any available inspection records of the tank including the gallons of petroleum products entered into the tank and the gallon dispersements from the tank, and other information that is reasonably prudent in order to obtain a sufficient body of statistical data to determine the relative hazards of various categories of tanks, the potential that future leaks or discharges may occur, and the conditions under which cleanup costs and personal injury and property damage costs may occur and vary in the severity of the release and the resultant costs to the trust fund.

(6) The administrator shall act upon the application for insurance with all reasonable promptness, and ~~he~~ the administrator shall make such investigations of the applicant as ~~he~~ the administrator deems advisable to determine if the information contained in the application for insurance is accurate and complete. The administrator shall determine if the applicant's storage tanks meet all the eligibility requirements and promptly notify the applicant of the acceptance or nonacceptance of the application for insurance. The absence of unknown data requested on the application shall not preclude an applicant's acceptance for coverage by the trust fund, if the applicant is otherwise eligible for insurance under this chapter.

(7) In addition to the application fees received by the trust fund pursuant to this section, the trust fund shall receive the revenue produced by the imposition of a "transfer fee" of one cent (1¢) per gallon on the delivery or storage of all petroleum products as defined in subsection (24) of section 41-4903, Idaho Code, delivered or stored within the state of Idaho. This transfer fee is hereby imposed upon the first licensed distributor who receives, as receipt is determined in section 63-2403, Idaho Code, a petroleum product within this state for the privilege of engaging in the delivery or storage of petroleum products whose delivery or storage may present the danger of a discharge into the environment and thus create the liability to be funded. The fee imposed by this subsection shall not apply to: (a) petroleum or petroleum products which are first delivered or stored in this state in a container of fifty-five (55) gallons or less if such container is intended to be transferred to the ultimate consumer of the petroleum or petroleum products; or (b) petroleum or petroleum products delivered or stored in this state for the purpose of packaging or repackaging into containers of fifty-

five (55) gallons or less if such container is intended to be transferred to the ultimate consumer of the petroleum or petroleum products.

(8) The transfer fee shall be collected by the commission on all petroleum products delivered or stored within this state after April 1, 1990. This transfer fee shall be in addition to any excise tax imposed on motor fuel or other petroleum products and shall be remitted to the commission with the distributor's monthly report as required in section 63-2406, Idaho Code. The distributor may deduct from his monthly report those gallons of petroleum products returned to a licensed distributor's refinery or pipeline terminal storage or exported from the state when supported by proper documents approved by the commission. For the purpose of carrying out its duties under the provisions of this chapter, the commission shall have the powers and duties provided in sections 63-3038, 63-3039, 63-3042 through 63-3066, 63-3068, 63-3071, and 63-3074 through 63-3078, Idaho Code, which sections are incorporated by reference herein as though set out verbatim.

(9) No person shall be excused from liability for any duty or fee imposed in this chapter for failure to obtain a distributor's license.

(10) The director shall certify to the commission when the unencumbered balance in the trust fund equals twenty-five million dollars ($25,000,000). Effective the first day of the second month following the date of such certification, the imposition of the transfer fee shall be suspended. Thereafter, the director shall certify to the commission when the unencumbered balance in the trust fund equals fifteen million dollars ($15,000,000). Effective the first day of the second month following the date of such certification, the imposition of the transfer fee shall be reinitiated.

SECTION 9. That Section 41-4909, Idaho Code, be, and the same is hereby amended to read as follows:

41-490~~9~~10. DISTRIBUTION OF APPLICATION FEES AND TRANSFER FEES. (1) The application fees and the transfer fees collected as provided in this chapter shall be promptly remitted to the state treasurer for deposit in the Idaho petroleum clean water trust fund. The transfer fees and accumulated interest which accrued to the fund prior to August 3, 1995, shall remain in the fund. The transfer fees and accumulated interest, which have been held in a separate suspense account since August 3, 1995, shall be distributed as provided in subsection (4) of this section. The transfer fees and accumulated interest which accrue to the Idaho petroleum clean water trust fund subsequent to April 1, 1997, shall be distributed monthly thereafter as provided in subsection (5) of this section.

(2) An amount of money equal to the actual cost of collecting, administering and enforcing the transfer fee by the commission, as determined by it, shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collection, administering and enforcing the transfer fee requirements by the commission at the end of each fiscal year shall be remitted to the state treasurer for deposit into the Idaho petroleum clean water trust fund.

(3) From the receipts of the transfer fee, an amount of money shall be distributed to the state refund account established under section

63-3067, Idaho Code, sufficient to reimburse that account for all current refund claims under this chapter paid from that account. Any refunds due and owing from the commission under this chapter shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(4) For the distribution on April 1, 1997, the balance of the transfer fees and accumulated interest accruing to the separate suspense account established for such fees on August 3, 1995, which remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

(a) Twenty percent (20%) to the Idaho petroleum clean water trust fund established in section 41-49045, Idaho Code;

(b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (e), subsection (1) of section 63-2412, Idaho Code; and

(c) The remainder shall be distributed:

(i) Six million dollars ($6,000,000) to the state highway account for administration by the Idaho transportation department as provided in section 41-490910A, Idaho Code; and

(ii) The balance remaining to the highway distribution account established in section 40-701, Idaho Code.

(5) For the distribution at the end of fiscal year 1997 and monthly thereafter, the balance of the transfer fees and accumulated interest accruing to the Idaho petroleum clean water trust fund which remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

(a) Seventy-seven percent (77%) to the highway distribution account established in section 40-701, Idaho Code; and

(b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (e), subsection (1) of section 63-2412, Idaho Code.

SECTION 10. That Section 41-4909A, Idaho Code, be, and the same is hereby amended to read as follows:

41-490910A. APPORTIONMENT OF MONEYS TRANSFERRED TO THE STATE HIGHWAY ACCOUNT FROM THE IDAHO PETROLEUM CLEAN WATER TRUST FUND SUSPENSE ACCOUNT ON APRIL 1, 1997. Of the moneys transferred to the state highway account pursuant to the distribution in section 41-490910(4)(c)(i), Idaho Code, an amount not to exceed six million dollars ($6,000,000) shall be administered by the Idaho transportation department for use as the state and local match for federal highway administration (FHWA) and federal emergency management agency (FEMA) road and bridge projects. Such moneys shall be used exclusively for repair and restoration of local and state roads and bridges damaged by the 1996, 1997 and 1998 natural disasters in the counties of Adams, Benewah, Bingham, Boise, Bonner, Bonneville, Boundary, Butte, Clearwater, Custer, Elmore, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington. When apportionment of moneys under this section is sufficient to meet the purposes for which the moneys are designated, but not to exceed six million dollars ($6,000,000), any remaining amounts shall be returned to the highway distribution account established in section 40-701, Idaho Code.

SECTION 11. That Section 41-4910, Idaho Code, be, and the same is hereby amended to read as follows:

41-4910~~1~~. ISSUANCE OF CONTRACTS OF INSURANCE BY THE ADMINISTRATOR OF THE IDAHO PETROLEUM CLEAN WATER TRUST FUND -- DEFERRAL. (1) The administrator may issue a contract of insurance to an owner or operator of a petroleum storage tank that, based upon a consideration of the owner or operator's application for insurance and appropriate investigation by the administrator, meets the eligibility provisions of this chapter and the underwriting requirements established by the administrator.

(2) The administrator may defer issuing contracts of insurance to certain categories of petroleum storage tank owners or operators if necessary for the sound operation of the trust fund.

(3) The administrator shall consider the following factors in determining whether to defer the issuance of contracts of insurance to any category of petroleum storage tank owners or operators:

(a) The underwriting capacity of the trust fund;

(b) Any requirement of federal or state law or regulation imposed on any category of petroleum storage tank owners or operators to demonstrate financial responsibility for corrective action and compensation to third parties for bodily injury and property damage arising from accidental releases from petroleum storage tanks;

(c) The ability of the administrator to process insurance applications from different categories of petroleum storage tank owners or operators.

(4) Any decision by the administrator to defer issuing contracts of insurance to any category of petroleum storage tank owners or operators shall be documented in the plan of operation, or an amendment thereto, submitted to the director of the department of insurance pursuant to sections 41-4924~~5~~ or 41-4924~~5~~A, Idaho Code, and subject to the director's approval.

(5) The administrator may issue contracts of insurance to deferred categories of petroleum storage tank owners or operators when the need for deferral documented in subsection (4) of this section no longer exists, as demonstrated by an amendment to the plan of operation submitted to and approved by the director of the department of insurance pursuant to section 41-4924~~5~~A, Idaho Code.

SECTION 12. That Section 41-4910A, Idaho Code, be, and the same is hereby amended to read as follows:

41-4910~~1~~A. PROVISIONS OF CONTRACTS OF INSURANCE -- RENEWAL. (1) The contracts of insurance issued by the administrator shall meet the requirements of this chapter. To the extent consistent with this chapter, the contracts of insurance shall also satisfy the provisions of any requirement imposed by federal or state law or regulation on any category of petroleum storage tank owners or operators to demonstrate financial responsibility for corrective action and compensation to third parties for bodily injury and property damage arising from accidental releases from petroleum storage tanks.

(2) Upon receipt of an annual application fee not exceeding twenty-five dollars ($25.00) for each aboveground tank, underground tank, farm tank or residential tank, or not to exceed five dollars ($5.00) for each

heating tank covered by a contract of insurance, and upon receipt of evidence that the petroleum storage tanks continue to meet the eligibility provisions of this chapter and the underwriting requirements established by the administrator, the administrator shall issue an annual renewal of the contract of insurance to the owner or operator of said petroleum storage tanks.

SECTION 13. That Section 41-4911, Idaho Code, be, and the same is hereby amended to read as follows:

41-491~~1~~2. 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 41-490~~8~~9, Idaho Code, or section 41-491~~0~~1A, 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 aboveground storage tank, is in compliance with state and federal rules and regulations including the international fire code. If an aboveground tank is exempt from state or federal rules and regulations and/or the international fire code by virtue of its being installed prior to the effective date of such rules and regulations or the international 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 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 14. That Section 41-4911A, Idaho Code, be, and the same is hereby amended to read as follows:

41-491~~1~~2A. STORAGE TANKS LOCATED ON SITES WHERE CONTAMINATION IS PRESENT. (1) Notwithstanding the provisions of section 41-491~~1~~2(1)(g), Idaho Code, an owner or operator of a petroleum storage tank or tanks located on a site where contamination is present may be eligible for insurance covering the petroleum storage tanks located on that site if the contamination does not pose a threat to public health, safety or the environment, or was not caused by or released by or from the tank, or if multiple tanks are present on the site, any one (1) of the tanks, for which insurance coverage is sought; provided, however, that the trust fund shall not pay for any corrective action costs or compensation to third parties for bodily injury or property damage arising from the prior contamination present at the site.

(2) Any contamination caused by or released by or from the tank or tanks which may migrate off-site; contaminate ground water; exceed fed-

eral or state standards, guidelines, criteria or contaminant levels for ground water or drinking water; or pose a fire, explosion or safety hazard may be deemed by the administrator to present a threat to public health, safety or the environment. An owner or operator of such petroleum storage tank or tanks will not be eligible for insurance covering the petroleum storage tanks located on that site unless the contamination has been cleaned up or a plan for cleanup or removal approved pursuant to section 41-491~~1~~2(1)(g), Idaho Code, is being implemented.

(3) Contracts of insurance issued to an owner or operator of a petroleum storage tank located on a site where contamination is present and where the administrator has determined that the contamination does not pose a threat to public health, safety or the environment, or was not caused by or released by or from the tank or tanks shall exclude from coverage corrective action costs and compensation to third parties for bodily injury or property damage arising out of the prior contamination present at the site.

SECTION 15. That Section 41-4912, Idaho Code, be, and the same is hereby amended to read as follows:

41-491~~2~~3. STATE TREASURER CUSTODIAN OF TRUST FUND -- DUTIES. The state treasurer shall be the custodian of the trust fund balance.

SECTION 16. That Section 41-4913, Idaho Code, be, and the same is hereby amended to read as follows:

41-491~~3~~4. DEPOSIT AND INVESTMENT OF FUNDS -- INTEREST. The state treasurer shall deposit or, on order of the administrator of the trust fund, invest any portion of the Idaho petroleum clean water trust fund not needed for immediate or currently anticipated use, in the manner provided by law. Interest earned by such invested portion of the trust fund shall be collected by the state treasurer and placed to the credit of the trust fund.

SECTION 17. That Section 41-4914, Idaho Code, be, and the same is hereby amended to read as follows:

41-491~~4~~5. PERPETUAL APPROPRIATION. All moneys which may come into the Idaho petroleum clean water trust fund are hereby perpetually appropriated to the ~~manager of the state insurance~~ trust fund ~~as trustee to be expended by him~~ for the purposes of this chapter.

SECTION 18. That Section 41-4915, Idaho Code, be, and the same is hereby amended to read as follows:

41-491~~5~~6. ENROLLED SUBSCRIBERS' LIABILITY ON JUDGMENT. (1) No action shall lie against any owner or operator of a tank insured by the Idaho petroleum clean water trust fund upon any obligation claimed against this trust fund until a final judgment has been obtained against this trust fund and remains unsatisfied for thirty (30) days.

(2) Any such judgment shall be binding upon each owner or operator only in such proportion as his interests may appear and in an amount not exceeding his contingent liability, if any, in excess of the amount of insurance provided by the trust fund.

SECTION 19. That Section 41-4916, Idaho Code, be, and the same is hereby amended to read as follows:

41-4916~~7~~. ACTIONS FOR COLLECTION IN CASE OF DEFAULT -- PENALTY -- CANCELLATION OF INSURANCE CONTRACT. (1) If an insured owner or operator of a storage tank shall default in any reimbursement required to be made by the insured to the trust fund under section 41-4906~~7~~, Idaho Code, the amount due from the insured may be collected by civil action against him in the name of the administrator, and the same, when collected by the administrator shall be paid into the trust fund, and such insured's compliance with the provisions of this chapter requiring payment to be made to the trust fund shall date from the time the money is collected by the administrator.

(2) The contract of insurance held by an insured owner or operator of a storage tank which fails to comply with section 41-491~~1~~2, Idaho Code, or who is in default in his enrollment fees for more than thirty (30) days may be ~~cancelled~~ canceled at the discretion of the administrator.

SECTION 20. That Section 41-4917, Idaho Code, be, and the same is hereby amended to read as follows:

41-4917~~8~~. CANCELLATION OF INSURANCE. Any insured owner or operator of a storage tank may cancel his insurance by returning his insurance contract to the administrator for cancellation. There shall be no refund of any application fees paid to the trust fund as all such fees shall be deemed fully earned when an insurance contract is issued or renewed.

SECTION 21. That Section 41-4918, Idaho Code, be, and the same is hereby amended to read as follows:

41-4918~~9~~. REINSURANCE. (1) The administrator of the trust fund may reinsure any risk, or any part thereof, and may enter into agreements of reinsurance in the same way and to the same extent as other insurance carriers, the cost of which shall be paid out of the trust fund balance.

(2) Such reinsurance contracts may be on a specific excess basis for each liability loss sustained, or on a quota share basis of each liability loss sustained, or on a treaty basis wherein a line of credit is available to pay losses in excess of a given amount with the money obtained from such a loan arrangement to be paid back only from expendable surplus funds, or on a facultative basis with one (1) or more reinsurers whereby successive portions of the loss are paid on a given share basis, and/or on a net annual aggregate stop loss basis whereby the reinsurer must contribute to all losses when such losses exceed a given amount in any policy year, or any other reinsurance agreement found to be necessary, prudent and reasonable by competent actuaries.

SECTION 22. That Section 41-4919, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~1~~920. PAYMENTS FROM THE TRUST FUND BY STATE TREASURER. The ~~manager of the state insurance fund as trustee~~ administrator of the trust fund shall~~, in the management contract with the state insurance fund, require the state insurance fund to~~ submit each month to the state

board of examiners an estimate of the amount necessary to meet the current disbursements for liability insurance losses to be paid in behalf of insured owners or operators of the trust fund during each succeeding calendar month, and when such estimate shall be approved by the state board of examiners, the state treasurer is authorized to pay the same out of the fund upon sight drafts drawn by the administrator. At the end of each calendar month the administrator shall account to the state board of examiners and the ~~trustee~~ board for all money so received, furnishing proper vouchers therefor.

SECTION 23. That Section 41-4920, Idaho Code, be, and the same is hereby amended to read as follows:

41-492~~0~~1. RESERVE FUNDS. The Idaho petroleum clean water trust fund shall establish and maintain the following reserves or financial resources, which shall constitute liabilities in any determination of the financial condition of the trust fund:

(1) An amount sufficient for the payment of all claims made against the trust fund, which shall include reasonable estimates for claim adjustment expense, legal fees and other claim settlement costs, and including claims reported and not yet paid and claims incurred but not reported to the trust fund but only to the extent that a reasonable estimate can be made based on prior statistical evidence and the condition of storage tanks insured by the trust fund.

(2) An amount adequate under reasonable estimates for the payment of any unpaid contractual obligations, taxes and any other services and expenses incurred but not paid.

SECTION 24. That Section 41-4921, Idaho Code, be, and the same is hereby amended to read as follows:

41-492~~1~~2. PLAN OF OPERATION. The administrator shall establish a plan of operation to be approved by the director of the department of insurance for the state of Idaho.

SECTION 25. That Section 41-4922, Idaho Code, be, and the same is hereby amended to read as follows:

41-492~~2~~3. REGISTRATION OF THE TRUST FUND. The trust fund established pursuant to the provisions of this chapter shall be registered with the director as set out in this chapter.

SECTION 26. That Section 41-4923, Idaho Code, be, and the same is hereby amended to read as follows:

41-492~~3~~4. QUALIFICATIONS FOR REGISTRATION. The director shall not register the trust fund if it is not qualified therefor. To be qualified, the trust fund:

(1) Shall require all application fees to be paid in advance and to be deposited in and disbursed from the trust fund duly created under this chapter.

(2) Shall have, or provide for, a trustworthy and responsible administrator for competent administration of the trust fund and plan.

(3) Shall provide that the administrator ~~or trustee on behalf of~~

~~the--trust--fund,--as--the-case-may-be,~~ furnish to each insured owner or operator a contract of insurance adequately and clearly stating all rights and obligations of the insured owner or operator, together with all applicable restrictions, limitations and exclusions, and the procedure for filing a claim.

(4) Shall be actuarially sound; that is, assets, income and other financial resources of the trust fund must be adequate under reasonable estimates for payment of all claims, claims adjustment expenses, taxes, expenses and other obligations.

(5) Shall otherwise be in compliance with the provisions of this chapter.

SECTION 27. That Section 41-4924, Idaho Code, be, and the same is hereby amended to read as follows:

41-49245. APPLICATION FOR REGISTRATION — FEE. (1) Application for registration of the trust fund shall be made to the director, on forms furnished and designed by him for the purpose of eliciting information as to whether the trust fund is qualified for registration. The application shall be signed and verified by the ~~trustee~~ board.

(2) The application shall be accompanied by:

(a) A copy of the bylaws of the trust fund referred to in section 41-49~~30~~27, Idaho Code;

(b) A copy of the proposed contract of insurance;

(c) A written plan of operation that outlines the reasonably projected income and disbursements of the trust fund for the twelve (12) month period commencing with date of application and showing also the amount reserved and financial resources available as of the end of such period for claims incurred and not paid or incurred and not reported;

(d) A current certified audited financial statement;

(e) Such other relevant documentation and information as the director may reasonably require.

(3) A nonrefundable filing fee of twenty-five dollars ($25.00) shall be paid to the director at the time the application is filed.

SECTION 28. That Section 41-4924A, Idaho Code, be, and the same is hereby amended to read as follows:

41-49245A. AMENDMENTS TO PLAN OF OPERATION. (1) Any amendment to the plan of operation prepared by the administrator for the purpose of deferring the issuance of contracts of insurance to any category of petroleum storage tank owners or operators or for issuing contracts of insurance to any deferred category of petroleum storage tank owners or operators shall be submitted to the director of the department of insurance.

(2) The director shall review the amendment and shall, with all reasonable promptness, approve, approve as modified, or disapprove of the amendment to the plan of operation. If the amendment is approved, the administrator may issue contracts of insurance and otherwise operate the trust fund in a manner consistent with the amended plan of operation. If the amendment is disapproved, the administrator must operate the trust fund in a manner consistent with the provisions of the plan of operation as submitted to the director in the trust fund's application

for registration under section 41-49~~24~~5, Idaho Code.

(3) The director may request such relevant documentation and information, including an actuarial analysis of the underwriting capacity of the trust fund, as is reasonably necessary to evaluate the proposed amendment to the plan of operation.

(4) All procedures and policies concerning the approval, modification or disapproval of any amendment to the plan of operation are subject to the provisions of chapter 52, title 67, Idaho Code, as well as the rules of practice and procedure of the department of insurance.

SECTION 29. That Section 41-4926, Idaho Code, be, and the same is hereby repealed.

SECTION 30. That Section 41-4925, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~25~~6. GRANT OR DENIAL OF REGISTRATION. (1) The director shall act upon an application for registration of the trust fund with all reasonable promptness. He may make such investigation of the proposal as he deems advisable. If the director finds that the application is complete and that the plan meets the qualifications stated in section 41-49~~23~~4, Idaho Code, he shall issue and deliver a certificate of registration in appropriate form to the applicant; otherwise, the director shall refuse to register the plan and shall give written notice of such refusal to the applicant, stating the reasons therefor.

(2) All procedures and policies concerning the grant or denial of registration of the trust fund are subject to the provisions of chapter 52, title 67, Idaho Code, as well as the rules of practice and procedure of the department of insurance.

SECTION 31. That Section 41-4930, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~30~~27. BYLAWS OF THE FUND. The ~~manager of the state insurance fund, as trustee of the trust fund,~~ board shall adopt ~~original~~ bylaws subject to the approval of the director, who shall grant his approval only after his determination that the provisions in the bylaws are not inconsistent nor contrary to the applicable provisions of title 41, Idaho Code, as amended in this chapter. These bylaws shall outline the organizational structure of the trust fund, its operational methods of complying with the provisions of this chapter, including the deposit, custody, disbursement and accounting for the moneys in the trust fund, fidelity bonds, if any, required of the administrator, ~~and the manager of the state insurance fund as trustee of the trust fund who is also under contract to administer the operations of the trust fund,~~ the essential elements of the managerial contract with the ~~state insurance fund~~ administrator, the powers and duties of the administrator of the trust fund, the rights, privileges and responsibilities of insured owners or operators of storage tanks, the manner in which annual and special meetings of the ~~trustee~~ board shall be conducted, and such other matters as may be customary, necessary or convenient for the management and operation of the trust fund.

SECTION 32. That Section 41-4931, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~31~~28. RECORDS AND ACCOUNTS -- ANNUAL STATEMENT. (1) The ~~manager of the state insurance fund, as trustee of the Idaho petroleum clean water trust fund,~~ administrator shall cause full and accurate records and accounts to be entered and maintained covering all financial transactions and affairs of the trust fund.

(2) Within sixty (60) days after the close of each calendar year, the ~~manager of the state insurance fund, as trustee,~~ administrator shall make an annual statement in writing summarizing the financial transactions of the trust fund for such prior calendar year and its financial condition at the end of such year in accordance with this chapter and generally accepted and applicable accounting principles. The statement shall otherwise be in the form prescribed and shall provide the information required by the director of the department of insurance of the state of Idaho, and the financial information contained therein shall be certified by the accountant by whom such information was prepared and audited.

(3) On or before the expiration of such sixty (60) day period the ~~manager of the state insurance fund, as trustee,~~ administrator shall cause an original of the annual statement to be filed with the director, and shall pay any filing fee required by the director or any other state agency having jurisdiction. At an appropriate time, consistent with the usual practices of the director, the director shall declare the annual statement to be open to the scrutiny of all interested parties and the public in general.

SECTION 33. That Section 41-4932, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~32~~29. ~~EXCLUSIVE~~ MANAGEMENT CONTRACT WITH THE ~~MANAGER OF THE STATE INSURANCE FUND~~ ADMINISTRATOR -- MANDATORY PROVISIONS. (1) The management contract entered into between the ~~manager of the state insurance fund as trustee of the trust fund~~ administrator and the ~~state insurance fund,~~ board as required in this chapter, shall not become effective unless the contract is filed with and approved by the director. The contract shall be deemed approved unless disapproved by the director within twenty (20) days after date of filing, subject to such reasonable extension of time as the director may require by notice given within the twenty (20) day period. Any disapproval shall be delivered to the ~~trustee~~ administrator in writing, stating the grounds therefor.

(2) Any such contract, or contract holder, shall provide that the ~~manager of the state insurance fund, as trustee~~ administrator shall, within ninety (90) days after expiration of each calendar year, furnish the director a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the principal management personnel of the ~~state insurance fund~~ administrator involved with the affairs of the trust fund, and with such classification of items and further detail as the director may reasonably require.

(3) The director shall disapprove any such contract if he finds that it:

(a) Subjects the trust fund to unreasonable or excessive charges; or

(b) Does not contain fair and adequate standards of performance; or

(c) Contains other inequitable provisions which impair the proper interests of the owners or operators insured by the trust fund.

(4) The director may, after a hearing held thereon, withdraw his approval of any such contract theretofore approved by him, if he finds that the basis of his original approval no longer exists, or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsection (3) of this section.

SECTION 34. That Section 41-4933, Idaho Code, be, and the same is hereby amended to read as follows:

41-49330. EXISTING INSURANCE LAWS TO APPLY TO THE TRUST FUND WITH CERTAIN EXCEPTIONS. The trust fund shall comply with all of the applicable provisions of title 41, Idaho Code, with certain exceptions as follows:

(1) The creation of the trust fund by act of the legislature shall not be deemed to be an ownership, control or operation of an insurer by a governmental entity, as referred to in section 41-309, Idaho Code, and the surplus funds of the trust fund shall be considered to be dedicated and held in reserve for the purpose of providing funds for the payment of claims arising out of the discharge of petroleum products from tanks covered by a contract of insurance issued to the tank owner or operator by the trust fund as provided for in section 41-49056, Idaho Code. The absolute control of the trust fund shall be vested in the ~~manager of the state insurance fund as trustee~~ board.

(2) The provisions of this chapter shall be construed to be contained in the document of organization and bylaws of the trust fund for purposes of sections 41-319, 41-320 and 41-322, Idaho Code, and the director shall issue a certificate of registration to and in the name of the trust fund upon his finding that it has met all other appropriate provisions of the Idaho Code, including sections 41-313, 41-316 and 41-316A, Idaho Code.

(3) Section 41-337, Idaho Code, shall not apply to contracts of insurance issued by the trust fund.

(4) Sections 41-1004 and 41-1022, Idaho Code, shall not apply to employees of the state insurance fund or the trust fund.

(5) Section 41-1103, Idaho Code, shall not apply to employees of the state insurance fund or the trust fund, provided the employees restrict their claims adjusting and investigation operations only to those contracts issued by the trust fund.

(6) Except as otherwise provided in this chapter, chapter 28, title 41, Idaho Code, and chapter 14, title 30, Idaho Code, shall not apply to the trust fund nor shall this trust fund be construed to be a domestic mutual insurer, nor a reciprocal insurer, nor any other type of insurer currently regulated by title 41, Idaho Code, and the only organizational requirements of this trust fund shall be those enumerated in this chapter.

SECTION 35. That Section 41-4934, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~34~~1. TAXES. (1) The trust fund shall not be subject to chapter 4, title 41, Idaho Code, as it pertains to premium tax.

(2) The state of Idaho hereby preempts the field of imposing excise, privilege, franchise, income, license and similar taxes, licenses and fees upon the trust fund; and no county, city, municipality, district, school district, or other political subdivision or agency of Idaho shall levy upon this trust fund any such tax, license or fee.

SECTION 36. That Section 41-4935, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~35~~2. 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,~~ administrator 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~~ administrator and the director. The ~~manager,-as-trustee,~~ administrator 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,~~ administrator 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,~~ administrator a copy of the report as so corrected or changed.

(4) At the direction of the director, the costs of the examination shall be borne by the trust fund in accordance with section 41-228, Idaho Code.

SECTION 37. That Section 41-4936, Idaho Code, be, and the same is hereby amended to read as follows:

41-49~~36~~3. ~~TRUSTEE---~~ ADMINISTRATOR -- FIDELITY BONDS. The ~~manager of--the--state--insurance--fund-as-trustee~~ administrator shall cause all individuals handling receipts and disbursements for the trust fund to be bonded at all times under a fidelity bond issued by a surety insurer authorized to transact such insurance in this state. The bond shall be in favor of the trust fund and for such aggregate penalty amount, not less than twenty-five thousand dollars ($25,000), as the director may deem reasonably advisable in relation to the amount of funds to be so handled. The bond shall be ~~noncancellable~~ noncancelable except upon not less than thirty (30) days advance notice in writing to the ~~manager,--as trustee,~~ administrator and the director. The cost of the bond shall be borne by the trust fund.

SECTION 38. That Section 41-4937, Idaho Code, be, and the same is hereby amended to read as follows:

41-493~~7~~4. PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT. (1) Neither the ~~manager, as trustee, nor the~~ administrator~~,~~ nor any other person having responsibility for the management of the trust fund or the investment or other handling of the trust fund moneys or assets shall:

(a) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation or emolument, other than salary or other similar compensation regularly fixed and allowed for services regularly rendered to the trust fund, arising out of any transaction to which the trust fund is or is to be a party;

(b) Receive compensation as a consultant to the trust fund while also acting as a trustee or administrator, or as an employee of either;

(c) Have any direct or indirect material pecuniary interest in any loan or investment of the trust fund.

(2) The director may, after reasonable notice and a hearing, prohibit the ~~manager as the trustee~~ administrator from employing or retaining or continuing to employ or retain any person in the administration of the trust fund upon finding that such employment or retention involves a conflict of interest not in the best interests of the trust fund or adversely affecting the interests of the owners or operators insured by the trust fund.

SECTION 39. That Section 41-4938, Idaho Code, be, and the same is hereby amended to read as follows:

41-4938~~5~~. POLITICAL CONTRIBUTIONS PROHIBITED. The ~~manager, as trustee,~~ administrator shall not make or knowingly permit the making, directly or indirectly, of any political contribution by or from the trust fund.

SECTION 40. That Section 41-4939, Idaho Code, be, and the same is hereby amended to read as follows:

41-4939~~6~~. RECOVERY OF DEPLETED FUNDS. If after notice and hearing, the director finds that the trust fund has been depleted by reason of any wrongful or negligent act or omission of the ~~trustee~~ board or any other person, he shall transmit a copy of his findings to the attorney general of this state, who may bring an action in the name of the people of this state, or intervene in any action brought by or on behalf of an insured owner or operator for the recovery of the amount of such depletion, for the benefit of the trust fund.

SECTION 41. That Section 41-4940, Idaho Code, be, and the same is hereby amended to read as follows:

41-494~~0~~37. IMPAIRED TRUST FUND. (1) If the assets of the trust fund are at any time insufficient to discharge its liabilities, and to maintain the required surplus, the administrator shall forthwith request authority from the director to make up the deficiency by borrowed surplus or other subordinated indebtedness.

(2) If the director finds that future estimated revenues from the transfer fees imposed under section 41-4908~~9~~, Idaho Code, are not sufficient to justify any borrowed surplus funds or other subordinated indebtedness, then the director shall request the administrator to sub-

mit a plan of action whereby priority is given to the payment of cleanup costs of petroleum discharges that constitute a clear and present danger to persons or property, including discharges into underground or surface water that may seriously contaminate the water used for domestic and commercial use, agricultural products, livestock, fish, game and other wildlife. Consideration shall be given in this plan of action to establishing a claim payment priority based on the severity of the contamination, the possible endangerment of life and health including, but not limited to, possible toxic fumes, fire and explosion hazards, economic impact, population density, and the need for immediate cleanup action versus action that can be delayed with only minimal adverse effects. This plan of action shall also establish similar criteria for the prioritization of the payment of bodily injury and property damage claims.

(3) Upon receiving this plan of action, the director shall promptly hold a public hearing with appropriate notice to determine any possible adverse effects of the plan of action on the owners or operators of insured tanks, the claimants and potential claimants, and the environment. After giving due consideration to the testimony of those parties affected by the proposed plan of action, the director shall either approve or disapprove the plan in writing, stating the reasons therefor, so that a plan of action that does meet with the director's approval can be placed into effect with due diligence and dispatch.

(4) Upon receiving the director's approval of the plan of action, the administrator shall promptly commence the prioritization of claims and pay such valid and compensable claims according to this priority as funds become available from collection of the transfer fees.

SECTION 42. That Section 41-4941, Idaho Code, be, and the same is hereby amended to read as follows:

41-494~~1~~38. LIQUIDATION OF TRUST FUND. (1) The annual tank application fees and transfer fees are perpetually appropriated as dedicated funds for the purposes of this chapter, and the trust fund shall remain in existence as long as the need exists for the trust fund to insure the costs of corrective actions and the need exists for the trust fund to insure the legal liability of petroleum tank owners and operators as provided in this chapter.

(2) In the event other more appropriate means come into existence to provide the insurance provided by the trust fund, then the trust fund shall be liquidated according to the provisions of this section.

(3) Liquidation shall be conducted by the ~~trustee~~ board under a written plan of liquidation filed with and approved by the director. If the director finds the plan to be fair and equitable to all persons having a pecuniary interest in the trust fund, he shall approve it. Any balance remaining after payment or adequate provision for payment of all claims and charges against the trust fund has been made shall be disposed of in the manner provided for in the plan of liquidation. Unless under the plan of liquidation the liability for all unpaid claims and obligations of the trust fund has been assumed by another financially responsible person or persons, the existence of surplus funds for such disposition shall not be determined prior to the expiration of two (2) years after termination of the certificate of registration issued to the trust fund as provided in section 41-493~~3~~0(2), Idaho Code.

(4) After its approval by the director, the plan of liquidation for the trust fund shall be binding upon all persons pecuniarily interested in the trust fund. Pending the effectuation of the plan of liquidation the director may impose such prohibitions or restrictions upon disbursement or use of trust fund moneys as the director deems advisable for the protection of all interested persons.

(5) If the trust fund is then insolvent and a plan of liquidation thereof satisfactory to the director as being fair and equitable is not filed within sixty (60) days after the effective date of termination of the plan's registration, or if liquidation of a solvent trust fund is not being carried out in accordance with the plan of liquidation theretofore approved by the director, the director shall liquidate the trust fund under the applicable provisions of chapter 33, title 41, Idaho Code, and for this purpose the trust fund shall be deemed to be an insolvent domestic insurer.

(6) If after all indebtedness and other obligations of the trust fund are discharged to the satisfaction of the director and the trust fund is dissolved, its remaining assets, if any, shall inure to the benefit of the state.

SECTION 43. That Section 41-4942, Idaho Code, be, and the same is hereby amended to read as follows:

41-494~~2~~39. VOUCHERS FOR EXPENDITURES. (1) The administrator of the trust fund~~, under the direction of the manager,~~ shall not make any disbursement of twenty-five dollars ($25.00) or more, unless evidenced by a voucher or other document correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher or other document, or some other writing referred to therein, shall describe the services and itemize the expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher or other document shall also correctly describe the nature of the matter and of the trust fund's interest therein.

SECTION 44. That Section 41-4943, Idaho Code, be, and the same is hereby amended to read as follows:

41-494~~3~~30. BORROWED SURPLUS AND SUBORDINATED INDEBTEDNESS. (1) The trust fund may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the trust fund's surplus in excess of the amount stipulated in such agreement. The agreement may provide for interest, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess or surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan.

(2) Money so borrowed, together with the interest thereon, if so stipulated in the agreement, shall not form a part of the fund's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff, but until

repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

(3) Any such loan shall be subject to the approval of the director. The trust fund shall, in advance of the loan, file with the director a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after the date of such filing, the trust fund is notified of the director's disapproval and the reasons therefor. The director shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties, and to other similar lenders, if any, to the trust fund, or that the information so filed by the trust fund is inadequate.

(4) Any such loan to the trust fund or substantial portion thereof shall be repaid by the trust fund when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by the fund unless approved in advance by the director.

(5) In the event of liquidation, repayment of the balance of the borrowed funds and any accrued interest then due and owing shall be paid only out of assets remaining after the payment of all obligations and claims of owners or operators of petroleum tanks insured by the trust fund and general creditors.

(6) The provisions of this section shall not apply to loans obtained by the trust fund in ordinary course of business from banks and other financial institutions, nor to loans secured by pledge or mortgage of assets.

SECTION 45. That Section 41-4944, Idaho Code, be, and the same is hereby amended to read as follows:

41-49441. PENALTIES. (1) Any person who willfully violates or causes or induces a violation of any provision of this chapter or any lawful rule ~~or regulation~~ of the director issued thereunder, shall be subject to penalty as provided in subsection (4) of this section.

(2) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact in any application, examination, or statement required under this act or by lawful rule ~~or regulation~~ of the director thereunder, shall be subject to penalty as provided in subsection (4) of this section.

(3) Any person who makes a false entry in any book, record, statement, or report required in this chapter or lawful rule ~~or regulation~~ of the director thereunder to be kept by him, with intent to injure or defraud the trust fund or any member thereof, or to deceive ~~any-one~~ anyone authorized or entitled to examine the affairs of the trust fund, shall be subject to penalty as provided in subsection (4) of this sec~~tion.~~

(4) For each such violation, act or omission referred to in this section, unless greater penalty is provided therefor under any other applicable law, the offender shall upon conviction thereof be subject to a fine of not more than one thousand dollars ($1,000) and to imprisonment for not more than one (1) year, or to both such fine and imprisonment.

SECTION 46. That Section 41-4945, Idaho Code, be, and the same is hereby amended to read as follows:

41-4945~~2~~. RULES ~~AND REGULATIONS~~ -- DIRECTOR -- DEPARTMENT OF INSURANCE. (1) The director may make reasonable rules ~~and regulations~~ necessary as an aid to the effectuation of any provision of this chapter. No such rule ~~or regulation~~ shall extend, modify or conflict with any provision of this chapter and the reasonable implications thereof.

(2) Such rules, ~~and regulations,~~ or any amendment thereof, shall be made by the director only after a public hearing thereon of which the director has given written notice not less than thirty (30) days in advance to the ~~trustee~~ board of the trust fund then registered with him. If reasonably possible the director shall include with the notice a copy of the proposed rules ~~and regulations~~ or amendment, or a condensed summary of material proposed provisions.

(3) All procedures and policies concerning the promulgation of such rules, ~~and regulations,~~ or any amendment thereof, are subject to the provisions of chapter 52, title 67, Idaho Code, and the rules of practice and procedure of the department of insurance.

SECTION 47. That Section 41-4946, Idaho Code, be, and the same is hereby amended to read as follows:

41-4946~~3~~. APPLICATION OF CHAPTER. All of the provisions of this chapter shall apply to and confer all rights, privileges, exemptions and immunities upon the trust fund established for the purposes contemplated in this chapter, and the ~~manager as trustee~~ administrator, insured owners or operators of petroleum tanks, beneficiaries, and participants thereof. The provisions of this chapter shall not apply to any railroad, railroad corporation, or any employee thereof when such employee is acting in the course of his employment for any such railroad or railroad corporation.

SECTION 48. That Section 41-4947, Idaho Code, be, and the same is hereby amended to read as follows:

41-4947~~4~~. 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 environmental quality concerning the financial responsibility of owners or operators of petroleum storage tanks.

SECTION 49. That Section 41-4948, Idaho Code, be, and the same is hereby repealed.

SECTION 50. That Chapter 49, 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 41-4945, Idaho Code, and to read as follows:

41-4945. PERSONAL LIABILITY. The administrator shall not, nor shall any person employed by him, be personally liable in his private capacity for or on account of any act performed or contract entered into in good faith and without the intent to defraud, in connection with the administration of the fund or affairs relating thereto.

SECTION 51. That Chapter 49, 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 41-4946, Idaho Code, and to read as follows:

41-4946. ACTIONS AGAINST THE FUND, ITS EMPLOYEES, AND ADMINISTRATOR SUBJECT TO THE IDAHO TORT CLAIMS ACT. Any action against the fund, its employees, and the administrator shall be subject in full to the Idaho tort claims act under chapter 9, title 6, Idaho Code.

SECTION 52. That Section 63-2427A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2427A. DISTRIBUTOR'S LICENSE. (1) It is unlawful for a person to act as a distributor without a license unless the person only purchases fuel which is either or both:

(a) Motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Dyed fuel upon which the transfer fee imposed in section 41-4908~~9~~, Idaho Code, has been imposed upon a licensed distributor.

(2) Application for a license shall be made upon forms furnished and in a manner prescribed by the commission and shall contain information as it deems necessary, and be accompanied by a bond in the amount required in section 63-2428, Idaho Code.

(3) Upon receipt of the application and bond in proper form the commission shall issue the applicant a license to act as a distributor unless the applicant:

(a) Is a person who formerly held a license under the provisions of this chapter, any predecessor statute, under the laws of any other jurisdiction, or under the laws of the United States which license, prior to the time of filing this application, had been revoked for cause within five (5) years from the date of such application; or

(b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction or the United States government; or

(c) Is a person who has been convicted, under the laws of the United States or any state or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws governing the reporting and payment of fees or taxes for petroleum products within five (5) years from the date of making such application; or

(d) Is a person who has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of such application; or

(e) Who is not the real party in interest and the real party in interest is a person described in subsection (3)(a), (3)(b), (3)(c) or (3)(d) of this section.

(4) Upon approval of the application the distributor's license shall be valid until it is suspended or revoked for cause, for failure to maintain the bond required in section 63-2428, Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and fees due with a return required in this chapter, or is otherwise canceled.

(5) No distributor's license shall be transferable.

(6) The commission shall furnish each licensed distributor with a list of all distributors licensed pursuant to this section. The list shall be supplemented by the commission from time to time to reflect additions and deletions.

SECTION 53. That Section 63-2427B, Idaho Code, be, and the same is hereby amended to read as follows:

63-2427B. LICENSED GASEOUS FUELS DISTRIBUTORS -- REPORTS. (1) In lieu of the distributor's license required by section 63-2427A, Idaho Code, the commission may issue a gaseous fuels distributor's license to a distributor who applies for the license and who does not deal in fuel, other than gaseous fuels, except fuel which is either:

(a) Motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Dyed fuel upon which the transfer fee imposed in section 41-4908~~9~~, Idaho Code, has been imposed upon a licensed distributor.

(2) Licensed gaseous fuels distributors shall, not later than the last day of each calendar month or for such other reporting period as the commission may authorize, render to the commission an accurate report of all gaseous fuels that are subject to tax under this chapter during the preceding reporting period. The report shall be made in the manner and on forms required by the commission and shall include such other information as the commission may require for the proper administration of this chapter.

Approved March 17, 2003.

## CHAPTER 97
## (H.B. No. 329)

### AN ACT

RELATING TO THE VOLUNTARY CONTRIBUTIONS ACT; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 26, TITLE 44, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE LIMITS ON LABOR ORGANIZATION CONTRIBUTIONS, TO PROVIDE CRIMINAL ACTS AND PENALTIES AND TO PROVIDE REGISTRATION AND DISCLOSURE REQUIREMENTS FOR EACH FUND ESTABLISHED BY A LABOR ORGANIZATION UNDER THIS VOLUNTARY CONTRIBUTIONS ACT; AMENDING SECTION 44-2004, IDAHO CODE, TO PROVIDE THAT DEDUCTIONS FOR POLITICAL ACTIVITIES, AS DEFINED IN THE VOLUNTARY CONTRIBUTIONS ACT, SHALL NOT BE DEDUCTED FROM THE WAGES, EARNINGS OR COMPENSATION OF AN EMPLOYEE AND TO PROVIDE THAT NOTHING IN THE RIGHT TO WORK LAW SHALL PROHIBIT AN EMPLOYEE FROM PERSONALLY PAYING CONTRIBUTIONS FOR POLITICAL ACTIVITIES AS DEFINED IN CHAPTER 26, TITLE 44, IDAHO CODE, TO A LABOR ORGANIZATION UNLESS SUCH PAYMENT IS PROHIBITED BY LAW AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-6605, IDAHO CODE, TO PROVIDE THAT A POLITICAL COMMITTEE MAY SOLICIT OR OBTAIN CONTRIBUTIONS FROM INDIVIDUALS AS PROVIDED IN THE VOLUNTARY CONTRIBUTIONS ACT OR AS PROVIDED IN THE STATE'S RIGHT TO WORK LAW; TO PROVIDE PROSPECTIVE APPLICATION; AND TO PROVIDE SEVERABILITY.

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

SECTION 1. That Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 26, Title 44, Idaho Code, and to read as follows:

CHAPTER 26
VOLUNTARY CONTRIBUTIONS ACT

44-2601. SHORT TITLE. This chapter shall be known as the "Voluntary Contributions Act."

44-2602. DEFINITIONS. (1) As used in this chapter the following terms have the following meanings:

(a) "Ballot proposition" includes initiatives, referenda, proposed constitutional amendments, and any other items submitted to the voters for their approval or rejection.

(b) "Filing entity" means a candidate, officeholder, political committee, political party, and each other entity required to report contributions under chapter 66, title 67, Idaho Code.

(c) "Fund" means the separate segregated fund established by a labor organization for political purposes according to the procedures and requirements of this chapter.

(d) (i) "Labor organization" means any association or organization of employees, and any agency, employee representation committee, or plan in which employees participate that exists, in whole or in part, to advocate on behalf of employees about grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment.

(ii) Except as provided in subsection (1)(d)(iii) of this section, "labor organization" includes each employee association and union for employees of public and private sector employers.

(iii) "Labor organization" does not include organizations governed by the national labor relations act, 29 U.S.C. section 151, et seq. or the railway labor act, 45 U.S.C. section 151, et seq.

(e) "Political activities" means electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee, political issues committee, voter registration campaign, or any other political or legislative cause, including ballot measures or propositions.

(f) "Union dues" means dues, fees or other moneys required as a condition of membership in a labor organization.

(2) Other terms defined in chapter 66, title 67, Idaho Code, apply to this chapter.

44-2603. LIMITS ON LABOR ORGANIZATION CONTRIBUTIONS.

(1) (a) A labor organization may only make expenditures for political activities if the labor organization establishes a separate segregated fund that meets the requirements of this chapter.

(b) The labor organization shall ensure that:

(i) In soliciting contributions for the fund, the solicitor discloses, in clear and unambiguous language on the face of the solicitation, that contributions are voluntary and that the

fund is a political fund and will be expended for political activities;

(ii) Union dues are not used for political activities, transferred to the fund, or intermingled in any way with fund moneys;

(iii) The cost of administering the fund is paid from fund contributions and not from union dues; and

(iv) Each contribution is voluntary and shall be made by the member and may not come from or be remitted by the employer of the member.

(2) At the time the labor organization is soliciting contributions for the fund from an employee, the labor organization shall:

(a) Affirmatively inform the employee, orally or in writing, of the fund's political purpose; and

(b) Affirmatively inform the employee, orally or in writing, of the employee's right to refuse to contribute without fear of reprisal or loss of membership in the labor organization.

(3) The labor organization has the burden of proof to establish that the requirements of subsections (1)(b) and (2) of this section are met.

(4) Notwithstanding the requirements of subsection (1)(b)(ii) of this section, a labor organization may use union dues to communicate directly with its own members about political candidates, ballot propositions, and other political issues.

44-2604. CRIMINAL ACTS -- PENALTIES.

(1) (a) It is unlawful for a labor organization to make expenditures for political activities by using contributions:

(i) Secured by physical force or threat of force, job discrimination or threat of job discrimination, membership discrimination or threat of membership discrimination, or economic reprisals or threat of economic reprisals; or

(ii) From union dues except as provided in section 44-2603(4), Idaho Code.

(b) When a labor organization is soliciting contributions for a fund from an employee, it is unlawful for a labor organization to fail to:

(i) Affirmatively inform the employee orally or in writing of the fund's political purpose; and

(ii) Affirmatively inform the employee orally or in writing of the employee's right to refuse to contribute without fear of reprisal or loss of membership in the labor organization.

(c) It is unlawful for a labor organization to pay a member for contributing to the fund by providing a bonus, expense account, rebate of union dues, or by any other form of direct or indirect compensation.

(2) Any person or entity violating this section is guilty of a misdemeanor.

44-2605. REGISTRATION -- DISCLOSURE. Each fund established by a labor organization under this chapter shall:

(1) Register as a political committee as required by chapter 66, title 67, Idaho Code; and

(2) File the financial reports for political committees required by chapter 66, title 67, Idaho Code.

SECTION 2. That Section 44-2004, Idaho Code, be, and the same is hereby amended to read as follows:

44-2004. VOLUNTARY ~~DEDUCTIONS~~ PAYMENTS PROTECTED. (1) It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.

(2) Deductions for political activities as defined in chapter 26, title 44, Idaho Code, shall not be deducted from the wages, earnings or compensation of an employee.

(3) Nothing in this chapter shall prohibit an employee from personally paying contributions for political activities as defined in chapter 26, title 44, Idaho Code, to a labor organization unless such payment is prohibited by law.

SECTION 3. That Section 67-6605, Idaho Code, be, and the same is hereby amended to read as follows:

67-6605. CONTRIBUTIONS OBTAINED BY A POLITICAL COMMITTEE. Contributions shall not be obtained for a political committee by use of coercion or physical force, by making a contribution a condition of employment or membership, or by using or threatening to use job discrimination or financial reprisals. A political committee may solicit or obtain contributions ~~on--an--automatic--basis-including,-but-not-limited-to,-a payroll-deduction-plan-only-if-the-person-who--is--contributing--to--the political--committee--affirmatively-consents-in-writing-to-the-contribution-at-least-once-every-calendar-year~~ from individuals as provided in chapter 26, title 44, Idaho Code, or as provided in section 44-2004, Idaho Code. A violation of the provisions of this section shall be punished as provided in subsection (b) of section 67-6625, Idaho Code.

SECTION 4. PROSPECTIVE APPLICATION. The provisions of this act shall apply to all contracts entered into after the effective date of this act and shall apply to any renewal of any existing contract.

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 14, 2003.

CHAPTER 98
(S.B. No. 1041)

AN ACT

RELATING TO LICENSING OF VEHICLE DEALERS; AMENDING SECTION 49-1602, IDAHO CODE, TO PROVIDE EXAMINATION AND CONTINUING EDUCATION REQUIREMENTS FOR LICENSURE OF VEHICLE DEALERS; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1637, IDAHO CODE, TO SET FORTH EDUCATION REQUIREMENTS FOR VEHICLE DEALERS, TO PROVIDE EXEMPTIONS, TO PROVIDE FOR THE DEVELOPMENT OF CONTINUING EDUCATION PROGRAMS AND EXAMINATIONS, TO PROVIDE THAT CERTAIN INSTITUTIONS, SCHOOLS AND ASSOCIATIONS MAY PROVIDE APPROVED CONTINUING EDUCATION PROGRAMS AND TO PROVIDE FOR RULES PROMULGATED BY THE DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-1602, Idaho Code, be, and the same is hereby amended to read as follows:

49-1602. ADMINISTRATION -- POWERS AND DUTIES. The department shall:

(1) Issue, and for reasonable cause shown, refuse to issue an applicant any license authorized under the provisions of this chapter. The department may refuse to issue a license to any applicant, other than a partnership or corporation, if the applicant fails to comply with the terms and provisions of this chapter or the rules of the board, or if the applicant has been convicted of a violation of any of the provisions of this chapter or chapter 5, title 49, or section 49-1418 or chapter 6, title 48, Idaho Code, or of any federal odometer law or regulation. Should the applicant be a partnership or a corporation, the department may refuse to issue a license to the applicant where it determines that one (1) or more of the partners of a partnership, or one (1) or more of the stockholders or officers of a corporation, was previously the holder of a license which was revoked or suspended, and the license revoked never reissued or the suspended license never reinstated, or that one (1) or more of the partners, stockholders, or officers, though not previously the holder of a license, has violated any of the provisions of this chapter or of an applicable rule or regulation, or of federal motor vehicle safety standards.

(2) For just cause shown, revoke or suspend, on terms, conditions, and for a period of time as the department shall consider fair and just, any license or licenses issued pursuant to the provisions of this chapter. No license shall be revoked or suspended unless it shall be shown that the licensee has violated a provision of this chapter or of an applicable rule or regulation, or of federal motor vehicle safety standards.

(3) On its own motion, upon the sworn complaint of any person, investigate any suspected or alleged violation by a licensee of any of the provisions of this chapter or of an applicable rule or regulation.

(4) Prescribe forms for applications for licenses and qualifications for an applicant for licensure. Every application for a license shall contain, in addition to other information required by the department, the following:

(a) The name and residence address of the applicant and the trade name, if any, under which he intends to conduct his business. If the applicant is a copartnership, the name and residence address of each member, whether a limited or general partner, and the name under which the partnership business is to be conducted. If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors.

(b) A complete description, including the city with the street number, of the principal place of business and any other and additional places of business operated and maintained by the applicant in conjunction with the principal place of business.

(c) Copies of any letters of franchise for new vehicles that the applicant has been enfranchised to sell or exchange, and the name or names and addresses of the manufacturer or distributor who has enfranchised the applicant.

(d) Names and addresses of the persons who shall act as salesmen under the authority of the license, if issued.

(e) A copy of the certificate of assumed business name, if required, shall be filed with the secretary of state.

(f) For a manufacturer's license, the name or names and addresses of each and every distributor, factory branch, and factory representative.

(g) For a salesman's license, certification by the dealer by whom the salesman will be employed, that he has examined the background of the applicant, and to the best of the dealer's knowledge, is qualified to be licensed under the sponsorship of the licensed dealer.

(h) Before a dealer who is not exempted from the continuing education requirements as provided in section 49-1637(2), Idaho Code, may apply for a renewal of a vehicle dealer's license, he shall provide to the department a certification from an accredited educational system, private vocational school, correspondence school or trade association approved by the department stating that the vehicle dealer has satisfied the four (4) hour continuing education requirements as specified in section 49-1637(1), Idaho Code.

(i) Before any vehicle dealer's license is issued by the department to an applicant who is not licensed with the department as a dealer within the previous twelve (12) calendar months and who is not exempted from the continuing education requirements as provided in section 49-1637(2), Idaho Code, the applicant shall provide to the department a certification from an accredited educational institution, private vocational school, correspondence school or trade association approved by the department stating that the applicant has satisfactorily completed the open book examination requirement specified in section 49-1637(1), Idaho Code.

(5) Refuse to issue any license under the provisions of this chapter if, upon investigation, the department finds that any information contained in the application is incomplete, incorrect or fictitious.

(6) Require that a dealer's principal place of business, and other locations operated and maintained by him in conjunction with his principal place of business, have erected or posted signs or devices providing information relating to the dealer's name, location and address of the principal place of business, and the number of the license held by the dealer.

(7) Provide for regular meetings of the dealer advisory board, to be held not less frequently than semiannually. Notices of meetings of the advisory board shall be mailed to all members not less than five (5) days prior to the date on which the meeting is to be held.

(8) Inspect, prior to licensing, the principal place of business and other sites or locations as may be operated and maintained by the applicant.

(9) Seek and consider the advisory board's recommendations and comments regarding proposed rules promulgated for the administration of the provisions of this chapter.

(10) Require the attendance of not less than one (1) or more than three (3) advisory board members at all hearings held relating to this chapter.

SECTION 2. 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 49-1637, Idaho Code, and to read as follows:

49-1637. EDUCATION REQUIREMENTS FOR VEHICLE DEALERS. (1) Except as provided in subsection (2) of this section, the following continuing education requirements shall apply to a vehicle dealer for an initial dealer's license and for the annual renewal, as provided in sections 49-1607(3) and 49-1634, Idaho Code, of a dealer's license:

(a) An applicant for an annual renewal of a dealer's license must complete a four (4) hour education program as described in subsection (3) of this section prior to submitting a renewal application for a vehicle or vessel dealer license.

(b) An applicant requesting an initial vehicle or vessel dealer's license shall be required to pass a comprehensive open book examination prior to submitting a license application.

(2) The education requirements of subsection (1) of this section do not apply to an applicant for a full-time or part-time vehicle salesman's license, manufacturer's license, distributor's license or wholesale dealer's license. The following applicants are also exempt from the provisions of subsection (1) of this section:

(a) A vehicle dealer of nationally advertised and recognized new motor vehicles or vessels; and

(b) A franchise dealer of new recreational vehicles, new motorcycles, new all-terrain vehicles, new snowmobiles or new vessels.

(3) The continuing education programs and written open book examination required in subsection (1) of this section shall be developed with input from motor vehicle industry organizations including, but not limited to, the Idaho independent automobile dealers association, and shall be approved by the department.

(4) The continuing education programs required in subsection (1) of this section may be provided by accredited educational institutions, private vocational schools, correspondence schools or trade associations, provided that the continuing education program has been approved by the department as required in subsection (3) of this section.

(5) The department may promulgate rules as necessary to implement the provisions of this section.

SECTION 3. This act shall be in full force and effect on and after January 1, 2004.

Approved March 20, 2003.

## CHAPTER 99
## (H.B. No. 30)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-226, IDAHO CODE, TO PROVIDE LANGUAGE TO CLARIFY THAT EXAMINERS WHO ARE EMPLOYEES OF THE DEPARTMENT SHALL BE NONCLASSIFIED EMPLOYEES.

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

SECTION 1. That Section 41-226, Idaho Code, be, and the same is hereby amended to read as follows:

41-226. EXAMINERS -- QUALIFICATIONS. For the conduct of or assistance in examinations under this chapter the director shall appoint as examiners only individuals who by reason of education, experience, or special training are competent to perform the duties and fulfill the responsibilities of an insurance examiner. In the selection of examiners the director shall give due consideration to standards and qualifications therefor recommended by the National Association of Insurance Commissioners or any successor organization thereto. The director may appoint, employ, fix the compensation of, prescribe and require the duties of and discharge such examiners as the duties of his office may require. Examiners <u>who are employees of the department</u> shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code.

Approved March 20, 2003.

## CHAPTER 100
## (H.B. No. 32)

AN ACT

RELATING TO THE BOARD OF ARCHITECTURAL EXAMINERS; AMENDING SECTION 54-312, IDAHO CODE, TO AUTHORIZE THE BOARD TO ADOPT RULES REQUIRING ANNUAL CONTINUING EDUCATION AS A CONDITION FOR LICENSE RENEWAL AND TO MAKE TECHNICAL CORRECTIONS.

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. <u>(1~~.~~)</u> 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.

(e) To adopt rules requiring annual continuing education as a condition for the renewal of licenses issued under this chapter.

(3~~.~~) Each member of the board of architectural examiners shall be compensated as provided by section 59-509(o), Idaho Code.

Approved March 20, 2003.

## CHAPTER 101
## (H.B. No. 35)

### AN ACT

RELATING TO THE IDAHO FOREST PRODUCTS COMMISSION; AMENDING SECTION 38-1502, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO ALPHABETIZE DEFINITIONS; AMENDING SECTION 38-1515, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO PROVIDE THAT ASSESSMENTS SHALL BE BASED ON DATA COMPILED FROM THE BASE YEAR AND SHALL BE PAID IN ACCORDANCE WITH RULES ADOPTED BY THE COMMISSION.

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

SECTION 1. That Section 38-1502, Idaho Code, be, and the same is hereby amended to read as follows:

38-1502. DEFINITIONS. As used in this chapter:

(1) "Assessment year" means January 1 through December 31 of any calendar year in which the commission levies an assessment.

(2) "Base year" means the calendar year immediately preceding the assessment year.

(3) "Business entity" means a person, firm, partnership, corporation, association, trust or other recognized legal entity.

(4) "Commission" means the Idaho forest products commission created by section 38-1503, Idaho Code.

(~~2~~5) "Financial supporter" means entities who have paid assessments pursuant to this chapter.

(~~3~~6) "Forest lands" means federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked, but it does not include land affirmatively converted to uses other than the growing of forest tree species.

(~~4~~7) "Forest product manufacturer" means a business entity that engages in the processing, cutting, fabricating or other process which converts timber, chips, sawdust or shavings into lumber, paper, plywood, particle board or other usable products for sale in commerce, provided, however, as used in this chapter, forest products manufacturers shall not include the following business entities engaged in:

(a) The production of fence or corral posts or rails;

(b) Producing shingles or shakes;

(c) Producing firewood or pellets for energy; or

(d) Producing logs which have been shaped or scribed and used in the construction of log structures.

(8) "Hog fuel" means wood or wood scraps that have been shredded or pulverized and used by forest product manufacturers to generate energy.

(~~5~~9) "Private forest lands" means forest lands not owned by the federal government, state government, an Indian tribe or a political subdivision of the state.

~~(6)--"Hog fuel" means wood or wood scraps that have been shredded or pulverized and used by forest product manufacturers to generate energy.~~

SECTION 2. That Section 38-1515, Idaho Code, be, and the same is hereby amended to read as follows:

38-1515. IMPOSITION OF ASSESSMENTS AND PROVISION FOR LATE FEES. (1) From and after the first day of July, 1995, ~~there~~ the commission is hereby authorized to levy the following ~~fees and~~ assessments:

(a) For all forest products manufacturers, an amount no greater than fifty cents (50¢) per thousand board feet or the equivalent thereof for all logs either harvested in Idaho or measured or processed by a manufacturing entity located in the state of Idaho, regardless of the state in which the logs might have been cut. For purposes of this chapter, "forest products manufacturers" shall include those business entities which buy timber in Idaho and then sell it to other persons outside the state for manufacture into fin-

ished products. Such business entities shall be liable for the assessments described in this paragraph for all timber cut within Idaho and then distributed to other persons outside the state.

(b) For all business entities engaged in the harvest or transport of timber, logs, unfinished lumber, chips, sawdust, shavings or hog fuel in Idaho, a sum no greater than twenty-five dollars ($25.00) per employee, including single, self-employers and the individuals involved in partnerships, as measured by the records of the department of employment during the month of July of the preceding year, or as provided in subsection (2) of this section, provided, however, those business entities engaged solely in the harvest or transport of those exclusions to forest products manufacturers as set forth in subsection (~~4~~7)(a), (b), (c) and (d) of section 38-1502, Idaho Code, shall owe no duty or assessment under this chapter, nor shall any assessment be levied upon forest products transported by railroad.

(c) For business entities or persons owning more than fifty thousand (50,000) acres of private forest land within the state of Idaho but with no facilities for manufacturing forest products within the state, a sum no greater than sixteen and sixty-six one hundredths cents (16.66¢) per each acre of forest land, provided, however, that this assessment shall be reduced by an amount equal to the assessment described in paragraph (a) of this subsection for all logs harvested from that land in the preceding calendar year and assessed in this section. Persons owning less than a total of fifty thousand (50,000) acres of forest land in the state shall bear no assessment or fee pursuant to the provisions of this subsection.

(d) No firm or business entity shall be liable for assessments under this chapter in more than one (1) of the categories described in this section. In the event that a person, firm or business entity qualifies to pay more than one (1) assessment as described herein, then the greater of the assessments shall be assessed, due and payable.

(2) In collecting assessments ~~and other financial obligations~~ due the commission, the commission is authorized to cooperate with and coordinate its actions to collect assessments with the various efforts of Idaho board of scaling practices, the tax commission, the department of employment, the transportation department and the department of lands to either collect assessments or taxes due under the provisions of this chapter or to identify those who may owe assessments under the provisions of this chapter.

(3) Any person or firm who makes payment to the commission at a date later than that prescribed in rules set forth by the commission under this section may be subject to a late payment penalty as set forth by the commission by rule. Such penalty shall not exceed 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.

(4) ~~All~~ An assessment~~s due~~ levied under this chapter shall be based upon ~~the~~ data ~~for~~ compiled from the base year. ~~immediately preceding and payments due~~ Assessments shall be paid to the commission ~~shall be made quarterly~~ according to such rules as may be adopted by the commission.

Approved March 20, 2003.

CHAPTER 102
(H.B. No. 58)

AN ACT

RELATING TO THE DEPARTMENT OF INSURANCE; AMENDING SECTION 41-249, IDAHO CODE, TO PROVIDE FOR THE SHARING OF CONFIDENTIAL INFORMATION AMONG GOVERNMENTAL AGENCIES AND THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, TO AUTHORIZE THE DIRECTOR TO ENTER INTO INFORMATION SHARING AGREEMENTS WITH OTHER GOVERNMENTS AND AGENCIES AND WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, TO PROVIDE A REFERENCE TO PRODUCERS AND OTHER LICENSEES AND TO PROVIDE CODE REFERENCES.

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

SECTION 1. That Section 41-249, Idaho Code, be, and the same is hereby amended to read as follows:

41-249. SHARING OF INFORMATION ~~PROVIDED BY~~ AMONG GOVERNMENTAL AGENCIES AND THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. (1) Any document, report, or other recorded information provided to the director by any federal or state government or regulatory or law enforcement agency, or any combination thereof, or by the national association of insurance commissioners (NAIC), which is marked "confidential" or "for regulator use only" or by similar terms or concerning which the ~~NAIC~~ entity requires written assurance that ~~a state~~ the director maintain such information in confidence before the ~~NAIC~~ entity will release the information, may be maintained by the director on a confidential basis and is not required to be disclosed to the public.~~; provided that~~

(2) The director may provide any document, report, or other recorded information to any federal or state government or regulatory or law enforcement agency, or any combination thereof, or to the NAIC, which is marked "confidential" or "for regulator use only" or by similar terms or concerning which the director requires written assurance that the entity maintain such information in confidence before he will release it to such entity.

(3) The director is authorized to enter into agreements with other governments, agencies, or any combination thereof, or with the NAIC, in connection with his duties and responsibilities pursuant to this section.

(4) ~~T~~the application of this section shall not prevent an insurance company or producer or other licensee from obtaining information used by the department of insurance in making regulatory decisions or taking regulatory action affecting the company consistent with chapter 3, title 9, Idaho Code, and title 41, Idaho Code.

Approved March 20, 2003.

CHAPTER 103
(H.B. No. 60)

AN ACT

RELATING TO STOCK AND MUTUAL INSURERS; AMENDING SECTION 41-2801, IDAHO CODE, TO DELETE CODE REFERENCES; AMENDING SECTION 41-2805, IDAHO CODE, TO DELETE LANGUAGE RELATING TO PERMITS FOR PROPOSED INSURERS; REPEALING SECTIONS 41-2806, 41-2807, 41-2808, 41-2810, 41-2811, 41-2812, 41-2813, 41-2814, 41-2815, 41-2816, 41-2817 AND 41-2819, IDAHO CODE; AMENDING SECTION 41-2809, IDAHO CODE, TO PROVIDE FOR INVESTIGATION BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE UPON APPLICATION OF A NEW INSURER FOR A CERTIFICATE OF AUTHORITY; AND AMENDING SECTION 41-2854A, IDAHO CODE, TO DELETE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-2801, Idaho Code, be, and the same is hereby amended to read as follows:

41-2801. SCOPE OF CHAPTER. This chapter shall apply only to domestic stock insurers and domestic mutual insurers, except that ~~sections 41-2806 through 41-2817 and section 41-2819, Idaho Code, relative to sale of securities or other financing of insurers or insurance operations, shall apply also as to reciprocal insurers and foreign insurers, and~~ section 41-2849, Idaho Code, (nonassessable policies, mutual insurers) shall also apply as to foreign insurers.

SECTION 2. 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) 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 and deliver two (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 proposed 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) 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.

(~~4~~3) 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 commitment by the director as to any other aspect or operation of the proposed insurer.

(~~5~~4) 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 3. That Sections 41-2806, 41-2807, 41-2808, 41-2810, 41-2811, 41-2812, 41-2813, 41-2814, 41-2815, 41-2816, 41-2817 and 41-2819, Idaho Code, be, and the same are hereby repealed.

SECTION 4. That Section 41-2809, Idaho Code, be, and the same is hereby amended to read as follows:

41-2809. INVESTIGATION OF PROPOSED ORGANIZATION. Upon ~~completion of the application for a solicitation permit under sections 41-2807 or 41-2808~~ application of a new insurer for a certificate of authority, the director of the department of insurance shall promptly make an investigation of:

(1) The character, reputation, financial standing and purposes of the organizers, incorporators, and subscribers organizing the proposed insurer or organization;

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers and directors; and

(3) Such other aspects of the proposed insurer or financing as he may deem advisable.

SECTION 5. That Section 41-2854A, Idaho Code, be, and the same is hereby amended to read as follows:

41-2854A. MUTUALIZATION OF SERVICE CORPORATIONS. (1) Every corporation organized or existing under chapter 34, title 41, Idaho Code, as a hospital service corporation, a combined professional service and hospital service corporation, or a professional service corporation whose articles of incorporation specify participant licensee services are to be provided by physicians or surgeons, of either medicine and surgery or of osteopathic medicine and surgery, shall file with the director of the department of insurance a plan of mutualization on or before January 1, 1995. Any other corporation organized under chapter 34, title 41, Idaho Code, may at any time file a plan of mutualization. Any corporation organized under chapter 34, title 41, Idaho Code, may hereafter be referred to in this section as a "service corporation." The director of

the department of insurance shall approve any plan of mutualization so filed, and forthwith issue a certificate of authority to the filing corporation to transact insurance in this state pursuant thereto, if:

(a) Except as herein provided and except as consistent with or implicit in the conversion of the service corporation to a mutual insurer, the plan does not deprive existing corporate members of statutory rights expressly set forth in chapter 34, title 41, Idaho Code;

(b) The plan has been approved by the corporation's board of directors;

(c) The corporation satisfies the minimum surplus or deposit requirements of this title for the type or types of mutual insurer to which it will convert, as specified by the corporation in its plan; and

(d) The plan requires the corporation to honor subscribers' existing contractual rights in their subscriber agreements as if the corporation had not been converted to a mutual insurer. Approval by the service corporation's board of directors of the plan of mutualization shall be sufficient and effective without the approval or vote of the service corporation's members, notwithstanding any other provision of law to the contrary or of the service corporation's bylaws or articles of incorporation. The filing of such a board-approved plan, together with the issuance by the director of the department of insurance of a certificate of authority, shall constitute legal authority, effective from and after the effective date of the plan, specified in the plan, for the corporation to transact insurance in Idaho as a nonprofit mutual insurer pursuant to such plan.

(2) A plan of mutualization shall provide that, from and after its effective date, the corporation's reserves shall not be used for any purpose or distributed in any manner contrary to this title. A plan of mutualization shall also provide for a "transition period" commencing with the plan's effective date and ending with a date identified as the "transition period termination date," which shall be a date not later than the first anniversary of the effective date of such plan. Prior to the expiration of the transition period, the corporation's reserves shall not be used for any purpose or distributed in any manner contrary to section 41-3421, Idaho Code. Following conversion, the corporation shall continue to be a nonprofit corporation; provided however, the board of directors of a mutualized service corporation may from time to time declare, apportion, and pay or credit to the corporation's members dividends pursuant to this title if the corporation's articles of incorporation (as amended, if applicable, in conjunction with the filing or after the effective date of its plan of mutualization) expressly so provide. Notwithstanding any other provision of law to the contrary, no corporation (including by way of illustration and not limitation, any direct or indirect successor corporation or entity, by merger or acquisition of substantially all its assets) mutualizing under this section shall, in the event of its dissolution, distribute any of its assets except as provided by its articles of incorporation in effect immediately before the effective date of its plan of mutualization; nor shall any such corporation take or fail to take any action that would prevent it from making such distributions at the time of its dissolution.

(3) From and after the transition period termination date, the obligations of participant hospitals, participant physicians, and other

licensees under sections 41-3415, 41-3415A, 41-3416 and 41-3431, Idaho Code, and all voting rights held by participant hospitals, participant physicians, and any other participant licensees by virtue of participant status under chapter 34, title 41, Idaho Code, shall be extinguished, but until such transition period termination date, they shall retain such voting rights and obligations as they held and for which they were accountable prior to mutualization hereunder, including duties and responsibilities to the corporation and its subscribers. Each policyholder of a policy issued on or after such plan's effective date shall have all the rights and liabilities of a member of a mutual insurer under the policy, under the corporation's articles of incorporation and bylaws, and as provided by law. Before such transition period termination date, the corporation shall replace, convert by agreement with subscribers, or allow to lapse pursuant to their express terms all subscriber agreements, so that from and after such transition period termination date the corporation shall have no subscriber agreements in force. From and after the effective date of its plan of mutualization, the corporation shall issue no subscriber agreements, but shall be authorized to accept applications for and to issue insurance policies of the kind or kinds specified by the plan and the corporation is qualified to issue pursuant to law.

(4) The service corporation shall file with the director of the department of insurance, as part of its plan of mutualization, amended bylaws and articles of amendment to articles of incorporation, approved by its board of directors, which articles and bylaws shall conform in all respects with the requirements of this chapter and any applicable rules duly promulgated hereunder, and shall become effective on the effective date of such plan. Approval by the service corporation's board of directors of such amendments to its articles and bylaws shall be sufficient and effective without the approval or vote of the corporation's members, notwithstanding any contrary provision of law or of the service corporation's bylaws or articles of incorporation. Pursuant to the Idaho nonprofit corporation act, the service corporation shall also file with the Idaho secretary of state articles of amendment to its articles of incorporation.

(5) For the period ending on the transition period termination date, the corporation's plan of mutualization and its articles of incorporation and bylaws may contain provisions the corporation's board of directors, in the exercise of its discretion and in fulfillment of its duties, deems necessary, convenient or prudent to implement the plan of mutualization, including, but not limited to, transition provisions, expressly identified as such, that allocate voting power among policyholder members, participant licensees and participant hospitals, as applicable and as the board of directors may deem reasonably appropriate; provided however, all transition provisions, whether in the corporation's articles of incorporation, bylaws or plan of mutualization, shall, without further action or filing, expire upon the transition period termination date.

(6) Within forty-two (42) days of the filing date of a corporation's plan of mutualization, the director shall approve the same and issue a certificate of authority to the corporation unless the director finds such plan does not comply with subsection (1) of this section, in which case the director shall within such forty-two (42) day period issue a written order disapproving such plan and specifying the

reasons therefor. The corporation may preserve the legal effectiveness and effective date of its plan by curing or otherwise responsibly addressing each asserted deficiency identified by the director and filing within fourteen (14) days of the effective date of the director's order an amended plan of mutualization that reflects corrections and responses made. Within fourteen (14) days of ~~the~~ such filing, the director shall issue a certificate of authority or a final order disapproving such amended plan and specifying the reasons therefor, which final order may, within forty-two (42) days after its effective date, be appealed to the district court for Ada ~~C~~county, ~~S~~state of Idaho. Notwithstanding the director's final order, the corporation shall be legally authorized to transact business pursuant to its plan of mutualization until the forty-second day following the latest of:

(a) The effective date of the director's final order;

(b) The entry of final judgment by the district court in which review of the director's final order has been sought; and

(c) The director's compliance and the district court's compliance (by entry of a final judgment) with the opinion issued by the last appellate court to which appeal may be taken that has reviewed the district court's judgment concerning the director's final order. If the director has prevailed upon final judgment being entered, the corporation's legal authority to transact business pursuant to its plan of mutualization shall expire at the end of such period; however, if the corporation has prevailed or corrected all deficiencies identified in the director's final order, the director shall, before or upon the expiration of such period, issue a certificate of authority to the corporation. Issuance of a certificate of authority under this section shall not preclude the director from commencing any proceedings for alleged violations of this title. The procedure in this subsection shall apply to corporations existing under chapter 34, title 41, Idaho Code, on December 31, 1993.

(7) Sections 41-2805, ~~and 41-2806,~~ Idaho Code, and any other provision of this title dealing with newly organized mutual insurers as such, shall have no application to a plan of mutualization under this section or to the corporation adopting or implementing such plan.

(8) If, pursuant to section 41-3406, Idaho Code, a mutualizing service corporation is also operating as a health maintenance organization immediately prior to the effective date of its plan of mutualization, it shall be legally authorized to continue such operations in the manner provided for in said plan after the effective date thereof as if such service corporation had not become a mutual insurer under this section.

(9) From and after the effective date of a plan of mutualization, a corporation mutualizing under this section shall be liable for the tax imposed and provided for in section 41-402, Idaho Code, but only with respect to insurance policies (as opposed to subscriber agreements) issued by it, and subject to refunds, reductions and other adjustments applicable to other domestic mutual insurers. Until all subscriber agreements are terminated, expire or are otherwise converted to policies of insurance issued by the corporation as a mutual insurer, the corporation shall continue to be liable for and pay the tax on subscriber contracts in the manner provided in section 41-3427, Idaho Code, subject to the same exemptions provided in that section, except for premium taxes paid pursuant to this subsection on policies issued as a mutual insurer.

(10) Except as modified in this section and other applicable law,

after the effective date of a service corporation's plan of mutualization, all contracts, rights, powers, privileges, liabilities and obligations of such corporation shall continue unchanged and in effect until repealed, terminated, ~~cancelled~~ canceled, amended, waived, satisfied or otherwise legally extinguished.

Approved March 20, 2003.

## CHAPTER 104
(H.B. No. 62, As Amended)

AN ACT

RELATING TO BAIL AGENTS; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1037, IDAHO CODE, TO SET FORTH APPLICABILITY OF REQUIREMENTS FOR BAIL AGENTS; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1038, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1039, IDAHO CODE, TO REQUIRE LICENSURE; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1040, IDAHO CODE, TO REQUIRE BONDING; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1041, IDAHO CODE, TO PROVIDE THAT BAIL AGENTS SHALL PROVIDE CERTAIN RECORDS TO THE DEFENDANT AND ANY COSIGNERS AT THE TIME OF THE BAIL TRANSACTION AND SHALL MAINTAIN CERTAIN RECORDS FOR AT LEAST FIVE YEARS AFTER THE LIABILITY OF THE SURETY HAS BEEN TERMINATED; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1042, IDAHO CODE, TO PERMIT SPECIFIED COLLECTIONS AND CHARGES BY BAIL AGENTS AND TO REQUIRE THE FULL DOCUMENTATION OF ALL EXPENSES FOR WHICH A BAIL AGENT SEEKS REIMBURSEMENT; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1043, IDAHO CODE, TO PROVIDE FOR COLLATERAL UNDER CERTAIN CONDITIONS; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1044, IDAHO CODE, TO PROVIDE THAT ALL PREMIUMS AND COLLATERAL MUST BE IMMEDIATELY RETURNED UPON A BAIL AGENT'S EARLY SURRENDER OF A DEFENDANT TO CUSTODY, TO SET FORTH GOOD CAUSE FOR THE EARLY SURRENDER OF A DEFENDANT AND TO REQUIRE A WRITTEN STATEMENT PRIOR TO THE EARLY SURRENDER OF A DEFENDANT FOR GOOD CAUSE; AND AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1045, IDAHO CODE, TO PROVIDE FOR BAIL AGENT RESPONSIBILITY FOR ACTIONS OF OTHERS.

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 41-1037, Idaho Code, and to read as follows:

41-1037. REQUIREMENTS FOR BAIL AGENTS. Sections 41-1037 through 41-1045, Idaho Code, provide requirements for the regulation of bail agents in this state in addition to the requirements generally applicable to producers under this chapter.

SECTION 2. 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 41-1038, Idaho Code, and to read as follows:

41-1038. DEFINITIONS. As used in sections 41-1037 through 41-1045, Idaho Code:

(1) "Bail agent" means a licensed producer in the line of surety insurance that is authorized by an insurer to execute or countersign undertakings of bail in connection with judicial proceedings.

(2) "Collateral" means property of any kind given as security to obtain a bail bond.

(3) "Department" means the department of insurance.

(4) "Director" means the director of the department of insurance.

SECTION 3. 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 41-1039, Idaho Code, and to read as follows:

41-1039. LICENSE REQUIRED. No person shall hold himself out to be a bail agent or sell, solicit, negotiate, advise or consult regarding the terms of bail bond contracts in this state unless that person is licensed as a producer in the line of surety insurance.

SECTION 4. 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 41-1040, Idaho Code, and to read as follows:

41-1040. BOND REQUIRED. After January 1, 2004, a producer shall not act as a bail agent unless the producer first files with the department and thereafter maintains in force a surety performance bond, executed by an authorized surety insurer, in favor of the director in the amount of fifteen thousand dollars ($15,000). Such bond shall be held in trust for the benefit and protection of the public against a judicial or administrative determination of loss by acts of fraud or dishonesty by the bail agent.

SECTION 5. 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 41-1041, Idaho Code, and to read as follows:

41-1041. RECORDS. (1) The bail agent shall provide copies of the bail contract, premium receipts, collateral receipts, and any related documents to the defendant and any cosigner at the time of the bail transaction.

(2) In addition to the records set forth in section 41-1036, Idaho Code, a bail agent shall also maintain complete records pertaining to any collateral received and any charges collected for any bail bond transaction for at least five (5) years after the liability of the surety has been terminated.

SECTION 6. 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 41-1042, Idaho Code, and to read as follows:

41-1042. COLLECTIONS AND CHARGES PERMITTED. (1) Notwithstanding any other provision of this chapter, a bail agent in any bail transaction shall not, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following:

(a) To pay premiums at the rates established by the insurer;

(b) To provide collateral;

(c) To reimburse the bail agent for actual expenses incurred in connection with the bail transaction, limited to the following:

(i) Expenditures actually and reasonably incurred to verify underwriting information or to pay for notary public fees, recording fees, or necessary long distance telephone or telegram fees; provided however, that the total of all such expenditures reimbursed shall not exceed fifty dollars ($50.00); and

(ii) Travel expenses incurred more than twenty-five (25) miles from a bail agent's place of business, which includes any city or locality in which the bail agent advertises or engages in bail business, up to the amount allowed by the internal revenue service for business travel for the year in which the travel occurs.

(2) Except as permitted under this section, a bail agent shall not make any charge for his service in a bail transaction and the bail agent shall fully document all expenses for which the bail agent seeks reimbursement.

SECTION 7. 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 41-1043, Idaho Code, and to read as follows:

41-1043. COLLATERAL. (1) A bail agent may accept collateral in connection with the bail bond transaction if the collateral is not excessive in relation to the face amount of the bond.

(2) All collateral received by a bail agent is received in a fiduciary capacity.

(a) Collateral received in the form of cash must be deposited and maintained in a trust account that is separate and apart from any other funds or assets of the bail agent.

(b) Collateral other than cash must be maintained in a separate and secure location apart from the assets of the bail agent.

(3) Collateral received must be returned to the person who deposited the collateral with the bail agent within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by collateral, is discharged.

(4) A copy of the order of the court wherein the bail or undertaking was ordered exonerated shall be deemed prima facie evidence of exoneration or termination of the liability.

(5) If a bail agent accepts collateral, the bail agent shall give a written receipt for the collateral to the person from whom the collateral was received. The receipt shall include a full and detailed accounting of the collateral received.

SECTION 8. 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 41-1044, Idaho Code, and to read as follows:

41-1044. EARLY SURRENDER OF DEFENDANT TO CUSTODY -- RETURN OF PREMIUM. (1) A bail agent shall immediately return in full all premium and collateral associated with a bail transaction if the bail agent without good cause or in violation of the bail contract surrenders the defendant to custody before the time specified in the undertaking of bail or the bail bond for the appearance of the defendant or, if no time is specified in the undertaking or bond, before the time the defendant is lawfully required to appear in court.

(2) A bail agent has good cause for the early surrender of a defendant if the defendant has changed addresses without notifying the bail agent, engaged in self-concealment, left the jurisdiction of the court without permission of the bail agent or the court, materially breached the terms of the bail contract, or has otherwise acted in a manner that materially increases the risk of loss assumed by the bail agent or surety. A failure to pay the premium when due shall constitute good cause for early surrender only if at the time of the bail transaction the bail agent obtains the payor's signature on a written statement clearly stating the amount of premium due, the date by which the premium must be paid and that the failure to pay the premium by the due date will result in the early surrender of the defendant and forfeiture of any premium paid.

(3) Before surrendering a defendant early for good cause, a bail agent shall prepare a signed and dated written statement fully describing the facts upon which the agent relied in determining that good cause exists for the early surrender of the defendant. The statement shall be maintained as a record of the bail transaction and shall be made available to the department upon request. A bail agent who surrenders a defendant early for good cause shall not be entitled to seek recovery of any unpaid premium.

SECTION 9. 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 41-1045, Idaho Code, and to read as follows:

41-1045. RESPONSIBILITY FOR ACTIONS OF OTHERS. For purposes of licensing and regulation under title 41, Idaho Code, a bail agent is responsible for the actions of the bail agent's employees, contractors and agents acting on the bail agent's behalf in relation to bail transactions and matters arising out of bail transactions.

Approved March 20, 2003.

## CHAPTER 105
## (H.B. No. 106)

AN ACT

RELATING TO THE IMPORTATION OR POSSESSION OF DELETERIOUS EXOTIC ANIMALS; AMENDING TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 39, TITLE 25, IDAHO CODE, TO DECLARE POLICY AND PROVIDE A STATEMENT OF LEGISLATIVE INTENT, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE AND THE ADMINISTRATOR OF THE DIVISION OF ANIMAL INDUSTRIES TO TAKE CER-

TAIN ACTION, TO PROVIDE FOR THE PROMULGATION OF RULES, TO PROVIDE FOR THE DESIGNATION OF DELETERIOUS EXOTIC ANIMALS AND TO PROVIDE FOR CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 39, Title 25, Idaho Code, and to read as follows:

CHAPTER 39
IMPORTATION OR POSSESSION OF DELETERIOUS EXOTIC ANIMALS

25-3901. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. The Idaho legislature finds and declares that the agriculture industry, wildlife of the state, and the environment are all important components of Idaho's economy, and that it is in the public interest to strictly regulate the importation or possession of deleterious exotic animals up to and including prohibition of the importation or possession of such animals.

25-3902. AUTHORITY OF THE DEPARTMENT OF AGRICULTURE AND THE DIVISION OF ANIMAL INDUSTRIES. The department of agriculture and the administrator of the division of animal industries are authorized and empowered to regulate or prohibit the importation or possession of any deleterious exotic animals.

25-3903. RULES FOR IMPORTATION OR POSSESSION OF DELETERIOUS EXOTIC ANIMALS. The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate and enforce necessary administrative rules in compliance with chapter 52, title 67, Idaho Code, for the regulation or prohibition of the importation or possession of deleterious exotic animals.

25-3904. DESIGNATION OF DELETERIOUS EXOTIC ANIMALS. The administrator of the division of animal industries shall, in cooperation with the director of the department of fish and game, designate by rule or order any animal, not native to Idaho, which is determined to be dangerous to the environment, livestock, agriculture, or wildlife of the state as a deleterious exotic animal.

25-3905. VIOLATIONS -- CIVIL -- CRIMINAL -- PENALTIES FOR VIOLATIONS. (1) Failure to comply with the provisions of this chapter, or the rules promulgated hereunder, shall constitute a violation. Civil penalties may be assessed against a violator as follows:

(a) A civil penalty as assessed by the department of agriculture or its duly authorized agent not to exceed five thousand dollars ($5,000) for each offense;

(b) 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, 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 of the department of agriculture 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 this chapter, or rules promulgated hereunder by the division of animal industries 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 20, 2003.

## CHAPTER 106
## (H.B. No. 108)

### AN ACT

RELATING TO BRUCELLOSIS INDEMNITY PAYMENTS; AMENDING SECTION 25-606, IDAHO CODE, TO AUTHORIZE THE BOARD OF EXAMINERS TO PAY OWNERS IN ACCORDANCE WITH DESIGNATED STATUTORY PROVISIONS AFTER THE SALE AND SLAUGHTER OF CERTAIN ANIMALS AND TO STRIKE REFERENCE TO APPRAISALS AND REPORTS OF SALVAGE.

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

SECTION 1. That Section 25-606, Idaho Code, be, and the same is hereby amended to read as follows:

25-606. SALE OF REACTORS FOR SLAUGHTER -- PAYMENTS TO OWNERS. The owner of cattle or other animals which have shown a positive reaction to the brucellosis test shall sell such reactors under the direction of the

department at a public auction market for immediate slaughter at a public slaughtering establishment where federal or state post mortem inspection is maintained; or the department may authorize such slaughter upon the owner's property or other place under the direction of said department. After such sale and slaughter the ~~department~~ board of examiners is authorized to pay such owner ~~out of funds appropriated by the legislature for that purpose, an indemnity not to exceed twelve dollars and fifty cents ($12.50) for any grade animal or more than twenty five dollars ($25.00) for any purebred animal~~ in accordance with section 25-614A, Idaho Code. No compensation shall be made until said owner complies with the rules and regulations of the department. ~~Appraisals and reports of salvage are not required.~~ Proof of destruction is required. Post mortem reports will be accepted as proof of slaughter.

Approved March 20, 2003.

## CHAPTER 107
## (H.B. No. 109)

AN ACT

RELATING TO SOIL CONSERVATION DISTRICTS; REPEALING SECTION 22-2716, IDAHO CODE; AMENDING CHAPTER 27, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2716, IDAHO CODE, TO SET FORTH THE LEGISLATIVE DETERMINATION AND DECLARATION OF POLICY; AMENDING SECTION 22-2717, IDAHO CODE, TO ALPHABETIZE, REVISE AND ADD DEFINITIONS; AMENDING SECTION 22-2718, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE POWERS, FUNCTIONS AND DUTIES OF THE SOIL CONSERVATION COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-2722, IDAHO CODE, TO STRIKE A CODE REFERENCE, TO PROVIDE THAT CERTAIN ACTIVITIES OF SOIL CONSERVATION DISTRICTS INCLUDE APPROPRIATE BEST MANAGEMENT PRACTICES AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTIONS 22-2728 AND 22-2729, IDAHO CODE; AMENDING SECTION 22-2730, IDAHO CODE, TO CLARIFY A COMMISSION TITLE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE FOR A PRIORITY LIST OF CONSERVATION IMPROVEMENTS, PROJECTS AND THE WATER QUALITY PROGRAM FOR AGRICULTURE; AMENDING SECTION 22-2731, IDAHO CODE, TO PROVIDE FOR THE ALLOCATION OF THE RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT FUND FOR THE PURPOSE OF IMPLEMENTING CONSERVATION IMPROVEMENTS AND PROJECTS; AMENDING SECTION 22-2733, IDAHO CODE, TO PROVIDE FOR GRANTS FROM THE STATE SOIL CONSERVATION COMMISSION GENERAL FUND, TO PROVIDE THAT APPLICATIONS MAY BE FILED BY ELIGIBLE PARTICIPANTS, TO REVISE THE PURPOSES FOR WHICH GRANTS MAY BE OBTAINED, TO PROVIDE CRITERIA FOR PARTICIPANT APPLICATIONS, TO REVISE THE PROCEDURES RELATED TO THE REVIEW, EVALUATION AND APPROVAL OF GRANT APPLICATIONS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 22-2734, IDAHO CODE, TO PROVIDE FOR COST-SHARE CONTRACTS OR PROJECTS FROM THE STATE SOIL CONSERVATION COMMISSION GENERAL FUND, TO PROVIDE THAT APPLICATIONS MAY BE FILED BY ELIGIBLE PARTICIPANTS, TO REVISE THE PURPOSES FOR WHICH CONTRACTS OR PROJECTS MAY BE OBTAINED, TO REVISE THE PROCEDURES RELATED TO THE FILING, REVIEW, EVALUATION, INVESTIGATION AND APPROVAL OF APPLICATIONS FOR PROPOSED CONTRACTS OR PROJECTS, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE FOR FUNDING UPON APPROVAL OF COST-SHARE GRANTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 22-2716, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 27, 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 22-2716, Idaho Code, and to read as follows:

22-2716. LEGISLATIVE DETERMINATION AND DECLARATION OF POLICY. (1) It is the determination of the state of Idaho that:

(a) Forest lands, rangelands and agricultural lands maintained in a healthy condition are a legitimate land use contributing to the economic, social and environmental well-being of the state and its citizens;

(b) It is essential to the general welfare of all citizens of this state that multiple use conservation improvements be implemented on a broader scale on both public and private lands;

(c) Due to numerous economic and practical issues relating to the improvements of individual tracts of land, both public and private resource conservation improvements, projects and programs of the nature contemplated by this chapter would enhance the economic productivity and environmental quality of the state; and

(d) It is sound public policy for the state of Idaho to provide for accounts to finance loans, grants, cost-share funding and tax incentives to the end that forest lands, rangelands and agricultural lands within the state can provide the greatest benefit to all concerned.

(2) It is the intent of the state of Idaho to provide a means by which funds, including federal, state, private and other moneys, can be obtained and utilized for the accelerated development of water quality programs, multiple use forest land, rangeland, and agricultural land conservation improvements in the state, and to provide that these improvements, projects and programs be locally planned, coordinated and implemented through statutory provisions pertaining to soil conservation districts, the state soil conservation commission, appropriate state and federal agencies, and the owners and operators of privately owned lands.

(3) It is in the best interest of the state of Idaho:

(a) To emphasize nonregulatory, science-based technical assistance, incentive-based financial programs and informational and educational programs at the local level;

(b) To maintain, preserve, conserve and rehabilitate forest lands, rangelands and agricultural lands to assure the protection and productivity of the state's natural resources;

(c) That soil conservation districts, as governmental subdivisions, and the state soil conservation commission, as a state agency, are the primary entities to provide assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of Idaho's natural resources;

(d) To establish policies for cooperative working relationships between local soil conservation districts, the state soil conservation commission, local, state and federal agencies and public and private groups to plan, develop and implement conservation goals and initiatives with local landowners and land users;

(e) That soil conservation districts and the state soil conservation commission lead nonregulatory efforts to conserve, sustain, improve and enhance Idaho's private and state lands and to provide assistance to private landowners and land users to plan, develop and implement conservation plans addressing soil, water, air, plant and animal resources. Technical, financial and educational assistance to landowners and land users is vital to that effort; and

(f) That the state soil conservation commission provide support to soil conservation districts in the wise use and enhancement of soil, water and related resources.

(4) It is the policy of the state of Idaho:

(a) To provide appropriate tax policies and program mechanisms that provide incentives for private landowners and land users to voluntarily manage forest lands, rangelands and agricultural lands in a manner that promotes conservation;

(b) That the health, safety and general welfare of the people of this state can be greatly enhanced by providing nonregulatory opportunities to landowners and land users in order to increase the ability of such landowners and land users to readily understand and plan for local, state and federal natural resource requirements and opportunities through technological innovation and processes;

(c) To enhance natural resource productivity in order to promote a strong natural resource sector, reduce unintended adverse effects of resource development and use, protect individual and community health and safety and encourage stewardship;

(d) That conservation plan implementation shall include best management practices implemented according to the standards and specifications developed by the United States department of agriculture natural resources conservation service (NRCS) as designated by the agricultural pollution abatement plan. Those practices shall include, but not be limited to: irrigation water management systems; prescribed grazing; forest stand improvement; establishment of grass, trees and shrubs to reduce wind and water erosion; promotion of sound community development; protection of water and air resources from agricultural nonpoint sources of impairment; maintenance, restoration or enhancement of wetlands and fish and wildlife habitat; protection of upstream watersheds from flood risk; and protection of watersheds from the effects of chronic water shortages and risks; and

(e) That all conservation programs authorized pursuant to this chapter shall deliver services fairly and equitably, strengthen the conservation district delivery system, provide timely science-based information and provide conservation information and educational programs and experiences to youth and adults.

SECTION 3. That Section 22-2717, Idaho Code, be, and the same is hereby amended to read as follows:

22-2717. DEFINITIONS. Whenever used or referred to in this ~~act~~ chapter, unless a different meaning clearly appears from the context:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Agricultural pollution abatement plan" or "ag plan" means the

document developed by the state soil conservation commission and approved by the commission and the department of environmental quality, that provides appropriate technical, programmatic, informational and educational processes, guidelines and policies for addressing agricultural pollution.

(3) "Agriculture" or "department of agriculture" means an executive department of state government created in section 22-101, Idaho Code.

(4) "Best management practices" or "BMPs" 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. (5) "Commission" or "state soil conservation commission" means the agency created in section 22-2718, Idaho Code.

(6) "Conservation plan" means a description of identified natural resource issues and a specific schedule of implementation of component practices necessary to resolve those specific resource issues as agreed upon by the landowner.

(7) "Designated agency" is as defined in section 39-3602, Idaho Code.

(8) "District," ~~or~~ "conservation district," "soil conservation district," or "soil and water conservation district" means a governmental subdivision(s) of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

~~(2)--"Supervisor"-means-one-(1)-of-the-members-of-the-governing-body of--a-district-elected-or-appointed-in-accordance-with-the-provisions-of this-act.~~

~~(3)--"Commission"-or-"state-soil-conservation-commission"-means--the agency-created-in-section-22-2718,-Idaho-Code.~~

~~(4)--"Agriculture"-or-"department-of-agriculture"-means-an-executive department-of-state-government-created-in-section-22-101,-Idaho-Code.~~

~~(5)--"Petition"--means-a-petition-filed-under-the-provisions-of-subsection-A.-of-section-22-2719,-Idaho-Code,-for-the-creation--of--a--district.~~

~~(6)--"Nominating--petition"--means-a-petition-filed-under-the-provisions-of-section-22-2721,-Idaho-Code,-to--nominate--candidates--for--the office-of-supervisor-of-a-soil-conservation-district.~~

~~(7)--"State"-means-the-state-of-Idaho.~~

~~(8)--"Agency--of--this--state"-includes-the-government-of-this-state and-any-subdivision,-agency,-or-instrumentality,-corporate-or-otherwise, of-the-government-of-this-state.~~

~~(9)--"United-States"-or-"agencies-of-the-United-States"-includes-the United-States-of-America,-the-natural-resources-conservation-service--of the--United--States--department--of-agriculture,-and-any-other-agency-or instrumentality,-corporate-or-otherwise,-of-the-United-States--of--America.~~

~~(10)-"Government"--or-"governmental"-includes-the-government-of-this state,-the-government--of--the--United--States,--and--any--subdivisions, agency,-or-instrumentality,-corporate-or-otherwise,-of-either-of-them.~~

~~(11)-"Landowner"-includes-any-person,-firm,-or-corporation-who-shall hold-title-to-any-lands-lying-within-a-district-organized-under-the-pro-~~

~~visions--of--this-act.-A-buyer-on-contract,-who-is-the-occupier-of-land, shall-be-construed-as-landowner.~~

(~~12~~9) "Due notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjournment dates.

~~(13)-"Qualified--elector"--means-any-person-who-is-qualified-to-vote pursuant-to-the-requirements-of-section-34-104,-Idaho-Code.~~

(10) "Eligible applicant" means an individual agricultural owner, operator, partnership, corporation, conservation district, irrigation district, canal company or other agricultural or grazing interest.

(11) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivisions, agency, or instrumentality, corporate or otherwise, of either of them.

(1~~4~~2) "Idaho association of soil conservation districts (IASCD)" means an incorporated, nongovernmental entity representing all soil conservation districts in Idaho.

(1~~5~~3) "Idaho OnePlan" means a computer-based system for improving efficiency and effectiveness of natural resource planning by landowners and land users.

(14) "Landowner" or "owner" includes any person, firm, or corporation who shall hold title to any lands lying within a district organized under the provisions of this chapter. A buyer on contract, who is the occupier of land, shall be construed as landowner.

(15) "Land user" means any entity with a lease, permit or similar business agreement with a landowner to implement, manage or utilize such land for activities related to use of the land.

(16) "Natural resources conservation service" or "NRCS" means the agency governed by the provisions of 16 U.S.C. section 590a through 590d and 590f.

(17) "Nominating petition" means a petition filed under the provisions of section 22-2721, Idaho Code, to nominate candidates for the office of supervisor of a soil conservation district.

(18) "Participant" means an individual agricultural owner, operator, partnership, private corporation, conservation district, irrigation district, canal company, or other agricultural or grazing interest approved by the commission or an individual agricultural owner, operator, partnership, or private corporation approved for implementation of conservation improvements, projects, or the water quality program for agriculture.

(19) "Petition" means a petition filed under the provisions of subsection A. of section 22-2719, Idaho Code, for the creation of a district.

(20) "Project sponsor" means a conservation district, irrigation district, canal company, or other agricultural or grazing interest, as determined appropriate by the commission, that enters into a conservation improvement or water quality project agreement with the commission.

(21) "Qualified elector" means any person who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code.

(22) "Riparian land" means the beds of streams, the adjacent vegetation communities and the land thereunder, which are predominately influenced by their association with water and are privately owned.

(23) "Specifications" means the materials, operations and procedures necessary to obtain the desired standards of construction and installation.

(24) "Standards" means the minimum limits of technical excellence of a component practice for its planning, design and construction.

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

(26) "Supervisor" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this act.

(27) "Total maximum daily load" is as defined in section 39-3602, Idaho Code.

(28) "United States" or "agencies of the United States" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

SECTION 4. That Section 22-2718, Idaho Code, be, and the same is hereby amended to read as follows:

22-2718. STATE SOIL CONSERVATION COMMISSION. ~~A.~~(1) There is hereby established and created in the department of agriculture of the state of Idaho the state soil conservation commission which shall in cooperation with the director of the department of agriculture perform all functions conferred upon it by this chapter. The soil conservation commission shall be a nonregulatory agency. The commission shall consist of five (5) members appointed by the governor, but no more than three (3) members shall be a member of the same political party. The term of office of each commission member shall be five (5) years; except that upon July 1, 1967, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. From and after the initial appointment the governor shall appoint a member of the commission to serve in office for a term of five (5) years commencing upon July 1 of that year. A vacancy which occurs in an unexpired term shall be filled for its remainder by the governor's appointment. Any commissioner may be removed during his term of office by the governor. Any commissioner so removed shall have notice of the same in writing, specifying the reasons for the removal. Each vacancy on the commission shall be filled by appointment by the governor. Such appointments shall be confirmed by the senate. The commission may invite the state conservationist of the United States department of agriculture natural resources conservation service, the president of the Idaho association of soil conservation districts and the dean of the college of agriculture of the university of Idaho or his designated representative to serve as nonvoting advisory members of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and pro-

mulgate such rules as may be necessary for the execution of its functions under this ~~act~~ chapter.

~~B.~~(2) The director of the department of agriculture shall appoint the administrator of the soil conservation commission from persons recommended by the soil conservation commission. The state soil conservation commission may employ such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commission may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations, and shall be furnished with the necessary supplies and equipment. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall insofar as may be possible under available appropriation, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request.

~~C.~~(3) The commission shall designate its chairman, and may from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrency of a majority in any matter within their duties shall be required for its determination. The chairman and members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

~~D.~~(4) In addition to the duties and powers hereinafter conferred upon the state soil conservation commission, it shall have the following responsibilities:

(~~1~~a) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(~~2~~b) To keep the supervisors of each of the several districts organized under the provisions of this ~~act~~ chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(~~3~~c) To coordinate the progress of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(~~4~~d) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(~~5~~e) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts in areas where their organization is desirable.

(~~6~~f) To provide for the establishment and encouragement of the "Idaho OnePlan" as a primary computer-based conservation planning

process for all natural resource concerns. Establishment and encouragement will be accomplished through an executive group and steering committee both containing private, state and federal representation. The information provided by those using the "Idaho OnePlan" shall be deemed to be trade secrets, production records or other proprietary information and shall be kept confidential and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

(5) In addition to other powers, functions and duties of soil conservation districts and the state soil conservation commission provided in this chapter, the commission shall have the following additional powers, functions and duties:

(a) The commission shall conduct, in cooperation with appropriate federal and state agencies and the owners and operators of privately owned forest lands, rangelands and agricultural lands in this state, conservation improvements on or in respect to these lands for the purposes of implementing conservation systems to conserve and improve natural resource conditions;

(b) The commission shall assist and advise soil conservation districts and other entities in implementing the conservation improvements, projects, and the water quality program for agriculture. To the extent that there are available general funds, the commission shall provide for grants and cost-share opportunities and, as legislatively designated, utilize the resource conservation and rangeland development fund for loans for conservation improvements. Provided however, that the commission shall determine whether general or resource conservation and rangeland development funds are available before approving any conservation improvements, projects, and cost-share opportunities and, after having made such determination. shall enter into the necessarv contracts for implementation;

(c) The state soil conservation commission shall be the agency responsible for the administration of funds accruing to the resource conservation and rangeland development fund and for all general funds appropriated as a separate and distinct action of the legislature to implement the powers, functions and duties of soil conservation districts and the commission; and

(d) The commission shall promulgate such rules as are necessary to carry out the purposes of this chapter.

SECTION 5. That Section 22-2722, Idaho Code, be, and the same is hereby amended to read as follows:

22-2722. POWERS OF DISTRICTS AND SUPERVISORS. A soil conservation district organized under the provisions of this ~~act~~ chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this ~~act~~ chapter:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, for the conservation, development, utilization, and disposal of water and the prevention and control measures, and works of improvement needed, to publish results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid

duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights of interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil-blowing and soil-washing may be prevented and controlled; works of improvement for flood prevention and the conservation, development, utilization, and disposal of water may be carried out;

(3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the districts including, but not limited~~,~~ to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and ~~the measures listed in subsection (6) of section 22-2716~~ other appropriate best management practices, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid, to any agency, governmental or otherwise, or any owner of lands within the district, in carrying on ~~erosion control~~ erosion control and prevention operations and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purpose of this ~~act~~ chapter;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein and all such property shall be exempt from taxation for state, county and municipal purposes; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this ~~act~~ chapter; to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this ~~act~~ chapter;

(6) To make available, on such terms as it shall prescribe, to ~~land~~ landowners within the district, agricultural and engineering machinery or equipment, as will assist such landowners to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this ~~act~~ chapter;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for

flood prevention or the conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specifications of engineering operations, method of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer, any ~~soil-conservation~~ soil conservation, ~~flood-prevention~~ flood prevention, ~~erosion-control~~ erosion control, or ~~erosion-prevention~~ erosion prevention project, or combination thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies; or of this state or any of its agencies, any ~~soil-conservation~~ soil conservation, ~~flood-prevention~~ flood prevention, ~~erosion-control~~ erosion control, or ~~erosion-prevention~~ erosion prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and use or expend such moneys, services, material, or other contributions in carrying on its operations~~.~~;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules ~~and regulations~~ not inconsistent with this ~~act~~ chapter, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this ~~act~~ chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in moneys, services, materials, or otherwise to any operations conferring such benefits, and may require landowners to enter into and perform such agreements or covenants as to permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

SECTION 6. That Sections 22-2728 and 22-2729, Idaho Code, be, and the same are hereby repealed.

SECTION 7. That Section 22-2730, Idaho Code, be, and the same is hereby amended to read as follows:

22-2730. RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT FUND CREATED. (1) There is hereby created in the state treasury a fund to be known as the Idaho resource conservation and rangeland development fund, which shall consist of all moneys which may be appropriated to it by the legislature or made available to it from federal, private, or other sources. The state treasurer is directed to invest all unobligated moneys in the fund. All interest and other income accruing from such investments shall accrue to the fund. The state soil conservation commission may expend from the fund such sums as it shall deem necessary for any of the conservation improvements, projects and programs provided for under this ~~act~~ chapter under such terms and conditions provided for in its rules and the water quality program for agriculture.

(2) The ~~Idaho~~ state soil conservation commission shall establish a priority list ~~of priority projects~~ for ~~control of agricultural--nonpoint source pollution~~ conservation improvements, projects and the water quality program for agriculture. ~~These~~ The priority lists shall be used as the method for allocation of funds ~~granted,--or~~ loaned ~~or--cost-shared~~ under this ~~act~~ chapter.

SECTION 8. That Section 22-2731, Idaho Code, be, and the same is hereby amended to read as follows:

22-2731. ALLOCATION OF FUND. The Idaho resource conservation and rangeland development fund shall be allocated for use:

(1) By the state soil conservation commission to eligible applicants for conservation improvements which it deems to be "in the public interest" in such amounts as are necessary for the implementation of conservation measures identified in a conservation plan;

(2) By the commission to eligible applicants for the purpose of conservation improvements on rangelands, agricultural lands, and riparian lands, which will provide environmental enhancement to soil, water, wildlife, and related resources;

(3) By the commission for the purpose of implementing conservation improvements, projects and the water quality program for agriculture.

SECTION 9. That Section 22-2733, Idaho Code, be, and the same is hereby amended to read as follows:

22-2733. GRANTS FROM STATE SOIL CONSERVATION COMMISSION GENERAL FUND -- APPLICATION -- APPROVAL -- GRANT AGREEMENT. (~~a~~1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil conservation commission for a grant from the state soil conservation commission general fund for the purpose of financing conservation improvements, ~~costs~~ projects, and implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form, and be accompanied by such information as may be prescribed by the commission; provided, however, that any such application filed with the district or the commission under the provisions of this section shall:

(~~1~~a) Describe the nature and purpose of the improvements or conservation plan implementation project.

(~~2~~b) Set forth or be accompanied by an improvement project plan approved by the local soil conservation district or the commission that identifies the practices to be applied, together with such

technical and economic feasibility data and estimated costs as may be required by the commission.

(~~3~~c) State whether money other than that for which application is made under this section will be used for improvement project or conservation plan implementation costs, and whether such money is available or has been sought for this purpose.

(~~4~~d) Show that the applicant or participant holds or can acquire title to all lands or has necessary easements and rights-of-way to implement the project plan.

(~~b~~2) The commission and local soil conservation district will keep each other informed of grant applications received. Within ~~sixty~~ thirty (~~6~~30) days of receipt of an application, the local soil conservation district or the commission shall review and evaluate and, if ~~it deems~~ deemed necessary, investigate all aspects of the proposed improvement, project or conservation plan. As part of such investigation, the district or the commission shall determine whether the project plan is satisfactory. If the district or the commission determines that the plan is unsatisfactory, it shall return the application to the applicant or participant and the district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the plan satisfactory. If the ~~district or the~~ commission determines either the plan or a plan revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.

(~~c~~3) The commission may approve a grant if after review, evaluation, and investigation if necessary, it finds that:

(~~1~~a) The applicant or participant is qualified and responsible~~.~~;

(~~2~~b) The improvement, project, or conservation plan demonstrates public benefits~~.~~; and

(~~3~~c) That money in the ~~resource~~ state soil conservation ~~and range land development~~ commission general fund is available for the grant.

(~~d~~4) If the commission approves a grant, the applicant or participant shall enter into an agreement covering the grant offer and acceptance of the grant for implementing the improvement, project, or conservation plan. The agreement shall be improvement, project, or conservation plan specific. The terms and conditions shall be those specified by the commission.

(~~e~~5) Upon approval of the grant and securing all necessary documents, the commission will make available, in the approved form, project or contract funding.

SECTION 10. That Section 22-2734, Idaho Code, be, and the same is hereby amended to read as follows:

22-2734. COST-SHARE FROM STATE SOIL CONSERVATION COMMISSION GENERAL FUND -- APPLICATION -- APPROVAL. (1) Eligible applicants or participants may file an application with the local soil conservation district or the state soil conservation commission for a cost-share contract~~,~~ or project~~, or program~~ from the state soil conservation commission general fund for the purpose of financing agricultural, ~~and~~ grazing or other conservation improvements, projects or implementation of the water quality program for agriculture. Such application shall be filed in such a manner and shall be in such form and be accompanied by such information as may be prescribed by the commission; provided however, that any such application filed with the district or the commission under the provi-

sions of this ~~act~~ section shall:

(a) Describe the nature and purposes of the improvements and projects requiring cost-sharing;

(b) Set forth or be accompanied by a plan that identifies the conservation improvements or projects, together with such technical and economic feasibility data and estimated costs as may be required by the commission;

(c) State whether money other than that for which application is made under this ~~act~~ section will be used for costs, and whether such money is available or has been sought for this purpose;

(d) Show the proposed project is feasible from a technical standpoint and is economically justified.

(2) The commission and the local soil conservation district will keep each other informed of cost-share applications received. Within ~~sixty~~ thirty (~~60~~30) days of receipt of an application, ~~for a cost-share project,~~ the local soil conservation district or the commission shall review and evaluate and, if ~~it deems~~ deemed necessary, investigate all aspects of the proposed contract or project. As part of such investigation, the district or the commission shall determine whether the plan for development of the conservation improvements or projects is satisfactory. If the district or the commission determines the plan is unsatisfactory, it shall return the application to the applicant or participant and the ~~appropriate agency~~ district or the commission may make such recommendations to the applicant or participant as are considered necessary to make the ~~plan~~ application satisfactory. ~~If~~ When the commission determines ~~the plan~~ either the application or an application revised pursuant to recommendation of the district or commission is satisfactory, it shall be considered for funding.

(3) The commission may approve a cost-share ~~grant~~ contract to an applicant or participant for conservation projects and improvements if, after review, evaluation and investigation, it finds that:

(a) The applicant or participant is qualified and responsible;

(b) The conservation improvement or project demonstrates public benefit;

(c) There is reasonable assurance that the applicant or participant will adhere to contract terms; and

(~~c~~d) ~~The money in the resource conservation and rangeland development fund is available for the cost-share project~~ Money is available in the state soil conservation commission general fund for cost-share.

(4) Upon approval of the cost-share contract or cost-share grant, and securing of all necessary documents, the commission will make funding available.

Approved March 20, 2003.

## CHAPTER 108
## (H.B. No. 129)

### AN ACT

RELATING TO POTATOES FOR PLANTING; AMENDING SECTION 22-503, IDAHO CODE, TO PROVIDE THAT CERTAIN POTATOES SHALL BE ACCOMPANIED BY A PLANT HEALTH CERTIFICATE, TO CLARIFY THE TYPE OF INFORMATION TO BE

INCLUDED WITH THE CERTIFICATE OF INSPECTION AND PLANT HEALTH CERTIFICATE, TO REVISE THE STANDARDS FOR SEED BEING IMPORTED INTO IDAHO, TO PROVIDE FOR IMPORTED SEED LOTS THAT EXCEED CERTAIN TOLERANCES, TO CLARIFY RESTRICTIONS FOR IDAHO GROWERS PLANTING UNCERTIFIED POTATOES AND TO DELETE UNNECESSARY VERBIAGE.

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

SECTION 1. That Section 22-503, Idaho Code, be, and the same is hereby amended to read as follows:

22-503. POTATOES FOR PLANTING. (1) All potatoes offered for sale, sold or delivered under contract or distributed into or within the state of Idaho for planting in the state of Idaho by any person from any state, territory, or country shall be certified and shall be accompanied by a certificate of inspection ~~including~~ and a plant health certificate, and shall include the description of the grade, the findings of all inspections of each lot of seed, noting the name and amount of any disease observed, and generation of the potatoes and shall show that the potatoes were packed, sealed, and tagged under the certification standards of the state, territory, or country in which they were produced. ~~The potatoes may not have a disease content that exceeds~~ Seed being imported into Idaho shall meet or exceed the Idaho certification standards for ~~the last generation of~~ certified seed potatoes according to the Idaho rules of certification as authorized under chapter 15, title 22, Idaho Code. Imported seed lots that exceed tolerances for that specific generation required for Idaho seed, shall be downgraded to the next acceptable generation tolerances until rejection. Potatoes imported from any other state, country, or territory shall be certified and also be in compliance with other applicable rules of the department pertaining to potatoes.

(2) Idaho growers shall be allowed to plant uncertified potatoes grown by them as a part of their farming operation provided that they are no more than ~~two~~ one (~~2~~1) generation~~s~~ from their own certified parent seed potatoes. ~~After January 1, 1997, Idaho growers shall only be allowed to plant uncertified potatoes grown by them provided that they are no more than one (1) generation from their own certified parent seed potatoes.~~ Uncertified potatoes planted by Idaho growers as provided for under this section must comply with all testing and any other conditions as set forth under this chapter and any rules promulgated pursuant to this chapter.

Approved March 20, 2003.

## CHAPTER 109
## (H.B. No. 157)

### AN ACT

RELATING TO IDAHO AGRICULTURAL LABOR LAW; REPEALING CHAPTER 41, TITLE 22, IDAHO CODE, RELATING TO THE IDAHO AGRICULTURAL LABOR ACT.

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

SECTION 1. That Chapter 41, Title 22, Idaho Code, be, and the same is hereby repealed.

Approved March 20, 2003.

## CHAPTER 110
## (H.B. No. 259)

AN ACT

RELATING TO THE CREATION OF A COMMEMORATIVE DAY; AMENDING CHAPTER 1, TITLE 73, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 73-108A, IDAHO CODE, TO ESTABLISH APRIL 30 AS CHILDREN'S DAY/EL DIA DE LOS NINOS COMMEMORATIVE DAY AND TO PROVIDE THAT COMMUNITIES ARE ENCOURAGED TO PARTICIPATE WITH SPECIAL EVENTS AND WITH CHILDREN AS THE CENTER OF ACTIVITY.

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

SECTION 1. That Chapter 1, Title 73, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 73-108A, Idaho Code, and to read as follows:

73-108A. CHILDREN'S DAY. April 30 shall be designated as Children's Day/El Dia de los Ninos commemorative day in recognition of the importance of children to families and to communities. It is a day to celebrate the value of children and to focus on the importance of creating a future for children full of hope, health and success. Communities are encouraged to participate with special events and with children as the center of activity.

Approved March 20, 2003.

## CHAPTER 111
## (H.B. No. 260)

AN ACT

RELATING TO ALCOHOLIC BEVERAGES LICENSES; AMENDING SECTION 23-902, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 23-944, IDAHO CODE, TO PROVIDE AN EXCEPTION FOR A THEATER THAT IS PRESENTING LIVE PERFORMANCES TO THE AGE REQUIREMENT OF TWENTY-ONE YEARS FOR PERSONS TO LEGALLY ENTER OR REMAIN ON A LICENSED PREMISES; AMENDING SECTION 23-1001, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 23-1010, IDAHO CODE, TO PROVIDE THAT IF AN APPLICANT IS APPLYING FOR A BEER LICENSE SOLELY FOR A THEATER THAT IS PRESENTING LIVE PERFORMANCES THE APPLICATION SHALL SO STATE; AND AMENDING SECTION 23-1303, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 23-902, Idaho Code, be, and the same is hereby amended to read as follows:

23-902. DEFINITIONS. The following words and phrases used in this chapter shall be given the following interpretation:

(1) "Club" includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members and to bona fide guests of members only:

(a) A post, chapter, camp or other local unit composed solely of veterans and their duly recognized auxiliary, and which is a post, chapter, camp or other local unit composed solely of veterans which has been chartered by the congress of the United States for patriotic, fraternal or benevolent purposes, and which has, as the owner, lessee or occupant, operated an establishment for that purpose in this state; or

(b) A chapter, aerie, parlor, lodge or other local unit of an American national fraternal organization, which has as the owner, lessee or occupant, operated an establishment for fraternal purposes in this state and actively operates in not less than thirty-six (36) states or has been in continuous existence for not less than twenty (20) years; and which has not less than fifty (50) bona fide members in each unit, and which owns, maintains or operates club quarters, and is authorized and incorporated to operate as a nonprofit club under the laws of this state, and which has recognized tax exempt status under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code, and has been continuously incorporated and operating for a period of not less than one (1) year. The club shall have had during that period of one (1) year, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the objects of the club. The club membership shall consist of bona fide dues paying members, recorded by the secretary of the club, paying at least six dollars ($6.00) per year in dues, payable monthly, quarterly or annually; and the members at the time of application for a club license shall be in good standing, having paid dues for at least one (1) full year.

(2) "Convention" means a formal meeting of members, representatives, or delegates, as of a political party, fraternal society, profession or industry.

(3) "Director" means the director of the Idaho state police.

(4) "Gaming" means any and all gambling or games of chance defined in chapters 38 and 49, title 18, Idaho Code, or any section or sections thereof, whether those games are licensed or unlicensed.

(5) "Interdicted person" means a person to whom the sale of liquor is prohibited under law.

(6) "License" means a license issued by the director to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor by the drink at retail, as provided by law.

(7) "Licensee" means the person to whom a license is issued under the provisions of law.

(8) "Liquor" means all kinds of liquor sold by and in a state liquor store of the state of Idaho.

(9) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(10) "Municipal license" means a license issued by a municipality of the state of Idaho under the provisions of law.

(10) "Party" means a social gathering especially for pleasure or amusement and includes, but is not limited to, such social events as weddings, birthdays, and special holiday celebrations to include, but not be limited to, New Year's celebrations, Super Bowl Sunday, St. Patrick's Day, the Fourth of July and Labor Day.

(12) "Person" means every individual, partnership, corporation, organization, or association holding a retail liquor license, whether conducting the business singularly or collectively.

(13) "Premises" means the building and contiguous property owned, or leased or used under a government permit by a licensee as part of the business establishment in the business of sale of liquor by the drink at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of liquor by the drink at retail is authorized under the provisions of law.

(14) "Rules" means rules promulgated by the director in accordance with the provisions of law.

(15) "State liquor store" means a liquor store or distributor established under and pursuant to the laws of the state of Idaho for the package sale of liquor at retail.

(16) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(17) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings.

SECTION 2. That Section 23-944, Idaho Code, be, and the same is hereby amended to read as follows:

23-944. EXCEPTIONS FROM RESTRICTION ON ENTERING OR REMAINING. It shall not be unlawful for, nor shall section 23-943, Idaho Code, be construed to restrict, any person under the age of twenty-one (21) years from entering or being:

(1) upon the premises of any restaurant, as herein defined, or in any railroad observation or club car or any airplane of a commercial airline, notwithstanding that such premises may also be licensed for the sale of liquor by the drink or for the sale of beer for consumption on the premises or that alcohol beverages, or beer, or both, are prepared, mixed or dispensed and served and consumed therein.

(2) in any building, a part or portion of which is used as a place, as herein defined, provided such place is separated or partitioned from the remainder of said building and access to such place through a doorway or doorways or other means of ingress can be controlled to prevent persons under the ages specified with respect thereto in section 23-943, Idaho Code, from entering therein.

(3) in any baseball park, sports arena, convention center, multipurpose arena, theater that is presenting live performances or fairgrounds, notwithstanding that such premises or any portion thereof may be licensed for the sale of liquor by the drink, wine or beer for consumption on the premises or that such products are dispensed and served and consumed therein; provided, that the person under the age of

twenty-one (21) years is attending a lawful activity, show, exhibition, performance or event on the premises or is required to be present as a condition of his employment. It is lawful for persons under the age of twenty-one (21) years to enter and remain in a baseball park, sports arena, convention center, multipurpose arena, theater that is presenting live performances or fairgrounds so long as the activity, show, exhibition, performance or event is lawful and the person does not violate section 23-949, Idaho Code.

(4) upon the premises of any licensed winery notwithstanding that such premises or any portion thereof may also be licensed for the sale of beer or wine for consumption on the premises or that wine is dispensed and served and consumed therein.

(5) upon the licensed premises of a wine retailer, wholly owned and operated by a licensed winery which retails exclusively the products of that winery.

(6) at a location, other than a liquor, beer, or wine licensed premises, authorized to serve alcohol beverages under a valid alcohol beverage catering permit.

SECTION 3. That Section 23-1001, Idaho Code, be, and the same is hereby amended to read as follows:

23-1001. DEFINITIONS. As used in this chapter:

(a) The word "beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water.

(b) The word "brewer" means a person licensed to manufacture beer.

(c) "Certificate of approval" means a license issued to a person whose business is located outside of the state of Idaho, who sells beer to wholesalers or brewers located within the state of Idaho.

(d) The term "dealer" means a person licensed to import beer into this state for sale to a wholesaler.

(e) The word "director" means the director of the Idaho state police.

(f) The words "live performance" mean a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(g) The word "person" includes any individual, firm, copartnership, association, corporation or any 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.

(~~g~~h) The word "premises" means the building and contiguous property owned, or leased or used under government permit by a licensee as part of the business establishment in the business of sale of beer at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of beer at retail is authorized under the provisions of law.

(~~h~~i) The word "retailer" means a person licensed to sell beer to consumers at premises described in the license.

(j) The word "theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(~~i~~k) The word "wholesaler" means any person licensed to sell beer

to retailers, wholesalers, permittees or consumers and distribute beer from warehouse premises described in the license.

(1) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings.

SECTION 4. 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. If the applicant is applying for a license solely for a theater that is presenting live performances as those terms are defined in section 23-1001, Idaho Code, the application shall so state. 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 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, 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) To determine qualification for a license, the director shall also cause an investigation which shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints and the fee to cover the cost of the criminal history background check for such person with the application.

(4) 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 partnership applicant and to each incumbent officer, director or member of the governing board of a corporation or association applicant.

(5) 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.

(6) 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.

(7) All licenses shall expire at 1:00 o'clock a.m. on the first day of the 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 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 5. That Section 23-1303, Idaho Code, be, and the same is hereby amended to read as follows:

23-1303. DEFINITIONS. The following terms as used in this chapter are hereby defined as follows:

(a) "Wine" shall mean any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(b) "Director" means the director of the Idaho state police.

(c) "Retail wine license" means a license issued by the director, authorizing a person to sell wine at retail for consumption off the licensed premises.

(d) "Wine distributor's license" means a license issued by the director to a person authorizing such person to distribute wine to retailers within the state of Idaho.

(e) "Wine importer's license" means a license issued by the director to a person authorizing such person to import wine into the state of Idaho and to sell and distribute wine to a distributor.

(f) "Retailer" means a person to whom a retail wine license has been issued.

(g) "Distributor" means a person to whom a wine distributor's license has been issued.

(h) "Importer" means a person to whom a wine importer's license has been issued.

(i) "Winery" means a place, premises or establishment within the state of Idaho for the manufacture or bottling of wine for sale.

(j) "Winery license" means a license issued by the director authorizing a person to maintain a winery.

(k) "Vintner" means a person who manufactures, bottles, or sells wine to importers for resale within this state other than a licensed "winery" as herein defined.

(l) "Person" includes an individual, firm, copartnership, association, corporation, or any group or combination acting as a unit, and includes the plural as well as the singular unless the intent to give a more limited meaning is disclosed by the context in which it is used.

(m) "Wine by the drink license" means a license to sell wine by the individual glass or opened bottle at retail, for consumption on the premises only.

(n) "Domestic produced product" means wine at least seventy-five percent (75%) of which by volume is derived from fruit or agricultural products grown in Idaho.

(o) "Low proof spirit beverages" means any alcoholic beverage containing not more than fourteen percent (14%) alcohol by volume obtained by distillation mixed with drinkable water, fruit juices and/or other ingredients in solution. These products shall be considered and taxed as wine. Spirit based beverages exceeding fourteen percent (14%) alcohol by volume shall be considered as liquor and sold only through the state liquor dispensary system.

(p) "Theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(q) "Live performance" means a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(r) All other words and phrases used in this chapter, the definitions of which ~~is~~ are not herein given, shall be given their ordinary and commonly understood and accepted meanings.

Approved March 20, 2003.

## CHAPTER 112
## (H.B. No. 179)

### AN ACT

RELATING TO COLLECTION AGENCIES; AMENDING SECTION 26-2239, IDAHO CODE, TO EXEMPT FROM LICENSING REQUIREMENTS PERSONS WHO ARE AFFILIATES OF THE CREDITOR.

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

SECTION 1. That Section 26-2239, Idaho Code, be, and the same is hereby amended to read as follows:

26-2239. EXEMPTIONS. The provisions of this chapter shall not apply to the following:

(1) Any attorney-at-law duly authorized to practice in this state;

(2) Any regulated lender as defined in section 28-41-301(37), Idaho Code, nor any subsidiary, affiliate or agent of such a regulated lender to the extent that the subsidiary, affiliate or agent collects for the regulated lender;

(3) Any trust company authorized to do business in this state;

(4) Any federal, state or local governmental agency or instrumentality;

(5) Any real estate broker or real estate salesman licensed under the laws of and residing within this state when engaged in the regular practice of a real estate business;

(6) Any abstract and title companies doing an escrow business;

(7) Any mortgage company to the extent that such mortgage company is engaged in the regular business of a mortgage company as defined in section 26-2802, Idaho Code;

(8) Any court appointed trustee, receiver or conservator;

(9) Any telephone corporation, as defined in subsection (10) of section 62-603, Idaho Code, whose initial request for payment on behalf of such telephone corporation or on behalf of another person is made by the telephone corporation as a part of regular telecommunications billings to its customers and at a time before the account, bill, claim or other indebtedness becomes past due or delinquent;

(10) A person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom he is so related or affiliated and if the principal business of such person is not the collection of debts.

Approved March 21, 2003.

## CHAPTER 113
## (S.B. No. 1004)

### AN ACT

RELATING TO THE EFFECT OF IMPRISONMENT ON CIVIL RIGHTS AND CERTAIN OFFICES; AMENDING SECTION 18-310, IDAHO CODE, TO DELETE AN INCORRECT REFERENCE.

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

SECTION 1. That Section 18-310, Idaho Code, be, and the same is hereby amended to read as follows:

18-310. IMPRISONMENT -- EFFECT ON CIVIL RIGHTS AND OFFICES. (1) A sentence of custody to the Idaho state board of correction suspends all the civil rights of the person so sentenced including the right to refuse treatment authorized by the sentencing court, and forfeits all public offices and all private trusts, authority or power during such imprisonment: provided that any such person may bring an action for damages or other relief in the courts of this state or have an action brought against such person; and provided further that any such person may lawfully exercise all civil rights that are not political during any period of parole or probation, except the right to ship, transport, possess or receive a firearm, and the right to refuse treatment authorized by the sentencing court.

(2) Upon final discharge, a person convicted of any Idaho felony shall be restored the full rights of citizenship, except that for persons convicted of treason or those offenses enumerated in paragraphs (a) through (jj) of this subsection the right to ship, transport, possess or receive a firearm shall not be restored. As used in this subsection, "final discharge" means satisfactory completion of imprisonment, probation and parole as the case may be.

(a) aggravated assault (18-905, 18-915, Idaho Code);

(b) aggravated battery (18-907, 18-915, Idaho Code);

(c) assault with intent to commit a serious felony (18-909, 18-915, Idaho Code);

(d) battery with intent to commit a serious felony (18-911, 18-915, Idaho Code);

(e) burglary (18-1401, Idaho Code);
(f) crime against nature (18-6605, Idaho Code);
(g) domestic battery, felony (18-918, Idaho Code);
(h) enticing of children, felony (18-1509, Idaho Code);
(i) forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);
(j) indecent exposure, felony (18-4116, Idaho Code);
(k) injury to child, felony (18-1501, Idaho Code);
(l) intimidating a witness, felony (18-2604, Idaho Code);
(m) lewd conduct with a minor or child under sixteen (18-1508~~(3), (4), (5) and (6)~~, Idaho Code);
(n) sexual abuse of a child under sixteen (18-1506, Idaho Code);
(o) sexual exploitation of a child (18-1507, Idaho Code);
(p) felonious rescuing prisoners (18-2501, Idaho Code);
(q) escape by one charged with, convicted of or on probation for a felony (18-2505, Idaho Code);
(r) unlawful possession of a firearm (18-3316, Idaho Code);
(s) degrees of murder (18-4003, Idaho Code);
(t) voluntary manslaughter (18-4006(1), Idaho Code);
(u) assault with intent to murder (18-4015, Idaho Code);
(v) administering poison with intent to kill (18-4014, Idaho Code);
(w) kidnapping (18-4501, Idaho Code);
(x) mayhem (18-5001, Idaho Code);
(y) rape (18-6101, Idaho Code);
(z) male rape (18-6108, Idaho Code);
(aa) robbery (18-6501, Idaho Code);
(bb) ritualized abuse of a child (18-1506A, Idaho Code);
(cc) cannibalism (18-5003, Idaho Code);
(dd) felonious manufacture, delivery or possession with the intent to manufacture or deliver, or possession of a controlled or counterfeit substance (37-2732, Idaho Code);
(ee) trafficking (37-2732B, Idaho Code);
(ff) threats against state officials of the executive, legislative or judicial branch, felony (18-1353A, Idaho Code);
(gg) unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317, Idaho Code);
(hh) unlawful possession of destructive devices (18-3319, Idaho Code);
(ii) unlawful use of destructive device or bomb (18-3320, Idaho Code);
(jj) attempt (18-306, Idaho Code), conspiracy (18-1701, Idaho Code), or solicitation (18-2001, Idaho Code), to commit any of the crimes described in paragraphs (a) through (ii) of this subsection.
(kk) The provisions of this subsection shall apply only to those persons convicted of the enumerated felonies in paragraphs (a) through (jj) of this subsection on or after July 1, 1991.

(3) A person not restored to the civil right to ship, transport, possess or receive a firearm may make application to the commission of pardons and parole to restore the civil right to ship, transport, possess or receive a firearm. The commission shall not accept any such application until five (5) years after the date of final discharge. The commission shall conduct the proceeding upon such application pursuant to rules adopted in accordance with the law. The commission shall not restore the right to ship, transport, possess or receive a firearm to

any person convicted of murder in the first degree (18-4003, Idaho Code), murder in the second degree (18-4003, Idaho Code), or any felony enumerated in paragraphs (a) through (jj) of subsection (2), upon which the sentence was enhanced for the use of a firearm during the commission of said felony.

Approved March 21, 2003.

## CHAPTER 114
## (S.B. No. 1005)

### AN ACT

RELATING TO THE CONTRACT TO PRINT IDAHO SUPREME COURT REPORTS; AMENDING SECTION 1-506, IDAHO CODE, TO PROVIDE FOR A MAXIMUM NUMBER OF COPIES OF EACH VOLUME THAT ARE TO BE FURNISHED TO THE STATE BY THE PRINTER, TO PROVIDE THAT THE EXACT NUMBER OF COPIES TO BE FURNISHED SHALL BE DETERMINED BY THE IDAHO SUPREME COURT AND TO MAKE TECHNICAL CORRECTIONS; AND REPEALING SECTION 1-507, IDAHO CODE, REQUIRING THE PRINTER TO POST BOND.

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

SECTION 1. That Section 1-506, Idaho Code, be, and the same is hereby amended to read as follows:

1-506. CONTRACT TO PRINT REPORTS. The contract to print the reports of such decisions shall be let by the reporter with the approval of the ~~J~~justices of the ~~S~~supreme ~~C~~court, or a majority thereof, to some person or persons who will print the same on terms most advantageous to the state, and who will furnish the state with a maximum of four hundred (400) copies of each volume, the exact number of copies to be determined by the supreme court, at a cost to be fixed in such contract per volume and who will agree to furnish copies of the reports to the public at a price not exceeding the cost per volume at which the same is to be furnished to the state: provided, the work shall be done in the state of Idaho, if responsible parties therein offer to do said work on terms as favorable to the state as any outside bidder.

SECTION 2. That Section 1-507, Idaho Code, be, and the same is hereby repealed.

Approved March 21, 2003.

## CHAPTER 115
## (S.B. No. 1006)

### AN ACT

RELATING TO PRELIMINARY EXAMINATIONS OF DEFENDANTS BEFORE MAGISTRATES; AMENDING SECTION 19-514, IDAHO CODE, TO STRIKE OBSOLETE LANGUAGE CONCERNING CERTAIN MAGISTRATE FEES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 19-514, Idaho Code, be, and the same is hereby amended to read as follows:

19-514. DEFENDANT TO BE TAKEN BEFORE MAGISTRATE. If the offense charged is a felony, the officer making the arrest must cause the defendant to be taken before the magistrate who issued the warrant, or in the case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant, with his return thereon endorsed and subscribed by him, but all hearings on preliminary examinations must, as far as possible, be had before the magistrate most convenient to the majority of the witnesses for the prosecution, unless for good cause it is ordered to be held elsewhere, and in all such cases the preliminary examinations must be had as hereinafter provided, unless such person shall waive his right to such examination. ~~For taking such examinations the magistrate must be allowed twenty cents per folio, except when a county stenographer employed by the board of county commissioners takes the testimony at such preliminary examination, in which event no fee shall be allowed the justice of the peace.~~

If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon the request of the defendant, take him before a magistrate in that county, who may admit him to bail in an amount which, in his judgment, will be reasonable and sufficient for the appearance of the defendant, and said magistrate must direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a day certain which shall in no case be more than fourteen (14) days after such admittance to bail. If bail shall be forthwith given, the magistrate shall take the same and endorse thereon a memorandum of the aforesaid order for the appearance of the defendant. On taking of said bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer in charge of the defendant. The officer must then discharge the defendant from arrest, and must without delay, deliver the warrant and undertaking to the court at which the defendant is required to appear.

If bail is not forthwith given by the defendant, the officer must cause the defendant to be taken before the magistrate who issued the warrant, or in case of his absence or inability to act before the nearest and most accessible magistrate in the same county, and at the same time deliver to the magistrate the warrant with his return endorsed thereon.

Approved March 21, 2003.

## CHAPTER 116
## (S.B. No. 1007)

AN ACT

RELATING TO PROSPECTIVE JURORS; AMENDING SECTION 2-208, IDAHO CODE, TO PROVIDE A CORRECT SUBSECTION REFERENCE.

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

SECTION 1. That Section 2-208, Idaho Code, be, and the same is hereby amended to read as follows:

2-208. NAMES DRAWN FROM MASTER JURY WHEEL -- QUALIFICATION FORMS FOR PROSPECTIVE JURORS — MAILING AND RETURN -- ORDER TO APPEAR -- CRIMINAL CONTEMPT -- PENALTY FOR MISREPRESENTATION. (1) From time to time and in a manner prescribed by the administrative judge the jury commission publicly shall draw at random from the master jury wheel the names or identifying numbers of as many prospective jurors as the administrative judge by order requires. The clerk or the jury commissioner shall prepare an alphabetical list of the names drawn. Neither the names drawn nor the list shall be disclosed to any person except upon specific order of the trial judge. The clerk or the jury commissioner shall mail to every prospective juror whose name is drawn from the master jury wheel a juror qualification form accompanied by instructions to fill out and return the form by mail to the clerk or the jury commissioner within ten (10) days after its receipt. The juror qualification form shall be subject to approval by the administrative judge as to matters of form and shall elicit the name, address of residence, and age of the prospective juror and whether the prospective juror: (a) is a citizen of the United States of America and a resident of the county, (b) is able to read, speak and understand the English language, (c) has any disability impairing his capacity to render satisfactory jury service, and (d) has lost the right to vote because of a felony criminal conviction and has not had that right restored. The juror qualification form shall contain the prospective juror's declaration that his responses are true to the best of his knowledge and his acknowledgment that a willful misrepresentation of a material fact may be punished as a misdemeanor. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for him and shall indicate that he has done so and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk or the jury commissioner shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commission within ten (10) days after its second receipt.

(2) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commission to appear forthwith before the clerk or the jury commissioner to fill out the juror qualification form. At the time of his appearance for jury service, or at the time of any interview before the court, clerk, or the jury commissioner, any prospective juror may be required to fill out another juror qualification form in the presence of the court, clerk, or the jury commissioner, at which time the prospective juror may be questioned, but only with regard to his responses to questions contained on the form and grounds for his excuse or disqualification. Any information thus acquired by the court, clerk, or the jury commissioner shall be noted on the juror qualification form.

(3) A prospective juror who fails to appear as directed by the commission, pursuant to subsection (~~1~~2) of this section shall be ordered by the court to appear and show cause for his failure to appear as directed. If the prospective juror fails to appear pursuant to the

court's order or fails to show good cause for his failure to appear as directed by the jury commission, he is guilty of contempt and upon conviction may be fined not more than one hundred dollars ($100) or imprisoned not more than three (3) days, or both, and postponed to a new jury term as set by the presiding judge.

(4) Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a misdemeanor.

Approved March 21, 2003.

## CHAPTER 117
## (S.B. No. 1008)

### AN ACT

RELATING TO ADMITTANCE TO BAIL; AMENDING SECTION 19-3934, IDAHO CODE, TO DELETE AN OBSOLETE REFERENCE TO PROBATE AND JUSTICES' COURTS.

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

SECTION 1. That Section 19-3934, Idaho Code, be, and the same is hereby amended to read as follows:

19-3934. ADMITTANCE TO BAIL. The defendant, at any time after his arrest, and before conviction, may be admitted to bail. ~~The--provisions of-this-code-relative-to-bail-are-applicable-to-bail-in-probate-and-justices'-courts.~~

Approved March 21, 2003.

## CHAPTER 118
## (S.B. No. 1019)

### AN ACT

RELATING TO LICENSE FEES FOR THE PRACTICE OF LAW; AMENDING SECTION 3-409, IDAHO CODE, TO STRIKE OBSOLETE VERBIAGE, TO CORRECT A DESIGNATION, TO INCREASE THE MAXIMUM AMOUNT OF A CERTAIN ASSESSMENT IMPOSED ON MEMBERS OF THE IDAHO STATE BAR AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 3-409, Idaho Code, be, and the same is hereby amended to read as follows:

3-409. LICENSE FEES AND APPROPRIATIONS. Every person practicing, or holding himself out as practicing law within this state, or holding himself out to the public as a person qualified to practice or carry on the calling of a lawyer within this state, except state and United States judges of the courts of record within this state, shall, prior to so

doing and no later than February 1 of each year pay to the board of commissioners of the Idaho state bar as a license fee the following amounts:

~~For the year 2000 and each year thereafter: For the calendar year of admission to the practice of law in the state of Idaho if admitted prior to July 1: one hundred fifteen dollars ($115); For the calendar year of admission to the practice of law in the state of Idaho if admitted after July 1: sixty five dollars ($65.00); Each year for the next three (3) calendar years following the calendar year of admission: two hundred thirty dollars ($230); Each year after the third full year of admission three hundred fifteen dollars ($315); Each year following the calendar year of the lawyer's seventy second birthday: fifty five dollars ($55.00); Affiliate members for each calendar year one hundred twenty dollars ($120).~~

~~For the year 2003 and each year thereafter:~~ For the calendar year of admission to the practice of law in the state of Idaho if admitted prior to July 1: one hundred forty dollars ($140); For the calendar year of admission to the practice of law in the state of Idaho if admitted after July 1: ninety dollars ($90.00); Each year for the next three (3) calendar years following the calendar year of admission: two hundred fifty-five dollars ($255); Each year after the third full year of admission: three hundred forty dollars ($340); Each year following the calendar year of the lawyer's seventy-second birthday: fifty-five dollars ($55.00); Affiliate members for each calendar year: one hundred twenty dollars ($120).

The moneys thus collected, together with other revenues shall be administered under the direction of the board of commissioners of the Idaho state bar for the purpose of administering the Idaho state bar, encouraging local bar associations, promoting legal education seminars, fostering relations between the public and the bar and for the purpose of establishing and maintaining a clients' ~~security~~ assistance fund which shall be administered by the Idaho state bar commissioners under rules approved by the supreme court, provided that the clients' ~~security~~ assistance fund shall be funded by assessment of the members of the Idaho state bar not to exceed ~~ten~~ twenty dollars ($~~1~~20.00) per member per year, independent of the license fee. All moneys received and expended by the commissioners of the Idaho state bar shall be audited annually by a certified public accountant.

Approved March 21, 2003.

## CHAPTER 119
## (H.B. No. 246)

### AN ACT

RELATING TO THE COUNTY OPTION KITCHEN AND TABLE WINE ACT; AMENDING SECTION 23-1303, IDAHO CODE, TO DEFINE "DESSERT WINE," TO DEFINE "WINE" AND TO PROVIDE REFERENCES TO TABLE WINE, DESSERT WINE AND TABLE WINE AND DESSERT WINE LICENSES; AMENDING SECTION 23-1304, IDAHO CODE, TO PROVIDE THAT BOARDS OF COUNTY COMMISSIONERS MAY PERMIT THE SALE OF TABLE WINE AND/OR DESSERT WINE BY RESOLUTION OR BY SUBMITTING THE QUESTION OF PERMITTING SUCH SALES TO COUNTY ELECTORS, TO REVISE THE

FORMS FOR RETAIL WINE SALE PETITIONS AND BALLOTS TO INCLUDE TABLE WINE AND DESSERT WINE, TO REVISE LANGUAGE RELATING TO THE ISSUANCE OF TABLE WINE AND/OR DESSERT WINE LICENSES BASED ON VOTES CAST AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 23-1303, Idaho Code, be, and the same is hereby amended to read as follows:

23-1303. DEFINITIONS. The following terms as used in this chapter are hereby defined as follows:

(a) "Table ~~w~~Wine" shall mean any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(b) "Director" means the director of the Idaho state police.

(c) "Dessert wine" means only those beverages that are designated or labeled, pursuant to the federal alcohol administration act, as "sherry," "madeira" or "port," which contain more than sixteen percent (16%) alcohol by volume, but do not exceed twenty-one percent (21%) alcohol by volume. Dessert wine as defined herein shall not be deemed to be a spirit based beverage for the purposes of subsection (p) of this section.

(d) "Retail wine license" means a license issued by the director, authorizing a person to sell table wine and/or dessert wine at retail for consumption off the licensed premises.

(~~d~~e) "Wine distributor's license" means a license issued by the director to a person authorizing such person to distribute table wine or dessert wine to retailers within the state of Idaho.

(~~e~~f) "Wine importer's license" means a license issued by the director to a person authorizing such person to import table wine or dessert wine into the state of Idaho and to sell and distribute such wines to a distributor.

(~~f~~g) "Retailer" means a person to whom a retail wine license has been issued.

(~~g~~h) "Distributor" means a person to whom a wine distributor's license has been issued.

(~~h~~i) "Importer" means a person to whom a wine importer's license has been issued.

(~~i~~j) "Winery" means a place, premises or establishment within the state of Idaho for the manufacture or bottling of table wine or dessert wine for sale.

(~~j~~k) "Winery license" means a license issued by the director authorizing a person to maintain a winery.

(~~k~~l) "Vintner" means a person who manufactures, bottles, or sells table wine or dessert wine to importers for resale within this state other than a licensed "winery" as herein defined.

(~~l~~m) "Person" includes an individual, firm, copartnership, association, corporation, or any group or combination acting as a unit, and includes the plural as well as the singular unless the intent to give a more limited meaning is disclosed by the context in which it is used.

(~~m~~n) "Wine by the drink license" means a license to sell table wine or dessert wine by the individual glass or opened bottle at retail, for

consumption on the premises only.

(no) "Domestic produced product" means wine at least seventy-five percent (75%) of which by volume is derived from fruit or agricultural products grown in Idaho.

(op) "Low proof spirit beverages" means any alcoholic beverage containing not more than fourteen percent (14%) alcohol by volume obtained by distillation mixed with drinkable water, fruit juices and/or other ingredients in solution. These products shall be considered and taxed as wine. Spirit based beverages exceeding fourteen percent (14%) alcohol by volume shall be considered as liquor and sold only through the state liquor dispensary system.

(pq) "Wine" includes table wine and dessert wine, unless the context requires otherwise.

(r) All other words and phrases used in this chapter, the definition of which is not herein given, shall be given their ordinary and commonly understood and accepted meaning.

SECTION 2. That Section 23-1304, Idaho Code, be, and the same is hereby amended to read as follows:

23-1304. COUNTY OPTION -- RESOLUTION OF COUNTY COMMISSIONERS -- ORDER FOR ELECTION -- FORM OF BALLOT -- EFFECT OF ELECTION OR RESOLUTION. There is hereby granted to the board of county commissioners of each of the several counties of this state the right and authority to permit the sale of table wine and/or dessert wine, as defined in this chapter, within the borders of the several counties of this state, which may be exercised in the following manner:

(a) the board of county commissioners of each county of this state may, by resolution regularly adopted, provided that retail sale of table wine and/or dessert wine, as defined in this chapter, shall be permitted within the county, and upon a certification of such resolution to the director, a retail wine license shall thereafter be issued for premises within such county so long as such resolution remains in effect; or

(b) the board of county commissioners of each of the several counties of this state may submit the question of permitting the sale of table wine and/or dessert wine at retail within the boundaries of the county to the electors of the county.

The board of county commissioners may make an order calling an election to be held, subject to the provisions of section 34-106, Idaho Code, within said county in the manner provided by law for holding elections for county officers. All laws of the state of Idaho relating to the holding of elections for county officers shall apply to the holdings of the election provided for in this section, except where specifically modified herein.

Such election may also be called upon written petition of registered electors equal in number to twenty percent (20%) of the registered, qualified electors of the county for the last general election under the following conditions:

(a) The petition for such an election shall be in substantially the following form:

RETAIL WINE SALE PETITION

To the Honorable County Commissioners of the County of ...., State of Idaho:

We, the undersigned citizens and registered, qualified electors of

the County of ...., respectfully demand that the Board of County Commissioners submit the question of permitting the sale of table wine (and/or dessert wine) at retail within the boundaries of the County of .... to the electors of the county in the manner provided in section 23-1304, Idaho Code.

We, each for himself, say: I am a registered elector of the County of .... and my residence, post office address, county, election precinct and the date I signed this petition are correctly written after my name.

| Name | Residence (If in a city, street and number) | Post Office | County | Election Precinct | Date |
|---|---|---|---|---|---|

(Here follow twenty numbered lines for signatures)

(b) Before or at the time of beginning to circulate any petition for an election to determine sale of wine at retail, the person or persons, organization or organizations, under whose authority the petition is to be circulated, shall send or deliver to the county clerk a copy of such petition duly signed by at least twenty (20) electors eligible to sign such petition. The county clerk shall immediately examine the petition and specify the form and kind and size of paper on which the petition shall be printed and circulated for further signatures. All petitions and sheets for signatures shall be printed on a good quality bond or ledger paper, on pages eight and one-half (8 1/2) inches in width by thirteen (13) inches in length, with a margin of one and three-fourths (1 3/4) inches at the top for binding, and the sheets for signatures shall have numbered lines thereon from one (1) to twenty (20) for signatures. The petition shall be prepared in sections, with each section numbered consecutively. Each section of a petition must have a printed copy of the petition as the first page, and each section shall have attached to it not more than ten (10) sheets for signatures.

(c) The county clerk shall indicate in writing on the petition that he has approved it as to form and the date of such approval. Upon approval as to form, the county clerk shall inform the person or persons, organization or organizations, under whose authority the petition is to be circulated, in writing, that the petition must be perfected with the required number of signatures within one hundred eighty (180) days following the date of approval as to form. Any petition that has not been perfected with the required number of certified signatures within the one hundred eighty (180) days allowed shall be declared null and void ab initio in its entirety, except for the extension allowed for in subsection (g) of this section.

(d) Each and every signature sheet of each petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of the petition, by his or her affidavit thereon, as a part thereof:

State of Idaho
County of ....

I, ...., swear, under penalty of perjury, that every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence. I believe that each has stated his or her name and the accompanying required information on the signature sheet correctly, and that the person was eligible to sign this petition.

.....(Signature)
....Post Office Address

Subscribed and sworn to before me this .... day of ...., ~~19~~2....
(Notary Seal) ..... (Notary Public)
Residing at .....

(e) All petitions with attached signature sheets shall be presented to the county clerk on the same day and a cursory examination of the petitions shall be made by him. The cursory examination shall be made to determine whether the petitions apparently contain the necessary number of signatures. If the total number of signatures on the petitions is not sufficient to satisfy the number required by this law, all petitions with attached signature sheets shall be returned to the person or organization attempting to file them, and further signatures may be gathered. If the cursory examination of the signature sheets reveals:

(1) erasures on any signature;

(2) illegible or unidentifiable signatures; or

(3) signatures not properly identified by all the information required on the sheet,

the county clerk shall summarily reject such signature and such signatures shall not be counted. Each rejected signature shall be drawn through with ink and initialed by the county clerk or his deputy. If the total number of signatures not rejected is not sufficient to satisfy the number required by law, all petitions with attached signature sheets shall be returned to the person or organization attempting to file them, and further signatures may be gathered.

(f) All petitions presented to the county clerk found to apparently contain the necessary number of signatures, after the cursory examination provided for in subsection (e) of this section, shall be filed with the county clerk and become public records of the county not to be returned. The county clerk shall examine each signature purported to be that of a registered elector and compare each such signature with the registration documents available to him. The county clerk shall summarily reject all signatures which are not the signatures of registered electors; and such rejected signatures shall not be counted. Each rejected signature shall be drawn through with ink and initialed by the clerk or his deputy. The county clerk may take not to exceed twenty (20) days after filing of the petition to complete his examination. The county clerk shall certify each signature found to comply with all of the requirements of this act by an appropriate mark following each signature. The county clerk shall total the number of certified signatures and certify the number thereof to the board of county commissioners.

(g) In the event that a petition filed with the county clerk does not contain the required number of certified signatures, the county clerk shall inform the person or organization under whose authority the petition was circulated that the petition is defective for lack of certified signatures, and specify the number of additional signatures required to make the petition valid. The petition must be perfected within sixty (60) days of the date that the clerk finds the petition defective for lack of certified signatures. If the petition is not perfected within the sixty (60) day period, the clerk shall declare the petition null and void ab initio in its entirety.

(h) In the event the county clerk shall certify to the board of county commissioners that a petition contains the required number of signatures of registered, qualified electors, said governing body shall forthwith make an order calling an election to be held, subject to the provisions of section 34-106, Idaho Code, within said county in the man-

ner provided by law for holding elections for county officers.

In addition to the other requirements of law, the notice of election shall notify the electors of the issue to be voted upon at said election. The county recorder must furnish the ballots to be used in such election, which ballots must contain the following words:

"Sale of table wine at retail, Yes,"

"Sale of table wine at retail, No."

and, if applicable:

"Sale of dessert wine at retail, Yes,"

"Sale of dessert wine at retail, No."

and the elector in order to vote must mark an "X" opposite one (1) of the questions in the space provided therefor. Upon a canvass of the votes cast, the county recorder shall certify the result thereof to the director. If a majority of the votes cast are ~~"Sale of wine at retail, Yes,"~~ affirmative on the issue or issues presented, licenses shall be issued in said county as in this chapter provided. If a majority of the votes cast are ~~"Sale of wine at retail, No,"~~ in the negative on the issue or issues presented, then no license shall be issued in said county unless thereafter authorized by a subsequent election in said county which may be called in the manner provided for herein.

No resolution or election prohibiting the sale of table wine and/or dessert wine within the boundaries of any county of this state shall have an effective date prior to the end of the then current calendar year if at the time of the adoption thereof there shall be any outstanding valid retail wine licenses in good standing for premises within such county.

The signer of any petition under this chapter may remove his own name from the petition by crossing out, obliterating, or otherwise defacing his own signature at any time prior to the time when the petition is filed. The signer of any such petition may have his name removed from the petition at any time after the petition has been filed, but prior to the time when an election has been ordered, by presenting or submitting to the county clerk a signed, acknowledged statement that the signer desires to have his name removed from the petition. The statement shall contain sufficient information to clearly identify the signer. The county clerk shall immediately strike the signer's name from the petition, and adjust the total of certified signatures on the petition accordingly. The statement shall be attached to, and become a part of, the petition.

A person is guilty of a felony punishable by imprisonment in the state penitentiary, not to exceed two (2) years, who:

(a) Signs any name other than his own to any petition.

(b) Knowingly signs his name more than once on the same petition.

(c) ~~Wilfully~~ Willfully or knowingly circulates, publishes or exhibits any false statement or representation concerning the contents, purport or effect of any petition for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition.

(d) Circulates or causes to circulate any petition, knowing the same to contain false, forged or fictitious names.

(e) Makes any false affidavit concerning any petition or the signatures appended thereto.

(f) Knowingly makes any false return, certification or affidavit concerning any petition or the signatures appended thereto.

(g) Threatens any person with punitive or retaliatory action for the purpose of obtaining signatures or hindering or delaying the obtaining of signatures upon a petition.

Approved March 24, 2003.

## CHAPTER 120
## (H.B. No. 19)

### AN ACT

RELATING TO THE BOARD OF PSYCHOLOGIST EXAMINERS; AMENDING SECTION 54-2307, IDAHO CODE, TO MAKE GRAMMATICAL CHANGES AND TO CLARIFY REQUIREMENTS FOR FEE PAYMENTS.

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

SECTION 1. That Section 54-2307, Idaho Code, be, and the same is hereby amended to read as follows:

54-2307. QUALIFICATIONS FOR LICENSE -- APPLICANTS FOR WHOM AN EXAMINATION MAY BE REQUIRED. An applicant shall be qualified for a license to practice psychology provided ~~he submits~~ proof satisfactory to the board ~~that~~ has been received showing:

(a) ~~He is of a~~Acceptable moral character; and

(b) ~~He is e~~Either (1) ~~a graduate of~~ graduation from an accredited college or university ~~holding~~ with a degree of doctor of philosophy in psychology ~~plus~~ and two (2) years of ~~post-graduate~~ postgraduate experience acceptable to the board, such two (2) years not to include terms of internship, or (2) ~~a graduate of~~ graduation from a recognized college or university ~~holding~~ with a doctoral degree in a field related to psychology, provided ~~his~~ experience and training are acceptable to the board; and

(c) ~~He has passed~~ Successful passage of an examination if such examination is required by the rules duly adopted by the board; and

(d) ~~His~~ Receipt of a completed application ~~has been~~ accompanied by an application fee as established by board rules not to exceed two hundred dollars ($200), and when an examination is required ~~an examination fee equal to that charged by the national examining entity plus~~ a processing fee of twenty-five dollars ($25.00) payable to the ~~chief~~ bureau of occupational licenses. The fee for any required examination or reexamination shall be ~~equal to that charged by~~ submitted directly to the national examining entity. ~~plus a processing fee of twenty-five dollars ($25.00).~~ The application fee~~, examination fee~~ and the ~~reexamination~~ processing fee are not refundable.

Approved March 25, 2003.

CHAPTER 121
(H.B. No. 105)

AN ACT

RELATING TO THE STATE SEED ADVISORY BOARD; AMENDING SECTION 22-435, IDAHO CODE, TO ADD THE PRESIDENT OF THE IDAHO SEED ANALYSTS ASSOCIATION AS A PERMANENT MEMBER OF THE ADVISORY BOARD.

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

SECTION 1. That Section 22-435, Idaho Code, be, and the same is hereby amended to read as follows:

22-435. STATE SEED ADVISORY BOARD. (1) In order to maintain close contact between the department and the seed industry, there is hereby created a state seed laboratory advisory board which shall consist of eight (8) official members and eight (8) ex officio alternates appointed by the director of the department of agriculture from a list provided by the Idaho seed council. The Idaho seed council will nominate a member and an alternate for each vacancy on the advisory board to represent the following seed commodities:

(a) Cereal grains
(b) Grasses - turf
(c) Grasses - forage
(d) Small seeded legumes
(e) Corn and small seeded vegetables
(f) Garden beans
(g) Field beans
(h) Oil crops.

The executive secretary of the Idaho crop improvement association shall serve as a permanent ninth official member of the board. The president of the Idaho seed analysts association, or his representative, shall serve as a permanent tenth official member of the board. Additionally, without the need for any nominations, the director shall appoint one (1) grower member who shall serve as the ~~tenth~~ eleventh official member of the board and serve a three (3) year term.

(2) The members first appointed shall determine by lot the length of their terms: Four (4) to serve for three (3) years, and four (4) to serve for two (2) years, each term beginning July 1, 1989. A member and his alternate shall serve the same length of term. Vacancies in office shall be filled by an alternate for the unexpired term.

(3) Official members or an alternate present in the absence of his respective representative will have the right to vote. A member and his respective alternate are not to work for the same employer.

(4) Members or alternates of the board shall be compensated as provided in section 59-509(a), Idaho Code.

(5) The functions of the board shall be to advise and counsel with the department in the administration of the provisions of sections 22-414 through 22-436, Idaho Code.

(6) The board shall meet at the call of the chairman or the director of the Idaho department of agriculture or his designee. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the board.

(7) At the first meeting after July 1, in each year, the board shall select a chairman. The director of the Idaho department of agriculture and the bureau chief of the Idaho state seed laboratory in the department of agriculture or their representatives, shall be ex officio members without the right to vote.

Approved March 25, 2003.

## CHAPTER 122
## (H.B. No. 92)

AN ACT

RELATING TO TORT LIABILITY LAWS; AMENDING SECTION 6-803, IDAHO CODE, TO PROVIDE FOR SEVERAL LIABILITY FOR CERTAIN TORTS; AMENDING SECTION 6-1603, IDAHO CODE, TO LOWER THE LIMITATION ON THE RECOVERY OF NONECONOMIC DAMAGES; AMENDING SECTION 6-1604, IDAHO CODE, TO REVISE THE EVIDENTIARY STANDARD FOR THE AWARD OF PUNITIVE DAMAGES AND TO PROVIDE A LIMITATION ON THE RECOVERY OF PUNITIVE DAMAGES; AMENDING SECTION 13-202, IDAHO CODE, TO WAIVE A PORTION OF THE BONDING AND CASH DEPOSIT REQUIREMENTS ON APPEALS OF JUDGMENTS FOR PUNITIVE DAMAGES WITH EXCEPTIONS AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE AND APPLICATION.

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

SECTION 1. That Section 6-803, Idaho Code, be, and the same is hereby amended to read as follows:

6-803. CONTRIBUTION AMONG JOINT TORTFEASORS -- DECLARATION OF RIGHT -- EXCEPTION -- LIMITED JOINT AND SEVERAL LIABILITY. (1) The right of contribution exists among joint tortfeasors, but a joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof.

(2) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

(3) The common law doctrine of joint and several liability is hereby limited to causes of action listed in subsections (5)~~,--(6)--and (7)~~ of this section. In any action in which the trier of fact attributes the percentage of negligence or comparative responsibility to persons listed on a special verdict, the court shall enter a separate judgment against each party whose negligence or comparative responsibility exceeds the negligence or comparative responsibility attributed to the person recovering. The negligence or comparative responsibility of each such party is to be compared individually to the negligence or comparative responsibility of the person recovering. Judgment against each such party shall be entered in an amount equal to each party's proportionate share of the total damages awarded.

(4) As used herein, "joint tortfeasor" means one (1) of two (2) or more persons jointly or severally liable in tort for the same injury to

person or property, whether or not judgment has been recovered against all or some of them.

(5) A party shall be jointly and severally liable for the fault of another person or entity or for payment of the proportionate share of another party where they were acting in concert or when a person was acting as an agent or servant of another party. As used in this section, "acting in concert" means pursuing a common plan or design which results in the commission of an intentional or reckless tortious act.

~~(6) Any cause of action arising out of a violation of any state or federal law or regulation relating to hazardous or toxic waste or substances or solid waste disposal sites.~~

~~(7) Any cause of action arising from the manufacture of any medical devices or pharmaceutical products.~~

SECTION 2. That Section 6-1603, Idaho Code, be, and the same is hereby amended to read as follows:

6-1603. LIMITATION ON NONECONOMIC DAMAGES. (1) In no action seeking damages for personal injury, including death, shall a judgment for noneconomic damages be entered for a claimant exceeding the maximum amount of ~~four~~ two hundred fifty thousand dollars ($~~40~~250,000); provided, however, that beginning on July 1, ~~1988~~2004, and each July 1 thereafter, the cap on noneconomic damages established in this section shall increase or decrease in accordance ~~with the~~ percentage amount of increase or decrease by which the Idaho industrial commission adjusts the average annual wage as computed pursuant to section 72-409(2), Idaho Code.

(2) The limitation contained in this section applies to the sum of: (a) noneconomic damages sustained by a claimant who incurred personal injury or who is asserting a wrongful death; (b) noneconomic damages sustained by a claimant, regardless of the number of persons responsible for the damages or the number of actions filed.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (1) of this section.

(4) The limitation of awards of noneconomic damages shall not apply to:

(a) Causes of action arising out of willful or reckless misconduct.

(b) Causes of action arising out of an act or acts which the trier of fact finds beyond a reasonable doubt would constitute a felony under state or federal law.

SECTION 3. That Section 6-1604, Idaho Code, be, and the same is hereby amended to read as follows:

6-1604. LIMITATION ON PUNITIVE DAMAGES. (1) In any action seeking recovery of punitive damages, the claimant must prove, by ~~a preponderance of the~~ clear and convincing evidence, oppressive, fraudulent, ~~wanton,~~ malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.

(2) In all civil actions in which punitive damages are permitted, no claim for damages shall be filed containing a prayer for relief seeking punitive damages. However, a party may, pursuant to a pretrial motion and after hearing before the court, amend the pleadings to include a prayer for relief seeking punitive damages. The court shall

allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that, the moving party ~~establishes~~ has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. A prayer for relief added pursuant to this section shall not be barred by lapse of time under any applicable limitation on the time in which an action may be brought or claim asserted, if the time prescribed or limited had not expired when the original pleading was filed.

(3) No judgment for punitive damages shall exceed the greater of two hundred fifty thousand dollars ($250,000) or an amount which is three (3) times the compensatory damages contained in such judgment. If a case is tried to a jury, the jury shall not be informed of this limitation. The limitations on noneconomic damages contained in ~~this act~~ section 6-1603, Idaho Code, are not applicable to punitive damages.

(4) Nothing in this section is intended to change the rules of evidence ~~or standards of proof~~ used by a trier of fact in finding punitive damages.

SECTION 4. That Section 13-202, Idaho Code, be, and the same is hereby amended to read as follows:

13-202. STAY OF PROCEEDINGS PENDING APPEAL. (1) Upon and after an appeal of a judgment or order of the district court in a civil action, the judgment or order appealed from, or any other order or proceeding in the action may be stayed by the district court or the ~~S~~supreme ~~C~~court as provided by ~~R~~rule of the ~~S~~supreme ~~C~~court.

(2) If a plaintiff in a civil action obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars ($1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal.

(3) If the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.

(4) The supersedeas bond or cash deposit requirements may also be waived in any action for good cause shown as provided by rule of the supreme court.

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.

SECTION 6. This act shall be in full force and effect on and after July 1, 2003. Sections 1 through 3 of this act shall apply to all causes of action which accrue thereafter. Section 4 of this act shall apply to all cases in which an appeal is filed thereafter.

Approved March 26, 2003.

CHAPTER 123
(H.B. No. 229)

AN ACT

RELATING TO LOCAL LAND USE PLANNING AND THE PERMIT GRANTING PROCESS; AMENDING SECTION 67-6519, IDAHO CODE, TO REQUIRE THE COMMISSION WHEN REVIEWING PERMIT APPLICATIONS OF A PUBLIC SCHOOL FACILITY TO SPECIFICALLY REVIEW FOR EFFECTS ON VEHICULAR, BICYCLE AND PEDESTRIAN VOLUMES ON ADJACENT ROADS AND HIGHWAYS, AND TO PROVIDE THAT THE APPROPRIATE HIGHWAY JURISDICTION SHALL REVIEW THE APPLICATION AND REPORT TO THE COMMISSION ON SPECIFIED ISSUES TO ENSURE THAT THE HIGHWAY SYSTEM CAN SATISFACTORILY ACCOMMODATE THE PROPOSED SCHOOL PROJECT.

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

SECTION 1. That Section 67-6519, Idaho Code, be, and the same is hereby amended to read as follows:

67-6519. PERMIT GRANTING PROCESS. (1) As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for permits for which a reasonable fee may be charged.

(2) Each application for a permit required or authorized under this chapter shall first be submitted to the zoning or planning and zoning commission for its recommendation or decision. The commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the permit or makes its recommendation to the governing board. Each commission or governing board shall establish by rule a time period within which a recommendation or decision must be made. Provided however, any permit application which relates to a public school facility shall receive priority consideration and shall be reviewed for approval, denial or recommendation by the commission or the governing board at the earliest reasonable time, regardless of the timing of its submission relative to other applications which are not related to public school facilities.

(3) When considering a permit application which relates to a public school facility, the commission shall specifically review the permit application for the effect it will have on increased vehicular, bicycle and pedestrian volumes on adjacent roads and highways. To ensure that the state highway system or the local highway system can satisfactorily accommodate the proposed school project, the commission shall request the assistance of the Idaho transportation department if state highways are affected, or the local highway district with jurisdiction if the affected roads are not state highways. The Idaho transportation department, the appropriate local highway jurisdiction, or both as determined by the commission, shall review the application and shall report to the commission on the following issues as appropriate: the land use master plan; school bus plan; access safety; pedestrian plan; crossing guard plan; barriers between highways and school; location of school zone; need for flashing beacon; need for traffic control signal; anticipated future improvements; speed on adjacent highways; traffic volumes on adjacent highways; effect upon the highway's level of service; need for acceleration or deceleration lanes; internal traffic circulation; antic-

ipated development on surrounding undeveloped parcels; zoning in the vicinity; access control on adjacent highways; required striping and signing modifications; funding of highway improvements to accommodate development; proposed highway projects in the vicinity; and any other issues as may be considered appropriate to the particular application.

(4) Whenever a governing board or zoning or planning and zoning commission grants or denies a permit, it shall specify:

(a) The ordinance and standards used in evaluating the application;

(b) The reasons for approval or denial; and

(c) The actions, if any, that the applicant could take to obtain a permit.

An applicant denied a permit or aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code.

Approved March 26, 2003.

## CHAPTER 124
## (H.B. No. 231)

### AN ACT

RELATING TO RESTRICTIONS; AMENDING SECTION 49-948, IDAHO CODE, TO PROHIBIT THE USE OF STUDDED TIRES BETWEEN SPECIFIED DATES AND TO PROVIDE EXCEPTIONS, TO ESTABLISH WEIGHT AND PROTRUSION STANDARDS FOR STUDS IN TIRES AND TO PROHIBIT CERTAIN TRADE PRACTICES.

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

SECTION 1. That Section 49-948, Idaho Code, be, and the same is hereby amended to read as follows:

49-948. RESTRICTIONS AS TO TIRE EQUIPMENT. (1) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(2) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the highway.

(3) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, spike, or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except as allowed herein. It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and it shall be permissible to use tire chains. Tires with bBuilt-in lugs of tungsten carbide or other suitable material, ~~of reasonable proportions~~ hereinafter called studs, may be used upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid, that will not unduly damage the highway~~, may be inserted if approved by the board. The board shall have the power to revoke any permission for built-in lugs at any time it may determine the lugs are unduly damaging~~

~~the highways~~. Motor vehicles, trailers and semitrailers with tires having built-in studs are prohibited on public highways between the dates of May 1 and September 30, annually, except as provided in paragraphs (a) and (b) of this subsection:

(a) Fire pumper/tanker trucks and ladder trucks belonging to fire departments and firefighting agencies are exempt from the prohibited dates.

(b) Special exemptions from the prohibited dates may be granted by the Idaho transportation board if it is found by the board that enhancements to public safety outweigh the increased pavement wear.

(4) Commercial tire retailers shall not sell studded tires with studs exceeding the following weight and protrusion limitations after July 1, 2005. Commercial tire retailers and tire shops shall not manually install studs exceeding the following weight and protrusion limitations after July 1, 2005.

(a) Studs shall not protrude more than six-hundredths (.06) of an inch from the surface of the tire tread when originally installed.

(b) Stud size shall be as recommended by the manufacturer of the tire for the type and size of the tire.

(c) Studs shall individually weigh no more than one and one-half (1.5) grams if the stud is size 14 or less.

(d) Studs shall individually weigh no more than two and three-tenths (2.3) grams if the stud size is 15 or 16.

(e) Studs shall individually weigh no more than three (3) grams if the stud size is 17 or larger.

Approved March 26, 2003.

## CHAPTER 125
## (S.B. No. 1042)

### AN ACT

RELATING TO DEALER AND MANUFACTURER LICENSE PLATES; AMENDING SECTION 49-411, IDAHO CODE, TO LIMIT THE NUMBER OF LICENSE PLATES THAT A DEALER MAY BE ISSUED BASED ON THE NUMBER OF VEHICLES SOLD DURING THE PREVIOUS DEALER LICENSING PERIOD AND TO AUTHORIZE THE DEPARTMENT TO AUDIT VEHICLE SALES DURING PREVIOUS YEARS BEFORE RENEWAL OF A DEALER'S LICENSE.

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

SECTION 1. That Section 49-411, Idaho Code, be, and the same is hereby amended to read as follows:

49-411. DEALER AND MANUFACTURER PLATE -- FEES. (1) Any person conducting the business of manufacturing, buying, selling or dealing in vehicles, and licensed as a manufacturer of or a dealer in vehicles, and owning and operating any such vehicle upon any highway may, in lieu of registering each vehicle obtain from the department upon application on the proper form and payment of the required fee, and attach to each vehicle, one (1) number plate as required for different classes of vehicles in section 49-434, Idaho Code. The special number plate shall bear

a distinctive number assigned to the manufacturer or dealer, the name of this state, which may be abbreviated, and the year for which the plate is issued, together with words which may be abbreviated or a distinguishing symbol indicating that the plate is issued to a manufacturer or dealer.

(a) Dealer license plates shall be limited to two (2) license plates for up to twenty (20) vehicles sold during the previous dealer licensing period and one (1) license plate for each ten (10) additional vehicles sold during the previous dealer licensing period. Any new dealer who applies for a dealer license shall be eligible for the number of dealer plates requested based on the number of vehicles that the dealer estimates he will sell during the first year of licensure.

(b) Upon renewal of a dealer's license, the department may audit vehicle sales from previous years to determine the number of dealer plates that will be authorized for the current dealer licensing period.

(2) The fee to validate a dealer or manufacturer number plate shall be twelve dollars ($12.00) for each validation sticker.

(3) All such fees shall be paid to the state treasurer and deposited to the state highway account.

Approved March 26, 2003.

## CHAPTER 126
## (H.B. No. 12)

AN ACT

RELATING TO LICENSURE BY THE BOARD OF MEDICINE; AMENDING SECTION 54-1810, IDAHO CODE, TO REQUIRE THAT APPLICANTS FOR LICENSURE BY WRITTEN EXAMINATION TO PRACTICE MEDICINE AND SURGERY OR OSTEOPATHIC MEDICINE AND SURGERY SHALL INCLUDE FINGERPRINT-BASED CRIMINAL HISTORY CHECKS; AMENDING SECTION 54-1811, IDAHO CODE, TO REQUIRE THAT APPLICANTS FOR LICENSURE BY ENDORSEMENT TO PRACTICE MEDICINE AND SURGERY OR OSTEOPATHIC MEDICINE AND SURGERY SHALL INCLUDE FINGERPRINT-BASED CRIMINAL HISTORY CHECKS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 54-1810, Idaho Code, be, and the same is hereby amended to read as follows:

54-1810. LICENSURE BY WRITTEN EXAMINATION. Any person seeking to be licensed to practice medicine and surgery or osteopathic medicine or osteopathic medicine and surgery in this state must successfully complete the following requirements before a license will be issued:

(1) Each applicant must submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a medical school acceptable to the board and successful completion of a postgraduate training program acceptable to the board. The application shall require a fingerprint-based criminal history check

of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant must submit a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the Idaho department of law enforcement and the federal bureau of investigation identification division for this purpose.

(2) Each applicant must pass an examination conducted by or acceptable to the board which shall thoroughly test the applicant's fitness to practice medicine. If an applicant fails to pass the examination on two (2) separate occasions, he shall not be eligible to take the examination for at least one (1) year, and before taking the examination again, he must make a showing to the board that he has successfully engaged in a course of study for the purpose of improving his ability to engage in the practice of medicine. Applicants who fail two (2) separate examinations in another state, territory, or district of the United States or Canada, must make the same showing of successful completion of a course of study prior to examination for licensure.

(3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. Such an interview shall be limited to a review of the applicant's qualifications and professional credentials.

SECTION 2. That Section 54-1811, Idaho Code, be, and the same is hereby amended to read as follows:

54-1811. LICENSURE BY ENDORSEMENT. Any person seeking to be licensed to practice medicine in this state who is licensed to practice medicine in another state must successfully complete the following requirements before a license to practice medicine will be issued:

(1) Each applicant must submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a medical school acceptable to the board and successful completion of a postgraduate training program acceptable to the board and which contains proof that the applicant has any one (1) of the following qualifications:

(a) The applicant is a diplomate of the national board of medical examiners or the national board of examiners for osteopathic physicians and surgeons;

(b) The applicant holds a valid, unrevoked, unsuspended license to practice medicine and surgery, or osteopathic medicine and surgery in a state, territory or district of the United States or Canada, and the applicant demonstrates that he possesses the requisite qualifications to provide the same standard of health care as provided by licensed physicians in this state. The board may require further examination to establish such qualifications.

(2) The application shall require a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant must submit a full set of the applicant's fingerprints on forms supplied by the board which shall be forwarded to the Idaho department of law enforcement and the federal bureau of investigation identification division for this purpose.

(3) The board may require an applicant to be personally interviewed by the board or a designated committee of the board. The interview shall

be limited to a review of the applicant's qualifications and professional credentials.

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 May 1, 2002.

Approved March 27, 2003.

## CHAPTER 127
## (H.B. No. 26)

AN ACT

RELATING TO THE IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED; AMENDING SECTION 67-5402, IDAHO CODE, TO REVISE THE DEFINITION OF "BLIND" OR "VISUALLY IMPAIRED" AND TO PROVIDE A DEFINITION OF "FUNCTIONALLY BLIND."

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

SECTION 1. That Section 67-5402, Idaho Code, be, and the same is hereby amended to read as follows:

67-5402. DEFINITIONS. As used in this act, unless the context otherwise requires:

(1) "Commission" means the Idaho commission for the blind and visually impaired.

(2) "Blind" or "visually impaired" means a person whose visual acuity with correcting lenses is not better than 20/200 in the better eye; or a person whose vision in the better eye is restricted to a field which subtends an angle of not greater than 20 degrees; or a person ~~for whom there exists the medically documented opinion that the person~~ who is functionally blind; or a person who is without any sight.

(3) "Functionally blind" means a person with a visual impairment which constitutes or results in a substantial impediment to employment, or substantially limits one (1) or more major life activities.

(4) "Prevention of blindness and sight restoration" means treatment or operations to prevent blindness or restore vision to applicants or recipients of services to the blind without financial resources to procure such services for themselves, who request and make written application for such treatment or operation.

Approved March 27, 2003.

## CHAPTER 128
## (H.B. No. 66, As Amended)

AN ACT

RELATING TO ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF PARKS AND RECREATION; AMENDING SECTION 67-4239, IDAHO CODE, TO PROVIDE THAT AN

ACTION NEEDS TO HAVE OCCURRED ON PROPERTIES OWNED OR MANAGED BY THE DEPARTMENT OF PARKS AND RECREATION BEFORE A CITATION MAY BE ISSUED BY A DEPARTMENT EMPLOYEE.

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

SECTION 1. That Section 67-4239, Idaho Code, be, and the same is hereby amended to read as follows:

67-4239. ENFORCEMENT AUTHORITY. (1) The director of the department of parks and recreation may issue Idaho uniform citations, as provided for by the rules of the court for the magistrates division of the district court and the district court, to violators of title 67, chapters 42 (state parks), 70 (safe boating act), 71 (recreational activities) and 75 (marine sewage disposal act), Idaho Code, and rules adopted under those chapters, within properties owned ~~and~~ <u>or</u> managed by the department. The director may delegate this authority <u>to</u> qualified employees of the department.

(2) The department of parks and recreation shall develop, with the guidance and approval of the peace officers standards and training academy, an appropriate training course for employees applicable to issuing citations as authorized and delegated in this section. The director shall ensure, before delegating authority under this section, that employees successfully complete the training course.

Approved March 27, 2003.

## CHAPTER 129
## (H.B. No. 67)

AN ACT

RELATING TO SPECIES CONSERVATION; AMENDING SECTION 18-3913, IDAHO CODE, TO PROVIDE THAT IT IS THE DUTY OF THE DEPARTMENT OF FISH AND GAME TO PROTECT WILD FLOWERS AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 36-2402, IDAHO CODE, TO REMOVE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF PARKS AND RECREATION FOR ESTABLISHING A DELISTING ADVISORY TEAM; AMENDING SECTION 36-2404, IDAHO CODE, TO REMOVE AUTHORITY OF THE DEPARTMENT OF PARKS AND RECREATION FOR PROVIDING DELISTING ADVISORY TEAMS AND TO TRANSFER AUTHORITY FOR PLANT LIFE BIOLOGICAL AND SPECIES MANAGEMENT ISSUES TO THE DEPARTMENT OF FISH AND GAME; AMENDING SECTION 36-2405, IDAHO CODE, TO REMOVE AUTHORITY OF THE DIRECTOR OF THE DEPARTMENT OF PARKS AND RECREATION FOR SPECIES MANAGEMENT PLANS; AND AMENDING SECTION 67-818, IDAHO CODE, TO REMOVE AUTHORITY OF THE DEPARTMENT OF PARKS AND RECREATION FOR POLICY AND STATE MANAGEMENT PLANS ON THREATENED, ENDANGERED AND PETITIONED SPECIES AND TO TRANSFER AUTHORITY FOR PLANT LIFE BIOLOGICAL AND SPECIES MANAGEMENT ISSUES TO THE DEPARTMENT OF FISH AND GAME.

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

SECTION 1. That Section 18-3913, Idaho Code, be, and the same is hereby amended to read as follows:

18-3913. WILD FLOWERS PROTECTED -- AMENDED LIST -- DUTY OF ~~PARKS~~ DEPARTMENT OF FISH AND GAME. (a) In order to further protect native wild flowers and shrubs from needless destruction and waste, the ~~parks~~ department of fish and game may, after investigation and public hearings and in accordance with the provisions of this act, establish and amend a list of wild flowers and shrubs in addition to those listed in section ~~1(3) of this act~~ 18-3911(3), Idaho Code. The provisions of this act will then apply to such "established" or "amended" list.

(b) In determi~~ning additions~~ to the list of wild flowers set forth herein, the ~~parks~~ department of fish and game may take into consideration:

(1) The laws and regulations of the United States and other states.

(2) The effect on the scenic beauty of public roads and public land.

(3) The necessity to preserve and protect native plants whenever it appears that they might possibly become extinct.

SECTION 2. That Section 36-2402, Idaho Code, be, and the same is hereby amended to read as follows:

36-2402. DELISTING ADVISORY TEAM -- DUTIES -- MEMBERSHIP. (1) The director of the department of fish and game for animal species ~~or the department of parks and recreation for~~ and plant species, in cooperation and consultation with the governor's office of species conservation, may establish a delisting advisory team (DAT) of no more than nine (9) members for a threatened species or endangered species, to recommend an appropriate state species management plan for a listed species in response to a notification from the secretary of interior or secretary of commerce of intent to delist the species or sooner if deemed appropriate.

(2) The delisting advisory team members shall be broadly representative of the constituencies with an interest in the species and its management or conservation and in the economic or social impacts of management or conservation including, where appropriate, depending on the specific species, representatives of tribal governments, local governments, academic institutions, private individuals and organizations and commercial enterprises. The delisting advisory team members shall be selected based upon:

(a) Their knowledge of the species;

(b) Their knowledge and expertise in the potential conflicts between a species' habitat requirements or management and human activities;

(c) Their knowledge and expertise in the interests that may be affected by species management or conservation; or

(d) Other factors that may provide knowledge, information, or data that will further the intent of this act.

SECTION 3. 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, and for plant life 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 department of environmental quality. The appropriate state agency for outfitting and guiding activities is the Idaho outfitters and guides licensing board.

SECTION 4. That Section 36-2405, Idaho Code, be, and the same is hereby amended to read as follows:

36-2405. RECOMMENDATION ON MANAGEMENT PLANS. (1) The delisting advisory team shall submit the management plan to the director of the department of fish and game for animal ~~species,~~ or ~~to the director of the department of parks and recreation for~~ plant species, for review and recommendation.

(2) The director shall review the management plan and make a recommendation to the fish and game commission~~, or the board of parks and recreation, as appropriate~~. The director may recommend either approval of the management plan, or recommend to return the management plan to the delisting advisory team for further study and review, with instructions, prior to return of the species strategy or management plan to the directors.

(3) If the fish and game commission ~~or the board of parks and recreation~~ finds that the management plan provides for the management and conservation of the species when it is delisted by the secretary of the interior or secretary of commerce and that reasonable safeguards are included in the management plan to protect the health, safety, private property and economic well-being of the citizens of the state of Idaho, the fish and game commission ~~or the board of parks and recreation, as appropriate,~~ shall approve the management plan.

(4) If the fish and game commission ~~or the board of parks and recreation~~ makes the finding required in subsection (3) of this section, the fish and game commission ~~or board of parks and recreation~~ shall forward the state management plan, to the governor's office of species conservation and the legislature. The management plan is subject to legislative approval, amendment or rejection by concurrent resolution at the

regular session immediately following the commission's ~~or board's~~ finding and approval of the plan.

(5) The governor's office of species conservation may petition the responsible public agencies to initiate rulemaking to facilitate the implementation of the approved management plan.

(6) Each management plan developed pursuant to this chapter shall include a public education component that shall be developed and implemented in cooperation with other appropriate bureaus of the department of fish and game. ~~or department of parks and recreation.~~

(7) Nothing in this act shall be interpreted as granting the department of fish and game ~~or the department of parks and recreation~~ with new or additional authority.

SECTION 5. 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 and for plant life 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 department of environmental quality. 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.

Approved March 27, 2003.

## CHAPTER 130
(H.B. No. 71, As Amended)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING SECTION 20-225, IDAHO CODE, TO INCREASE THE MAXIMUM AMOUNT OF SUPERVISION FEES THAT MAY BE COLLECTED BY THE BOARD AND TO CLARIFY THE TYPES OF COSTS THAT CONSTITUTE COSTS OF SUPERVISION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 20-225, Idaho Code, be, and the same is hereby amended to read as follows:

20-225. PAYMENT FOR COST OF SUPERVISION. Any person under state probation or parole supervision shall be required to contribute not more than ~~thirty-five~~ forty dollars (~~$35~~40.00) per month as determined by the board of correction. Costs of supervision are the direct and indirect

costs incurred by the department of correction to supervise probationers and parolees, including tests to determine drug and alcohol use, books and written materials to support rehabilitation efforts, and monitoring of physical location through the use of technology. Any failure to pay such contribution shall constitute grounds for the revocation of probation by the court or the revocation of parole by the commission for pardons and parole. The division of probation and parole in the department of correction may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:

(1) The offender has diligently attempted but been unable to obtain employment.

(2) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination acceptable to the division of probation and parole.

Money collected as a fee for services will be placed in the probation and parole receipts account, which is hereby created in the dedicated fund in the state treasury, and utilized to provide supervision for clients. Moneys in the probation and parole receipts account may be expended only after appropriation by the legislature.

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

Approved March 27, 2003.

## CHAPTER 131
## (H.B. No. 102)

AN ACT

RELATING TO BONDED WAREHOUSES; AMENDING SECTION 69-263, IDAHO CODE, TO RESTRICT THE TIME IN WHICH CERTAIN CONTRACTS ARE ELIGIBLE FOR PAYMENT FROM THE COMMODITY INDEMNITY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 69-263, Idaho Code, be, and the same is hereby amended to read as follows:

69-263. FAILURE TO FILE -- LOSS OF CLAIM ON FUND. If a producer, after notification, refuses or neglects to file in the office of the director his verified claim against a warehouseman or dealer as requested by the director within ninety (90) days from the date of the notice, the director shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the commodity indemnity fund. No claim shall be paid from the fund if a producer files his claim more than two (2) years from the date of sale of the commodity. Provided however, for those claims that are based on contracts containing no readily calculable sale value of the commodity for the producer, no claim shall be paid from the fund if a producer files his claim more than one hundred eighty (180) days from the date the contract is executed.

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 27, 2003.

CHAPTER 132
(H.B. No. 113, As Amended in the Senate)

AN ACT

RELATING TO SEARCH AND RESCUE OPERATIONS; AMENDING SECTION 46-1009, IDAHO CODE, TO PROVIDE THAT THE SHERIFF OF EACH COUNTY SHALL BE THE OFFICIAL RESPONSIBLE FOR COMMAND OF ALL SEARCH AND RESCUE OPERATIONS WITHIN HIS JURISDICTION AND EACH SHERIFF SHALL PREPARE AND KEEP CURRENT A PLAN TO COMMAND THE SEARCH AND RESCUE CAPABILITY AND RESOURCES AVAILABLE WITHIN THE COUNTY, TO PROVIDE RESPONSIBILITY FOR THE SEARCH FOR LOST AIRCRAFT AND AIRMEN, TO PROVIDE FOR SEARCH AND RESCUE OPERATIONS WITHIN THE INCORPORATED LIMITS OF ANY CITY AND TO PROVIDE FOR RESCUE OF ENTRAPPED OR INJURED PERSONS WITHIN A FIRE DISTRICT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 46-1009, Idaho Code, be, and the same is hereby amended to read as follows:

46-1009. LOCAL AND INTERGOVERNMENTAL DISASTER AGENCIES AND SERVICES. (1) Each county within this state shall be within the jurisdiction of and served by the bureau and by a county or intergovernmental agency responsible for disaster preparedness and coordination of response.

(2) Each county shall maintain a disaster agency or participate in an intergovernmental disaster agency which, except as otherwise provided under this act, has jurisdiction over and serves the entire county, or shall have a liaison officer appointed by the county commissioners designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response and recovery.

(3) The chairman of the board of county commissioners of each county in the state shall notify the bureau of the manner in which the county is providing or securing disaster planning and emergency services. The chairman shall identify the person who heads the agency or acts in the capacity of liaison from which the service is obtained, and furnish additional information relating thereto as the bureau requires.

(4) Each county and/or intergovernmental agency shall prepare and keep current a local or intergovernmental disaster emergency plan for its area.

(5) The county or intergovernmental disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

(6) Except as provided in subsections (7), (8) and (9) of this section, t~~T~~he sheriff of each county shall:

(a) be the official responsible for ~~coordination~~ command of all search and rescue operations within his jurisdiction;

(b) prepare and keep current a plan to ~~make--use--of~~ command the search and rescue capability and resources available within the county.

(7) Pursuant to chapter 1, title 21, Idaho Code, subsection (6) of this section shall not apply to all aerial activity related to the search for lost aircraft and airmen which shall be under the direction and supervision of the director of the Idaho transportation department and coordinated with the division of aeronautics.

(8) Nothing in subsection (6) of this section shall apply to search and rescue operations within the incorporated limits of any city.

(9) Nothing in subsection (6) of this section shall apply to the rescue of entrapped or injured persons where their location is known to be within a fire district, where the fire district performs such service.

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

Approved March 27, 2003.

## CHAPTER 133
## (H.B. No. 133)

AN ACT

RELATING TO THE NOTICE AND OPPORTUNITY TO REPAIR ACT; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 25, TITLE 6, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO SET FORTH PROCEDURES FOR ACTIONS AGAINST CONSTRUCTION PROFESSIONALS FOR CONSTRUCTION DEFECTS AND TO PROVIDE FOR LIMITATIONS ON DAMAGES.

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

SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 25, Title 6, Idaho Code, and to read as follows:

### CHAPTER 25
### NOTICE AND OPPORTUNITY TO REPAIR ACT

6-2501. SHORT TITLE. This chapter shall be known and may be cited as the "Notice and Opportunity to Repair Act."

6-2502. DEFINITIONS. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. "Action" does not include any civil action in tort

alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means a homeowner's association, condominium management body, unit owner's organization or a nonprofit corporation created to own and operate portions of a planned community which has the power to assess unit owners to pay the costs and expenses incurred in the performance of the association's obligations.

(3) "Claimant" means a homeowner or association that asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means any person with a right to lien pursuant to section 45-501, Idaho Code, an architect, subdivision owner or developer, builder, contractor, subcontractor, engineer or inspector, performing or furnishing the design, supervision, inspection, construction or observation of the construction of any improvement to residential real property, whether operating as a sole proprietor, partnership, corporation, limited liability company or other business entity.

(5) "Homeowner" means:

(a) Any person who contracts with a construction professional for the construction, sale, or construction and sale of a residence; and

(b) An association as defined in this section.

"Homeowner" includes a subsequent purchaser of a residence from any homeowner.

(6) "Person" means an individual, an association as defined in this section, or a corporation, business trust, estate, trust, partnership, limited liability company, joint venture or other legal business entity.

(7) "Residence" means a single-family house, duplex, triplex, quadraplex, condominium or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a cooperative system.

(8) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(9) "Substantial remodel" means a remodel of a residence, for which the total cost exceeds one-half (1/2) of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made.

6-2503. NOTICE AND OPPORTUNITY TO REPAIR. (1) Prior to commencing an action against a construction professional for a construction defect, the claimant shall serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect. Any action commenced by a claimant prior to compliance with the requirements of this section shall be dismissed by the court without prejudice and may not be recommenced until the claimant has complied with the requirements of this section. If a written notice of claim is served under this section within the time prescribed for the filing of an action under this chapter, the statute of limitations for construction-related claims is tolled until sixty (60) days after the period of time during which the filing of an action is barred.

(2) Within twenty-one (21) days after service of the notice of claim, the construction professional shall serve a written response on the claimant. The written response shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection; or

(c) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3) (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty (30) days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a) of this section, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen (14) days following completion of the inspection, the construction professional shall serve on the claimant:

(i) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim and a timetable for the completion of such construction;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

(iii) A written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if

the construction professional fails to comply with the provisions of subsection (4)(b) of this section, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to subsection (4)(b)(i) or (ii) of this section to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty (30) days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to subsection (4)(b)(i) or (ii) of this section, then at any time thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer and no later than thirty (30) days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer including, but not limited to, repair of additional defects.

(6) Written or oral statements made by a claimant or by a construction professional in the course of complying with the procedures required or authorized by this section shall not be considered an admission of liability and shall not be admissible in an action subject to this section.

(7) Nothing in this section shall be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect or fails to perform by the timetable agreed upon pursuant to subsection (4)(b) or (5)(b) of this section.

6-2504. LIMITATION ON DAMAGES. (1) In a suit subject to section 6-2503, Idaho Code, the claimant may recover only the following damages proximately caused by a construction defect:

(a) The reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under this chapter;

(b) The reasonable expenses of temporary housing reasonably necessary during the repair period;

(c) The reduction in market value, if any, to the extent that the reduction is due to structural failure; and

(d) Reasonable and necessary attorney's fees.

(2) If a construction professional fails to make a reasonable offer as required under section 6-2503, Idaho Code, or fails to make a reasonable attempt to complete the repairs specified in an accepted offer, or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided for in this section shall not apply.

(3) If a claimant denies a request to inspect as provided for in section 6-2503, Idaho Code, unreasonably rejects an offer to remedy the construction defect or does not permit the construction professional a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of:

(a) The reasonable cost of the offered repairs which are necessary to cure the construction defect and which are the responsibility of the construction professional; or

(b) The amount of a reasonable monetary settlement offer made under section 6-2503, Idaho Code; and

(c) The amount of reasonable and necessary attorney's fees and costs incurred before the offer was rejected or considered rejected.

(4) The total damages awarded in a suit subject to this chapter may not exceed the greater of the claimant's purchase price for the residence or the current fair market value of the residence without the construction defect.

(5) A builder, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss or liability if the builder can demonstrate any of the following affirmative defenses in response to the claimed construction defect action:

(a) An unforeseen act of nature caused the structure not to meet the standard. For purposes of this section, an "unforeseen act of nature" means a weather condition, earthquake or man-made event such as war, terrorism or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations and ordinances in effect at the time of original construction.

(b) The homeowner unreasonably failed to minimize or prevent those damages in a timely manner. Such failure includes the failure of the homeowner to allow reasonable and timely access for inspections and repairs under this chapter or to give timely notice to the builder after discovery of a construction defect, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim of a construction defect.

(c) The homeowner or his or her agent, employee, subcontractor, independent contractor or consultant failed to follow the builder's or manufacturer's recommendations or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder must show that the homeowner had written notice of these schedules and recommendations and that the schedules and recommendations were reasonable at the time they were issued.

(d) The damage or loss was caused by the homeowner's or his or her agent's or an independent third party's alterations, ordinary wear

and tear, misuse, abuse or neglect, or by the structure's use for something other than its intended purpose.

(e) The time period for filing actions bars the claim.

(f) The action relates to a particular claim for which the builder has obtained a valid release.

(g) The builder's repair was successful in correcting the particular claimed construction defect to the applicable standard.

(6) All applicable affirmative defenses are preserved for causes of action to which this chapter does not apply.

Approved March 27, 2003.

## CHAPTER 134
## (H.B. No. 134)

### AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; AMENDING THE HEADING FOR CHAPTER 50, TITLE 28, AS ADDED BY SECTION 1, CHAPTER 422, LAWS OF 2000; AND AMENDING CHAPTER 51, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-51-103, IDAHO CODE, TO PROVIDE RESTRICTIONS ON THE INFORMATION PRINTED ON RECEIPTS FOR PAYMENT CARD TRANSACTIONS AND TO PROVIDE PENALTIES.

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

SECTION 1. That the heading for Chapter 50, Title 28, Idaho Code, as added by Section 1, Chapter 422, Laws of 2000, be, and the same is hereby amended to read as follows:

CHAPTER ~~50~~ 51
IDENTITY THEFT

SECTION 2. That Chapter 51, 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 28-51-103, Idaho Code, and to read as follows:

28-51-103. PAYMENT CARD RECEIPTS. (1) As used in this section, the term:

(a) "Cardholder" means a person or organization named on the face of a payment card to whom or for whose benefit the payment card is issued.

(b) "Merchant" means a person or organization who receives from a cardholder a payment card, or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person or organization.

(c) "Payment card" means a credit card, charge card, debit card, or any other card that is issued to a cardholder and that allows the cardholder to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

(2) A merchant who accepts a payment card for the transaction of business may not print more than the last five (5) digits of the payment

card's account number or print the payment card's expiration date on a receipt provided to the cardholder. This subsection does not apply to a transaction in which the sole means of recording the payment card's account number or expiration date is by handwriting or by an imprint or copy of the payment card. Effective January 1, 2004, this section applies to all receipts that are electronically printed using a cash register or other machine or device that is first used on or after July 1, 2003. Effective January 1, 2005, this section applies to all receipts that are electronically printed, including those printed using a cash register or other machine or device that is first used before July 1, 2003.

(3) A merchant who violates this section shall be subject to a civil penalty of not more than two hundred fifty dollars ($250) for the first violation and one thousand dollars ($1,000) for a second or subsequent violation. An action to recover the civil penalty may be brought by a prosecuting attorney. If the prosecuting attorney does not file an action for such a civil penalty within sixty (60) days from the date the violation is reported by the cardholder whose payment card number was printed on a receipt in violation of this section, the cardholder may file such action. Venue for an action under this section shall be in the county in which the transaction occurred or the county in which the cardholder resides or the county in which the merchant has its principal place of business in this state.

The penalties provided in this section are in addition to any other remedy at law or equity available to a cardholder.

Any civil penalty imposed pursuant to this section shall be deposited in the state general fund. Attorney's fees shall be paid solely to the party successfully bringing the action.

Approved March 27, 2003.

## CHAPTER 135
## (H.B. No. 143)

### AN ACT

RELATING TO LICENSING OF ELECTRICAL JOURNEYMEN; AMENDING SECTION 54-1007, IDAHO CODE, TO REQUIRE CONTINUATION TRAINING OF APPRENTICE ELECTRICIANS WHO HAVE NOT TAKEN OR PASSED THE JOURNEYMAN'S EXAMINATION WITHIN TWO YEARS OF COMPLETING INSTRUCTIONAL TRAINING OR WHO HAVE NOT ADVANCED IN APPRENTICESHIP TRAINING FOR A PERIOD OF TWO YEARS AND TO AUTHORIZE THE ELECTRICAL BOARD TO ESTABLISH BY RULE REQUIREMENTS FOR CONTINUATION TRAINING.

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

SECTION 1. That Section 54-1007, Idaho Code, be, and the same is hereby amended to read as follows:

54-1007. ISSUANCE OF LICENSES -- RECIPROCITY. (1) The administrator shall issue licenses to such persons as have by examination shown themselves to be fit, competent and qualified to engage in the trade of journeyman electrician, specialty electrician or master electrician, and

to such persons, firms, partnerships, associations or corporations as have shown themselves to be fit, competent and qualified to engage in the business of electrical contracting or specialty electrical contracting.

(2) An apprentice electrician, as herein defined, may take the journeyman's examination if he has completed the required related instruction for electrical apprentices as approved by the Idaho state board for professional-technical education and has worked the number of hours as prescribed by the Idaho electrical board, provided that for each such year he is claiming to have worked as an apprentice electrician, the apprentice shall have been registered with the division of building safety as an apprentice, paid an apprentice registration fee, and submitted with his annual application for apprentice registration verification of employment, the number of instructional hours completed and the number of hours worked. The electrical board may, by rule, fix the apprentice registration fee, in an amount not to exceed the costs of issuing apprentice registration certificates and enforcing the apprentice registration provisions of this act, and may also by rule establish requirements relative to the manner of verification of employment, the number of instructional hours completed, continuation training and the number of hours worked.

(a) An apprentice who has completed the number of instructional hours and has not taken or passed the journeyman's examination within two (2) years of completion of the instructional training hours, shall provide proof of continuation training as set by rule of the electrical board.

(b) An apprentice who has not advanced in apprenticeship training for a period of two (2) years shall complete continuation training as set by rule of the electrical board.

(3) Any person who has worked in this state for a period of not less than two (2) years and who has worked the number of hours as prescribed by rule of the board as a journeyman electrician shall be considered as qualified to apply for a master electrician's license in this state. The Idaho electrical board, in establishing by rule the requirements for a master electrician's license, shall also take into account the applicant's performance as a journeyman electrician.

(4) Any person with out-of-state experience who has worked as a journeyman electrician or as an apprentice electrician, as herein defined, for a period of four (4) years, and who has met such other requirements as established by rule of the board, shall be considered as qualified to apply for a journeyman electrician's license in this state.

(5) To the extent that other states which provide for the licensing of electricians provide for similar action, the administrator, on the recommendation of the Idaho electrical board, may grant licenses to electricians licensed by such other states, upon payment by the applicant of the required fee and upon furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this subsection are not required to take a written examination.

Approved March 27, 2003.

CHAPTER 136
(H.B. No. 171)

AN ACT

RELATING TO MURDER; AMENDING SECTION 18-4004, IDAHO CODE, AS AMENDED BY SENATE BILL 1001, ENACTED BY THE FIRST REGULAR SESSION OF THE FIFTY-SEVENTH IDAHO LEGISLATURE, TO PROVIDE A CODE REFERENCE; AMENDING SECTION 19-2126, IDAHO CODE, AS AMENDED BY SENATE BILL 1001, ENACTED BY THE FIRST REGULAR SESSION OF THE FIFTY-SEVENTH IDAHO LEGISLATURE, TO PROVIDE A CODE REFERENCE; AMENDING SECTION 19-2515, IDAHO CODE, AS AMENDED BY SENATE BILL 1001, ENACTED BY THE FIRST REGULAR SESSION OF THE FIFTY-SEVENTH IDAHO LEGISLATURE, TO PROVIDE AN EXCEPTION TO DEATH PENALTY ELIGIBILITY; AND AMENDING CHAPTER 25, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-2515A, IDAHO CODE, TO SET FORTH PROVISIONS APPLICABLE TO FIRST-DEGREE MURDER PROCEEDINGS IN CASES WHERE THE DEFENDANT IS MENTALLY RETARDED; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-4004, Idaho Code, as amended by Senate Bill 1001, enacted by the First Regular Session of the Fifty-seventh Idaho Legislature, be, and the same is hereby amended to read as follows:

18-4004. PUNISHMENT FOR MURDER. Subject to the provisions of sections 19-2515 <u>and 19-2515A,</u> Idaho Code, every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A, Idaho Code, and provided further that whenever the death penalty is not imposed the court shall impose a sentence. If a jury, or the court if a jury is waived, finds a statutory aggravating circumstance beyond a reasonable doubt but finds that the imposition of the death penalty would be unjust, the court shall impose a fixed life sentence. If a jury, or the court if a jury is waived, does not find a statutory aggravating circumstance beyond a reasonable doubt or if the death penalty is not sought, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years during which period of confinement the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service. Every person guilty of murder of the second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life.

SECTION 2. That Section 19-2126, Idaho Code, as amended by Senate Bill 1001, enacted by the First Regular Session of the Fifty-seventh Idaho Legislature, be, and the same is hereby amended to read as follows:

19-2126. CUSTODY OF JURY DURING TRIAL. The jury sworn to try any felony may, at any time during the trial, and after the submission of

the cause, in the discretion of the court, be permitted to separate, or they may be kept together, in the charge of a proper officer. Provided however, that in causes where the defendant has been charged with first-degree murder, the jury may not be permitted to separate after submission of the cause and completion of the special sentencing proceeding held pursuant to section 19-2515 or 19-2515A, Idaho Code. Before permitting the jury to separate after the cause has been submitted, the court shall permit counsel to place objections, if any, on the record outside the presence of the jury. In case the court orders the jury to be kept together the county must provide a suitable place for the board and lodging of the jury, at the expense of the county, and when first given custody of the jury the officer or bailiff must be sworn to keep the jury together during each recess and adjournment during the trial; to allow no person to speak to or communicate with them, or any of them, nor to do so himself, on any subject connected with the trial, and to return them into court as ordered by the court.

SECTION 3. That Section 19-2515, Idaho Code, as amended by Senate Bill 1001, enacted by the First Regular Session of the Fifty-seventh Idaho Legislature, be, and the same is hereby amended to read as follows:

19-2515. SENTENCE IN CAPITAL CASES -- SPECIAL SENTENCING PROCEEDING -- STATUTORY AGGRAVATING CIRCUMSTANCES -- SPECIAL VERDICT OR WRITTEN FINDINGS. (1) Except as provided in section 19-2515A, Idaho Code, a~~A~~ person convicted of murder in the first degree shall be liable for the imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death.

(2) Where a person is sentenced to serve a term in the penitentiary, after conviction of a crime which falls within the provisions of section 20-223, Idaho Code, except in cases where the court retains jurisdiction, the comments and arguments of the counsel for the state and the defendant relative to the sentencing and the comments of the judge relative to the sentencing shall be recorded. If the comments are recorded electronically, they need not be transcribed. Otherwise, they shall be transcribed by the court reporter.

(3) Where a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless:

(a) A notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code; and

(b) The jury, or the court if a jury is waived, finds beyond a reasonable doubt at least one (1) statutory aggravating circumstance. Where a statutory aggravating circumstance is found, the defendant shall be sentenced to death unless mitigating circumstances which may be presented are found to be sufficiently compelling that the death penalty would be unjust. The jury shall not direct imposition of a sentence of death unless it unanimously finds at least one (1) statutory aggravating circumstance and unanimously determines that the penalty of death should be imposed.

(4) Notwithstanding any court rule to the contrary, when a defendant is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, no presentence investigation

shall be conducted; provided however, that if a special sentencing proceeding is not held or if a special sentencing proceeding is held but no statutory aggravating circumstance has been proven beyond a reasonable doubt, the court may order that a presentence investigation be conducted.

(5) (a) If a person is adjudicated guilty of murder in the first degree, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, and a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code, a special sentencing proceeding shall be held promptly for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

(b) If the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding; provided however, that if it is impracticable to reconvene the same jury to hear the special sentencing proceeding due to an insufficient number of jurors, the trial court may dismiss that jury and convene a new jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code.

(c) If the defendant's guilt was determined by a plea of guilty or by a decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including, but not limited to, a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code, unless such jury is waived.

(d) If a special sentencing proceeding is conducted before a newly impaneled jury pursuant to the provisions of subsection (5)(b) or (5)(c) of this section, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder and that the jury's purpose is limited to making findings relevant for sentencing.

(6) At the special sentencing proceeding, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(7) The jury shall be informed as follows:

(a) If the jury finds that a statutory aggravating circumstance exists and no mitigating circumstances exist which would make the imposition of the death penalty unjust, the defendant will be sentenced to death by the court.

(b) If the jury finds the existence of a statutory aggravating circumstance but finds that the existence of mitigating circumstances makes the imposition of the death penalty unjust or the jury cannot unanimously agree on whether the existence of mitigating circumstances makes the imposition of the death penalty unjust, the

defendant will be sentenced to a term of life imprisonment without the possibility of parole; and

(c) If the jury does not find the existence of a statutory aggravating circumstance or if the jury cannot unanimously agree on the existence of a statutory aggravating circumstance, the defendant will be sentenced by the court to a term of life imprisonment with a fixed term of not less than ten (10) years.

(8) Upon the conclusion of the evidence and arguments in mitigation and aggravation:

(a) With regard to each statutory aggravating circumstance alleged by the state, the jury shall return a special verdict stating:

(i) Whether the statutory aggravating circumstance has been proven beyond a reasonable doubt; and

(ii) If the statutory aggravating circumstance has been proven beyond a reasonable doubt, whether all mitigating circumstances, when weighed against the aggravating circumstance, are sufficiently compelling that the death penalty would be unjust.

(b) If a jury has been waived, the court shall:

(i) Make written findings setting forth any statutory aggravating circumstance found beyond a reasonable doubt;

(ii) Set forth in writing any mitigating circumstances considered; and

(iii) Upon weighing all mitigating circumstances against each statutory aggravating circumstance separately, determine whether mitigating circumstances are found to be sufficiently compelling that the death penalty would be unjust and detail in writing its reasons for so finding.

(9) The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt before a sentence of death can be imposed:

(a) The defendant was previously convicted of another murder.

(b) At the time the murder was committed the defendant also committed another murder.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The murder was committed for remuneration or the promise of remuneration or the defendant employed another to commit the murder for remuneration or the promise of remuneration.

(e) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(f) By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

(g) The murder was committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(h) The defendant, by prior conduct or conduct in the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

(i) The murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty or because of the victim's former or present official status.

(j) The murder was committed against a witness or potential witness

in a criminal or civil legal proceeding because of such proceeding.

SECTION 4. That Chapter 25, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-2515A, Idaho Code, and to read as follows:

19-2515A. IMPOSITION OF DEATH PENALTY UPON MENTALLY RETARDED PERSON PROHIBITED. (1) As used in this section:

(a) "Mentally retarded" means significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two (2) of the following skill areas: communication, self-care, home living, social or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety. The onset of significant subaverage general intelligence functioning and significant limitations in adaptive functioning must occur before age eighteen (18) years.

(b) "Significantly subaverage general intellectual functioning" means an intelligence quotient of seventy (70) or below.

(2) In any case in which the state has provided notice of an intent to seek the death penalty pursuant to section 18-4004A, Idaho Code, and where the defendant intends to claim that he is mentally retarded and call expert witnesses concerning such issue, the defendant shall give notice to the court and the state of such intention at least ninety (90) days in advance of trial, or such other period as justice may require, and shall apply for an order directing that a mental retardation hearing be conducted. Upon receipt of such application, the court shall promptly conduct a hearing without a jury to determine whether the defendant is mentally retarded; provided however, that no court shall, over the objection of any party, receive the evidence of any expert witness on the issue of mental retardation unless such evidence is fully subject to the adversarial process in at least the following particulars:

(a) If a defendant fails to provide notice as required in this subsection, an expert witness shall not be permitted to testify until such time as the state has a complete opportunity to consider the substance of such testimony and prepare for rebuttal through such opposing experts as the state may choose.

(b) A party who expects to call an expert witness to testify on the issue of mental retardation shall, on a schedule to be set by the court, furnish to the opposing party a written synopsis of the findings of such expert or a copy of a written report. The court may authorize the taking of depositions to inquire further into the substance of such synopsis or report.

(c) Raising the issue of mental retardation shall constitute a waiver of any privilege that might otherwise be interposed to bar the production of evidence on the subject and, upon request, the court shall order that the state's experts shall have access to the defendant in such cases for the purpose of having its own experts conduct an examination in preparation for any legal proceeding at which the defendant's mental retardation may be in issue.

(d) The court is authorized to appoint at least one (1) expert at public expense upon a showing by an indigent defendant that there is a need to inquire into questions of the defendant's mental retardation. The defendant shall pay the costs of examination if he is

financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19, Idaho Code. The report of the examination shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(e) If an examination cannot be conducted by reason of the unwillingness of the defendant to cooperate with either a court-appointed examiner or with any state expert, the examiner or expert shall so advise the court in writing and include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental retardation. The court may consider the defendant's lack of cooperation for its effect on the credibility of the defendant's mental retardation claim.

(3) If the court finds by a preponderance of the evidence that the defendant is mentally retarded, the death penalty shall not be imposed. The jury shall not be informed of the mental retardation hearing or the court's findings concerning the defendant's claim of mental retardation.

(4) In the event of a conviction of first-degree murder of a person who has been found to be mentally retarded pursuant to subsections (2) and (3) of this section, a special sentencing proceeding shall be held promptly to determine whether the state has proven beyond a reasonable doubt the existence of any of the statutory aggravating circumstances set forth in subsections 19-2515(9)(a) through (j), Idaho Code.

(a) The special sentencing proceeding shall be conducted before a jury unless a jury is waived by the defendant with the consent of the prosecuting attorney.

(i) If the defendant's guilt was determined by a jury verdict, the same jury shall hear the special sentencing proceeding; provided however, that if it is impracticable to reconvene the same jury to hear the special sentencing proceeding due to an insufficient number of jurors, the trial court may dismiss that jury and convene a new jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code.

(ii) If the defendant's guilt was determined by a plea of guilty or by a decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including, but not limited to, a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve (12) persons, plus alternate jurors as the trial court deems necessary pursuant to section 19-1904, Idaho Code, unless such jury is waived.

(iii) If a special sentencing proceeding is conducted before a newly impaneled jury, the state and the defense may present evidence to inform the jury of the nature and circumstances of the murder for which the defendant was convicted. The newly impaneled jury shall be instructed that the defendant has previously been found guilty of first-degree murder and that the jury's purpose is limited to making findings relevant for sentencing.

(b) At the special sentencing proceeding, the state and the defendant shall be entitled to present all evidence relevant to the determination of whether or not a statutory aggravating circumstance has

been proven beyond a reasonable doubt. Disclosure of evidence to be relied on in the sentencing proceeding shall be made in accordance with Idaho criminal rule 16. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing.

(c) If a unanimous jury, or the court if a jury is waived, finds the existence of a statutory aggravating circumstance beyond a reasonable doubt, the court shall impose a fixed life sentence. If a unanimous jury, or the court if a jury is waived, does not find the existence of a statutory aggravating circumstance beyond a reasonable doubt, the court shall impose a life sentence with a minimum period of confinement of not less than ten (10) years during which period of confinement the defendant shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service.

(5) Nothing in this section is intended to alter the application of any rule of evidence or limit or extend the right of any party to assert any claim or defense otherwise available to that party.

(6) Any remedy available by post-conviction procedure or habeas corpus shall be pursued according to the procedures and time limits set forth in section 19-2719, Idaho Code.

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.

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

Approved March 27, 2003.

## CHAPTER 137
(H.B. No. 208, As Amended in the Senate)

AN ACT

RELATING TO GROUND WATER DISTRICTS; AMENDING SECTION 42-5224, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF GROUND WATER DISTRICT BOARDS OF DIRECTORS; DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

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

SECTION 1. That Section 42-5224, Idaho Code, be, and the same is hereby amended to read as follows:

42-5224. POWERS AND DUTIES OF BOARD OF DIRECTORS. The board shall, in addition to any other powers and duties provided in this chapter, and provided that nothing in this chapter shall abrogate or impair the right of any person to take any action necessary to acquire, protect, challenge or defend any water right, have the following powers and duties:

(1) To acquire, and/or construct, operate, control or use by appro-

priation, grant, purchase, bequest, devise, contract or lease works or facilities, water rights, water permits or licenses, well-drilling permits, wells, pipelines, ditches and any other real and personal property (including easements and rights-of-way) or contract entitlement within or without the district necessary or convenient to fully exercise its powers;

(2) To sell, lease, encumber, alienate, or otherwise dispose of works or facilities, water, water rights, wells, pipelines, ditches, reservoirs, recharge facilities, and any other real and personal property owned by the district within or without its boundaries;

(3) To enter into contracts and agreements, cooperative and otherwise, including contracts with the United States of America and any of its agencies or instrumentalities, and tribes, and contracts with corporations, public or private, municipalities, or governmental subdivisions necessary or convenient to fully exercise its powers;

(4) To hire and retain agents, employees, engineers, hydrologists, geologists, and attorneys as shall be necessary and convenient to transact the district's business and to represent the district's interests;

(5) To levy assessments for the operation of the district and its programs;

(6) To represent district members, with respect to their individual water rights, in general water rights adjudications and other legal and administrative proceedings or before political bodies, provided that the board may levy assessments for these matters against only those members who have given written consent for the representation;

(7) To represent district members in proceedings or meetings of a water district established by the director of the department notwithstanding any provision to the contrary in chapter 6, title 42, Idaho Code. Provided however, that the board shall not be authorized to cast a vote in any proceeding or meeting of a water district established pursuant to chapter 6, title 42, Idaho Code, on behalf of any district member who has, prior to such proceeding or meeting, given written notice to the board and to the water district that such district member intends to vote on his own behalf, or on behalf of any district member who attends such meeting or proceeding and intends to vote on his own behalf. The board shall provide a verified list of the water rights that it represents at any water district proceeding or meeting to the chairman of the water district proceeding or meeting.

(8) To appropriate, develop, store, and transport water within the state;

(~~8~~9) To acquire stock in canal companies, water companies, and water users' associations;

(~~9~~10) To invest any surplus money in the district treasury pursuant to the public depository law as contained in chapter 1, title 57, Idaho Code;

(~~10~~11) To develop, maintain, operate and implement mitigation plans designed to mitigate any material injury caused by ground water use within the district upon senior water uses within and/or without the district;

(~~11~~12) To finance the repair or abandonment of wells in the ground water district which have experienced or are experiencing declines in water level or water pressures because of reasons including, but not limited to, flow, leakage, and waste from improper construction, maintenance, and operation of wells;

(1~~2~~3) To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for easements, rights-of-way, and other rights of access to property necessary to the exercise of the mitigation powers herein granted, both within and without the district;

(1~~3~~4) To sue and be sued, and be a party to suits, actions and proceedings;

(1~~4~~5) To enter into joint powers agreements and/or memoranda of understanding with other districts, governmental or quasi-public entities;

(1~~5~~6) To develop and acquire water rights for, and operate, aquifer storage or recharge projects;

(1~~6~~7) To monitor, measure, study, and implement programs in the interests of the district's members regarding the protection of ground water diversions, depth of water in wells, aquifer water levels and characteristics;

(1~~7~~8) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district and to establish a fiscal year;

(1~~8~~9) To enter upon land to make surveys, locate district property, works, or facilities, and to otherwise conduct the affairs of the district;

(~~19~~20) To make, record and report annually to the director sufficient measurements of diversions and water levels of district members to allow the district to be excluded from any water measurements district created pursuant to sections 42-705 through 42-715, Idaho Code.

(2~~0~~1) To manage and conduct the affairs of the district and to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this act.

SECTION 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, 2003.

Approved March 27, 2003.

## CHAPTER 138
(H.B. No. 211, As Amended)

AN ACT

RELATING TO HEARINGS BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES; AMENDING SECTION 42-1701A, IDAHO CODE, TO REVISE THE PROCEDURES FOR HEARINGS REQUIRED BY LAW TO BE HELD BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES.

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

SECTION 1. That Section 42-1701A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1701A. HEARINGS BEFORE DIRECTOR -- APPEALS. (1) All hearings required by law to be held before the director of the department of water resources shall be conducted in accordance with the provisions of chapter 52, title 67, Idaho Code, and rules of procedure promulgated by the director.

(2) The director, in his discretion, may direct that a hearing be conducted by a hearing officer appointed by the director. In such event, the hearing officer shall have the duty to make a complete record of the evidence presented and duly received at the hearing and to prepare a ~~proposal--for--decision~~ recommended or preliminary order in accordance with chapter 52, title 67, Idaho Code, and rules of procedure promulgated by the director.

(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, ~~of-the-director-of-the-department-of-water-resources-or~~ including action upon any ~~applicant~~ application for ~~any~~ a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by ~~a denial--or--conditional--approval-ordered-by~~ the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the ~~denial-or-conditional-approval-upon-filing~~ action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the ~~denial-or-conditional-approval~~ action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing ~~may~~ shall be had pursuant to subsection (4) of this section.

(4) Any person who is aggrieved by a final decision or order of the director is entitled to judicial review. The judicial review shall be had in accordance with the provisions and standards set forth in chapter 52, title 67, Idaho Code.

Approved March 27, 2003.

## CHAPTER 139
## (H.B. No. 214)

### AN ACT

RELATING TO SEPARATE AND COMMUNITY PROPERTY; AMENDING SECTION 15-1-201, IDAHO CODE, TO REVISE DEFINITIONS OF "SEPARATE PROPERTY" AND "COMMUNITY PROPERTY" AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 32-906, IDAHO CODE, TO CLARIFY THAT INCOME INCLUDES THE RENTS, ISSUES AND PROFITS FROM VARIOUS PROPERTY.

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

SECTION 1. That Section 15-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

15-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters or parts, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the registrar for an order of informal probate or appointment under part 3 of chapter 3 of this code.

(2) "Augmented estate" means the estate described in section 15-2-202, Idaho Code.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(4) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(5) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, other tax obligations arising from activities or transactions of the estate, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(6) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents, minors, incapacitated and disabled persons. This court in this state is known as the district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person and includes limited conservators as described by section 15-5-420, Idaho Code.

(8) "Determination of heirship of community property" shall mean that determination required by the provisions of section 15-3-303, Idaho Code, upon an application for informal probate not accompanied by presentation of a will.

(9) "Determination of heirship" shall mean that determination of heirship required by section 15-3-409, Idaho Code, upon a finding of intestacy.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability," with respect to an individual, means any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-

care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the ~~effect~~ affect of corrective or mitigating measures used to reduce the effects of the impairment.

(13) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purpose of this provision "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Emancipated minor" shall mean any male or female who has been married.

(15) "Estate" means all property of the decedent, including community property of the surviving spouse subject to administration, property of trusts, and property of any other person whose affairs are subject to this code as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate which is described in section 15-2-403, Idaho Code.

(17) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(18) "Foreign personal representative" means a personal representative of another jurisdiction.

(19) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and includes limited guardians as described by section 15-5-304, Idaho Code, but excludes one who is merely a guardian ad litem.

(21) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" is as defined in section 15-5-101, Idaho Code.

(23) "Informal proceedings" means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(26) "Lease" includes an oil, gas, or other mineral lease.

(27) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(28) "Minor" means a male under eighteen (18) years of age or a female under eighteen (18) years of age.

(29) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(31) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(33) "Person" means an individual, a corporation, an organization, or other legal entity.

(34) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(35) "Petition" means a written request to the court for an order after notice.

(36) "Proceeding" includes action at law and suit in equity.

(37) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(38) "Protected person" is as defined in section 15-5-101, Idaho Code.

(39) "Protective proceeding" is as defined in section 15-5-101, Idaho Code.

(40) "Quasi-community property" is the property defined by section 15-2-201, Idaho Code.

(41) "Registrar" refers to magistrates or judges of the district court who shall perform the functions of registrar as provided in section 15-1-307, Idaho Code.

(42) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(43) "Settlement," in reference to a decedent's estate, includes the

full process of administration, distribution and closing.

(44) "Special administrator" means a personal representative as described by sections 15-3-614 through 15-3-618, Idaho Code.

(45) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(46) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(47) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(48) "Supervised administration" refers to the proceedings described in part 5, chapter 3, of this code.

(49) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(50) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 6 of this code, custodial arrangements pursuant to chapter 8, title 68, Idaho Code, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(51) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(52) "Ward" is as defined in section 15-5-101, Idaho Code.

(53) "Will" is a testamentary instrument and includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

(54) "Separate property" ~~includes all property of either the husband or the wife owned by him or her before marriage, and that acquired afterward either by gift, bequest, devise or descent, or that which either he or she acquires with proceeds of his or her separate property, by way of moneys or other property~~ is as defined in section 32-903, Idaho Code.

(55) "Community property" ~~includes all other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, unless, by the instrument by which any such property is acquired by the wife, it is provided that the rents and profits thereof be applied to her sole and separate use. Real property conveyed by one (1) spouse to the other shall be presumed to be the sole and separate estate of the grantee~~ is as defined in section 32-906, Idaho Code.

SECTION 2. That Section 32-906, Idaho Code, be, and the same is hereby amended to read as follows:

32-906. COMMUNITY PROPERTY -- INCOME FROM SEPARATE AND COMMUNITY PROPERTY -- CONVEYANCE BETWEEN SPOUSES. (1) All other property acquired

after marriage by either husband or wife is community property. The income, including the rents, issues and profits, of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income, including the rents, issues and profits, from all or the specifically designated property shall be the separate property of one of the spouses or the income, including the rents, issues and profits, from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

(2) Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 32-912, Idaho Code; provided, however, that the income, including the rents, issues and profits, from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

Approved March 27, 2003.

## CHAPTER 140
## (H.B. No. 220)

### AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-1601, IDAHO CODE, TO REVISE THE GROUNDS FOR WHICH AN INDICTMENT MAY BE SET ASIDE BY A COURT.

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

SECTION 1. That Section 19-1601, Idaho Code, be, and the same is hereby amended to read as follows:

19-1601. GROUNDS FOR SETTING ASIDE INDICTMENT. The indictment must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

1. When it is not found, endorsed and presented as prescribed in this code.

2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or endorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in chapter 11 of this title.

4. When the defendant has not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

~~5.--When the defendant has been granted immunity from prosecution in connection with his testimony as a witness, if the--present--prosecution~~

~~is--for--a-crime-involving-any-fact-or-act-concerning-which-he-testified or-produced-evidence-in-accordance-with--an--immunity--agreement--or--an order-of-a-district-court-pursuant-to-the-provisions-of-sections-19-1114 and-19-1115.~~

Approved March 27, 2003.

CHAPTER 141
(H.B. No. 256, As Amended)

AN ACT

RELATING TO REGULATORY TAKINGS; AMENDING SECTION 67-8002, IDAHO CODE, TO FURTHER DEFINE TERMS; AND AMENDING SECTION 67-8003, IDAHO CODE, TO PROVIDE FOR A WRITTEN TAKING ANALYSIS TO BE PREPARED CONCERNING A GOVERNMENTAL AGENCY'S ACTION REGARDING PRIVATE PROPERTY UPON REQUEST, TO PROVIDE PROCEDURES, TO PROVIDE THE EFFECT ON A GOVERNMENTAL ACTION IF A TAKING ANALYSIS IS NOT PREPARED AFTER REQUEST, TO PROVIDE FOR JUDICIAL PROCEEDINGS AND TO PROVIDE FOR A TOLLING OF A TIME LIMITATION RELEVANT TO THE REGULATORY OR ADMINISTRATIVE ACTION.

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

SECTION 1. That Section 67-8002, Idaho Code, be, and the same is hereby amended to read as follows:

67-8002. DEFINITIONS. As used in this chapter:

(1) "Local government" means any city, county, taxing district or other political subdivision of state government with a governing body.

(2) "Private property" means all ~~real~~ property protected by the ~~fifth--amendment-and-the-fourteenth-amendment-of-the~~ constitution of the United States or ~~section-13,-article-I,-of~~ the constitution of the state of Idaho.

(3) "State agency" means the state of Idaho and any officer, agency, board, commission, department or similar body of the executive branch of the state government.

(4) "Regulatory t~~T~~aking" means ~~an--uncompensated~~ a regulatory or administrative action resulting in deprivation of private property that is the subject of such action, whether such deprivation is total or partial, permanent or temporary, in violation of the state or federal constitution.

SECTION 2. That Section 67-8003, Idaho Code, be, and the same is hereby amended to read as follows:

67-8003. PROTECTION OF PRIVATE PROPERTY. (1) The attorney general shall establish, by October 1, 1994, an orderly, consistent process, including a checklist, that better enables a state agency or local government to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in law. All state agencies and local governments shall follow the guidelines of the attorney general.

(2) ~~The--review--process-used-by-a-state-agency-or-local-government shall-be-protected-by-attorney-client-privilege.-Nothing-in-this-section grants-a-person-the-right-to-seek-judicial-relief--requiring--compliance with-the-provisions-of-this-chapter~~ Upon the written request of an owner of real property that is the subject of such action, such request being filed with the clerk or the agency or entity undertaking the regulatory or administrative action not more than twenty-eight (28) days after the final decision concerning the matter at issue, a state agency or local governmental entity shall prepare a written taking analysis concerning the action. Any regulatory taking analysis prepared hereto shall comply with the process set forth in this chapter, including use of the checklist developed by the attorney general pursuant to subsection (1) of this section and shall be provided to the real property owner no longer than forty-two (42) days after the date of filing the request with the clerk or secretary of the agency whose action is questioned. A regulatory taking analysis prepared pursuant to this section shall be considered public information.

(3) A governmental action is voidable if a written taking analysis is not prepared after a request has been made pursuant to this chapter. A private real property owner, whose property is the subject of governmental action, affected by a governmental action without the preparation of a requested taking analysis as required by this section may seek judicial determination of the validity of the governmental action by initiating a declaratory judgment action or other appropriate legal procedure. A suit seeking to invalidate a governmental action for noncompliance with subsection (2) of this section must be filed in a district court in the county in which the private property owner's affected real property is located. If the affected property is located in more than one (1) county, the private property owner may file suit in any county in which the affected real property is located.

(4) During the preparation of the taking analysis, any time limitation relevant to the regulatory or administrative actions shall be tolled. Such tolling shall cease when the taking analysis has been provided to the property owner. Both the request for a taking analysis and the taking analysis shall be part of the official record regarding the regulatory or administrative action.

Approved March 27, 2003.

## CHAPTER 142
## (H.B. No. 257)

### AN ACT

RELATING TO THE LOCAL LAND USE PLANNING ACT; AMENDING SECTION 67-6511, IDAHO CODE, TO PROVIDE THAT AMENDMENTS OF ZONING ORDINANCES MAY BE SUBJECT TO A REGULATORY TAKING ANALYSIS, TO REVISE NOTICE REQUIREMENTS AND TO ALLOW PARTICIPATION IN A PUBLIC HEARING BY CERTAIN PROPERTY OWNERS; AMENDING SECTION 67-6512, IDAHO CODE, TO PROVIDE THAT DENIAL OR APPROVAL OF SPECIAL USE PERMITS MAY BE SUBJECT TO A REGULATORY TAKING ANALYSIS, TO REVISE NOTICE REQUIREMENTS AND TO ALLOW PARTICIPATION IN A PUBLIC HEARING BY CERTAIN PROPERTY OWNERS; AMENDING SECTION 67-6513, IDAHO CODE, TO PROVIDE THAT APPROVAL OR DENIAL OF A SUBDIVISION PERMIT MAY BE SUBJECT TO A REGULATORY TAKING

ANALYSIS; AMENDING SECTION 67-6515, IDAHO CODE, TO PROVIDE THAT APPROVAL OR DENIAL OF A PLANNED UNIT DEVELOPMENT PERMIT MAY BE SUBJECT TO A REGULATORY TAKING ANALYSIS; AMENDING SECTION 67-6516, IDAHO CODE, TO PROVIDE THAT DENIAL OR APPROVAL OF A VARIANCE PERMIT MAY BE SUBJECT TO A REGULATORY TAKING ANALYSIS; AMENDING SECTION 67-6523, IDAHO CODE, TO INCREASE THE PERIOD OF TIME AN EMERGENCY ORDINANCE OR MORATORIUM MAY BE EFFECTIVE, TO PROVIDE THAT RESTRICTIONS MAY NOT BE IMPOSED FOR CONSECUTIVE PERIODS AND TO REVISE PROCEDURES; AMENDING SECTION 67-6524, IDAHO CODE, TO PROVIDE THAT AN INTERIM ORDINANCE OR MORATORIUM MAY BE EFFECTIVE FOR NOT MORE THAN ONE CALENDAR YEAR AND TO PROVIDE PROCEDURES TO SUSTAIN RESTRICTIONS ESTABLISHED BY AN INTERIM ORDINANCE OR MORATORIUM; AND AMENDING SECTION 67-6535, IDAHO CODE, TO PROVIDE THAT EVERY FINAL DECISION RENDERED CONCERNING A SITE SPECIFIC LAND USE REQUEST MAY BE SUBJECT TO A REGULATORY TAKING ANALYSIS.

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

SECTION 1. That Section 67-6511, Idaho Code, be, and the same is hereby amended to read as follows:

67-6511. ZONING ORDINANCE. Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

Within a zoning district, the governing board shall where appropriate, establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code, provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional

boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c) If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to section 67-6511(b), Idaho Code.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

SECTION 2. That Section 67-6512, Idaho Code, be, and the same is hereby amended to read as follows:

67-6512. SPECIAL USE PERMITS, CONDITIONS, AND PROCEDURES. (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability

of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, nNotice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

(1) Minimizing adverse impact on other development;

(2) Controlling the sequence and timing of development;

(3) Controlling the duration of development;

(4) Assuring that development is maintained properly;

(5) Designating the exact location and nature of development;

(6) Requiring the provision for on-site or off-site public facilities or services;

(7) Requiring more restrictive standards than those generally required in an ordinance;

(8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

SECTION 3. That Section 67-6513, Idaho Code, be, and the same is hereby amended to read as follows:

67-6513. SUBDIVISION ORDINANCE. Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. Fees established for purposes of mitigating the financial impacts of development must comply with the provisions of chapter 82, title 67, Idaho Code. Denial of a subdivision permit or approval of a subdivision permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

SECTION 4. That Section 67-6515, Idaho Code, be, and the same is hereby amended to read as follows:

67-6515. PLANNED UNIT DEVELOPMENTS. As part of or separate from the zoning ordinance, each governing board may provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for planned unit development permits.

A planned unit development may be defined in a local ordinance as an area of land in which a variety of residential, commercial, industrial, and other land uses are provided for under single ownership or control. Planned unit development ordinances may include, but are not limited to, requirements for minimum area, permitted uses, ownership, common open space, utilities, density, arrangements of land uses on a site, and permit processing. Planned unit developments may be permitted pursuant to the procedures for processing applications for special use permits following the notice and hearing procedures provided in section 67-6512, Idaho Code. Denial of a planned unit development permit or approval of a planned unit development permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

SECTION 5. That Section 67-6516, Idaho Code, be, and the same is hereby amended to read as follows:

67-6516. VARIANCE -- DEFINITION -- APPLICATION -- NOTICE -- HEARING. Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance

shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

SECTION 6. That Section 67-6523, Idaho Code, be, and the same is hereby amended to read as follows:

67-6523. EMERGENCY ORDINANCES AND MORATORIUMS. If a governing board finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances as required or authorized under this chapter, or adoption of a moratorium upon the issuance of selected classes of permits, or both, it shall state in writing its reasons for that finding. The governing board may then proceed without recommendation of a commission, upon any abbreviated notice of hearing that it finds practical, to adopt the ordinance or moratorium. An emergency ordinance or moratorium may be effective for a period of not longer than one hundred ~~and--twenty~~ eighty-two (182~~0~~) days. Restrictions established by an emergency ordinance or moratorium may not be imposed for consecutive periods. Further, an intervening period of not less than one (1) year shall exist between an emergency ordinance or moratorium and reinstatement of the same. To sustain restrictions established by an emergency ordinance or moratorium beyond the one hundred eighty-two (182) day period, a governing board must adopt an interim or regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code.

SECTION 7. That Section 67-6524, Idaho Code, be, and the same is hereby amended to read as follows:

67-6524. INTERIM ORDINANCES AND MORATORIUMS. If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt interim ordinances as required or authorized under this chapter, following the notice and hearing procedures provided in section 67-6509, Idaho Code. The governing board may also adopt an interim moratorium upon the issuance of selected classes of permits if, in addition to the foregoing, the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one (1) calendar year, when it shall be in full force and effect. To sustain restrictions established by an interim ordinance or moratorium, a governing board must adopt a regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code.

SECTION 8. That Section 67-6535, Idaho Code, be, and the same is hereby amended to read as follows:

67-6535. APPROVAL OR DENIAL OF ANY APPLICATION TO BE BASED UPON STANDARDS AND TO BE IN WRITING. (a) The approval or denial of any application provided for in this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county.

(b) The approval or denial of any application provided for in this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(c) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code.

Approved March 27, 2003.

## CHAPTER 143
## (H.B. No. 261)

### AN ACT

RELATING TO SCHOOL TEACHER CERTIFICATE RECORDS AND FEES; AMENDING SECTION 33-1205, IDAHO CODE, TO REVISE THE SCHEDULE OF FEES FOR TEACHER CERTIFICATES EFFECTIVE THROUGH DECEMBER 31, 2004, TO PROVIDE FOR CERTIFICATE AND RELATED FEES AS SPECIFIED BY RULE OF THE STATE BOARD OF EDUCATION ON AND AFTER JANUARY 1, 2005, AND TO PLACE A LIMIT ON THE PORTION OF FEES COLLECTED THAT MAY BE USED BY THE DEPARTMENT TO DEFRAY COSTS TO THE OFFICE OF CERTIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-1205, Idaho Code, be, and the same is hereby amended to read as follows:

33-1205. CERTIFICATE RECORDS AND FEES. (1) The state board of education shall cause to be maintained a record of all certificates issued, showing names, dates of issue and renewal, and if revoked, the date thereof and the reason therefor. A ~~thirty-five--dollar--($35.00)~~ nonre-

fundable fee shall accompany each application for ~~an original certificate and each application for renewal. A fifteen dollar ($15.00) nonrefundable fee shall accompany each application for certificate changes that are processed subsequent to the issuance of the original or renewed certificate.~~ a prekindergarten through grade twelve (12) certificate, alternate certificate, change in certificate or replacement as follows:

(a) Original certificate, all types, issued for five (5) years .... ..... $ 75.00

(b) Renewal certificate, all types, issued for five (5) years ..... ..... $ 75.00

(c) Alternate route certificate, all types, issued for one (1) year ..... $100.00

(d) Additions or changes during the life of an existing certificate ..... $ 25.00

(e) To replace an existing certificate ..... $ 10.00

(2) The fees specified in subsection (1) of this section shall be in effect through December 31, 2004. On and after January 1, 2005, certificate and related fees shall be as specified by rule of the state board of education.

(3) The fees shall be used by the professional standards commission for payment of the reasonable expenses in performing its duties and responsibilities as approved by the state board of education and ~~a portion~~ not more than thirty-three percent (33%) of the fees ~~shall~~ may be used by the state department of education to partially defray the cost of the office of certification.

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 27, 2003.

## CHAPTER 144
## (H.B. No. 263)

### AN ACT

RELATING TO THE PROFESSIONAL STANDARDS COMMISSION; AMENDING SECTION 33-1252, IDAHO CODE, TO PROVIDE A REFERENCE TO THE IDAHO SCHOOL BOARDS ASSOCIATION.

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

SECTION 1. That Section 33-1252, Idaho Code, be, and the same is hereby amended to read as follows:

33-1252. PROFESSIONAL STANDARDS COMMISSION -- MEMBERS -- APPOINTMENT -- TERMS. A professional standards commission is hereby created in the department of education, consisting of eighteen (18) members, one (1) of whom shall be a member of the staff of the state department of education, and one (1) of whom shall be a member of the staff of the division of professional-technical education, to be appointed by the state board of education. The members shall be representative of the

teaching profession of the state of Idaho, and not less than seven (7) members shall be certificated classroom teachers in the public school system of the state and shall include at least one (1) teacher of exceptional children and at least one (1) teacher in pupil personnel services. Such expansion of membership on the professional standards commission shall not require reaffirmation of the codes and standards of ethics and rules of procedure used by the professional standards commission.

Except for the member from the staff of the state department of education, and the member from the staff of the division of professional-technical education, three (3) nominees for each position on the commission shall be submitted to the state superintendent of public instruction, for the consideration of the state board of education. Any state organization of teachers whose membership is open to all certificated teachers in the state may submit nominees for positions to be held by classroom teachers; the Idaho association of school superintendents may submit nominees for one (1) position, the Idaho association of secondary school principals may submit nominees for one (1) position; the Idaho association of elementary school principals may submit nominees for one (1) position; the Idaho school boards association ~~of school trustees~~ may submit nominees for one (1) position; the Idaho association of special education administrators may submit nominees for one (1) position; the education departments of the private colleges of the state may submit nominees for one (1) position, the community colleges and the education departments of the public institutions of higher education may submit nominees for two (2) positions, and the colleges of letters and sciences of the institutions of higher education may submit nominees for one (1) position.

The state board of education shall appoint or reappoint members of the commission for terms of three (3) years.

Approved March 27, 2003.

## CHAPTER 145
## (H.B. No. 266)

### AN ACT

RELATING TO CRIME; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1509A, IDAHO CODE, TO PROVIDE THAT ADULTS WHO USE THE INTERNET TO ENTICE CHILDREN UNDER THE AGE OF SIXTEEN YEARS OR BELIEVED TO BE UNDER THE AGE OF SIXTEEN YEARS TO ENGAGE IN ILLEGAL SEXUAL ACTS SHALL BE GUILTY OF A FELONY, TO PROVIDE A PENALTY, TO LIMIT DEFENSES AND TO PROVIDE FOR JURISDICTION; AND AMENDING SECTION 18-8304, IDAHO CODE, TO APPLY THE PROVISIONS OF THE SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY RIGHT-TO-KNOW ACT TO FELONIES INVOLVING THE ENTICEMENT OF CHILDREN OVER THE INTERNET.

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

SECTION 1. That Chapter 15, 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 18-1509A, Idaho Code, and to read as follows:

18-1509A. ENTICING OF CHILDREN OVER THE INTERNET -- PENALTIES -- JURISDICTION. (1) A person aged eighteen (18) years or older shall be guilty of a felony if he or she knowingly uses the internet to solicit, seduce, lure, persuade or entice by words or actions, or both, a minor child under the age of sixteen (16) years or a person the defendant believes to be a minor child under the age of sixteen (16) years to engage in any sexual act with or against the child where such act is a violation of chapter 15, 61 or 66, title 18, Idaho Code.

(2) Every person who is convicted of a violation of this section shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years.

(3) It shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.

(4) The offense is committed in the state of Idaho for purposes of determining jurisdiction if the transmission that constitutes the offense either originates in or is received in the state of Idaho.

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), 18-1509A (enticing a child over the internet), 18-4003(d) (murder committed in perpetration of rape), 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.

Approved March 27, 2003.

## CHAPTER 146
## (H.B. No. 276)

### AN ACT

RELATING TO THE URBAN RENEWAL LAW; AMENDING SECTION 50-2018, IDAHO CODE, TO REVISE THE DEFINITION FOR "AREA OF OPERATION," TO MAKE A SPELLING CORRECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 50-2018, Idaho Code, be, and the same is hereby amended to read as follows:

50-2018. DEFINITIONS. The following terms wherever used or referred to in this ~~act~~ chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) "Agency" or "urban renewal agency" shall mean a public agency created by section 50-2006, Idaho Code.

(b) "Municipality" shall mean any incorporated city or town, or county in the state.

(c) "Public body" shall mean the state or any municipality, township, board, commission, authority, district, or any other subdivision or public body of the state.

(d) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(e) "Mayor" shall mean the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(f) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(g) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(h) "Deteriorated area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(i) "Deteriorating area" shall mean an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use~~:~~; p~~P~~rovided, that if such deteriorating area consists of open land the conditions contained in the proviso in section 50-2008(d), Idaho Code, shall apply~~:~~; a~~A~~nd provided further, that any disaster area referred to in section 50-2008(g), Idaho Code, shall constitute a deteriorating area.

(j) "Urban renewal project" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(1) acquisition of a deteriorated area or a deteriorating area or portion thereof;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, off-street parking facilities, public facilities or buildings and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this ~~act~~ chapter in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area, ~~(~~including sale, initial leasing or retention by the agency itself~~)~~, at its fair value for uses in accordance with the urban renewal plan except for ~~dispostion~~ disposition of property to another public body;

(5) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(6) acquisition of real property in the urban renewal area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(7) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities;

(8) lending or investing federal funds; and

(9) construction of foundations, platforms and other like structural forms.

(k) "Urban renewal area" means a deteriorated area or a deteriorating area or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(l) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan: (1) shall conform to the general plan for the municipality as a whole except as provided in subsection 50-2008(g), Idaho Code; and (2) shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(m) "Related activities" shall mean: (1) planning work for the preparation or completion of a community-wide plan or program pursuant to section 50-2009, Idaho Code~~,~~; and (2) the functions related to the acquisition and disposal of real property pursuant to section 50-2007(d), Idaho Code.

(n) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(o) "Bonds" shall mean any bonds, ~~(~~including refunding bonds~~)~~, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(p) "Obligee" shall include any bondholder, agents or trustees for any bondholders, or lessor demising to the municipality property used in connection with urban renewal, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(q) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(r) "Area of operation" shall mean the area within the corporate limits of the municipality and the area within five (5) miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city or town or within the unincorporated area of the county unless a resolution shall have been adopted by the governing body of such other city, ~~or~~ town or county

declaring a need therefor.

(s) "Board" or "commission" shall mean a board, commission, department, division, office, body or other unit of the municipality.

(t) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

Approved March 27, 2003.

## CHAPTER 147
## (H.B. No. 291)

AN ACT

RELATING TO INITIATIVE AND REFERENDUM MEASURES; AMENDING SECTION 34-1809, IDAHO CODE, TO REVISE PROCEDURES FOR REVIEW OF INITIATIVE AND REFERENDUM MEASURES BY THE ATTORNEY GENERAL AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 34-1810, IDAHO CODE, TO PROVIDE THAT THE ELECTION BALLOT SHALL INCLUDE A CLEAR AND CONCISE STATEMENT AS TO THE EFFECT OF A "YES" OR "NO" VOTE, PREPARED JOINTLY BY THE ATTORNEY GENERAL AND SECRETARY OF STATE FOR INITIATIVE AND REFERENDUM MEASURES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 34-1809, Idaho Code, be, and the same is hereby amended to read as follows:

34-1809. REVIEW OF INITIATIVE AND REFERENDUM MEASURES BY ATTORNEY GENERAL -- CERTIFICATE OF REVIEW PREREQUISITE TO ASSIGNMENT OF BALLOT TITLE -- BALLOT TITLE -- JUDICIAL REVIEW. (1) After receiving a copy of the petition from the secretary of state as provided in section 34-1804, Idaho Code~~,~~:

(a) T~~t~~he attorney general may confer with the petitioner and shall, within twenty (20) working days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate.

(b) The recommendations of the attorney general shall be advisory only and the petitioner may accept or reject them in whole or in part.

(c) The attorney general shall issue a certificate of review to the secretary of state certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall be issued whether or not the petitioner accepts such recommendations. The certificate of review shall be available for public inspection in the office of the secretary of state.

(2) Within fifteen (15) working days after the issuance of the certificate of review, the petitioner, if he desires to proceed with his sponsorship, shall file the measure, as herein provided, with the secretary of state for assignment of a ballot title and the secretary of

state shall thereupon submit to the attorney general two (2) copies of the measure filed.

(a) Within ten (10) working days after receiving ~~said~~ copies of the petition, the attorney general shall provide ~~a~~ ballot titles ~~therefor~~ as provided for below and return one ~~of said copies~~ (1) copy of the petition to the secretary of state, ~~together~~ with ~~the~~ its ballot title. ~~so prepared by him.~~

(b) A copy of the ballot title as prepared by the attorney general shall be furnished by the secretary of state with ~~his~~ the approved form of any initiative or referendum petition, as provided herein, to the person or persons or organization or organizations under whose authority the measure is initiated or referred.

(c) ~~Said~~ The ballot titles shall be used and printed on the covers of the petition when in circulation; the short title shall be printed in type not less than twenty (20) points on the covers of all such petitions circulated for signatures.

(d) The ballot title shall contain:

(~~1~~i) Distinctive short title ~~in~~ not exceeding twenty (20) words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition.

(~~2~~ii) A general title expressing in not more than two hundred (200) words the purpose of the measure.

(iii) The ballot title shall be printed with the numbers of the measure on the official ballot.

(e) In making ~~such~~ the ballot title the attorney general shall, to the best of his ability, give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure.

(3) Any person ~~who is~~ dissatisfied with the ballot title or the short title provided by the attorney general for any measure, may appeal from his decision to the ~~S~~supreme ~~C~~court by petition, praying for a different title and setting forth the reason why the title prepared by the attorney general is insufficient or unfair.

(a) No appeal shall be allowed from the decision of the attorney general on a ballot title unless ~~the same is taken~~ made within twenty (20) days after ~~said~~ the ballot title is filed in the office of the secretary of state; provided however, that this section shall not prevent any later judicial proceeding to determine the sufficiency of such title, nor shall it prevent any judicial decision upon the sufficiency of such title.

(b) A copy of every such ballot title shall be served by the secretary of state upon the person offering or filing such initiative or referendum petition, or appeal. The service of ~~such decision~~ the ballot title may be by mail, ~~or~~ telegraph or facsimile and shall be made forthwith when it is received from the attorney general by the secretary of state.

(c) ~~Said~~ The ~~S~~supreme ~~C~~court shall thereupon examine said measure, hear argument, and in its decision thereon certify to the secretary of state a ballot title and a short title for the measure in accord with the intent of this section. The secretary of state shall print on the official ballot the title thus certified to him.

(4) Any qualified elector of the state of Idaho may, at any time

after the attorney general has issued a certificate of review, bring an action in the ~~S~~supreme ~~C~~court to determine the constitutionality of any initiative.

SECTION 2. That Section 34-1810, Idaho Code, be, and the same is hereby amended to read as follows:

34-1810. PRINTING AND DESIGNATION OF BALLOT TITLES ON OFFICIAL BALLOTS. (1) The secretary of state, at the time he furnishes to the county clerks of the several counties certified copies of the names of candidates for state and district offices shall furnish to each of said county clerks a certified copy of the ballot titles and numbers of the several measures to be voted upon at the ensuing general election, and he shall use for each measure the ballot title designated in the manner herein provided.

(a) Such ballot title shall not resemble, so far as to probably create confusion, any such title previously filed for any measure to be submitted at that election.

(b) The ballot shall include a clear and concise statement as to the effect of a "yes" or "no" vote, prepared jointly by the attorney general and secretary of state.

(2) The secretary of state shall number the measures consecutively beginning with number (1), in the order in which the measures were finally filed with the secretary. The measures shall be designated on the ballot as a "Proposition One,"~~;~~ "Proposition Two," et cetera.

Approved March 27, 2003.

## CHAPTER 148
## (H.B. No. 298)

### AN ACT

RELATING TO IDAHO AGRICULTURAL PRODUCTS; AMENDING CHAPTER 1, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-112, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO PROMULGATE RULES RELATING TO THE PROMOTION AND CERTIFICATION OF IDAHO AGRICULTURAL PRODUCTS, TO PROVIDE FOR CERTAIN FEES RELATING TO VOLUNTARY SERVICES AND PROGRAMS, TO AFFIRM THE AUTHORITY AND RIGHTS OF DESIGNATED ORGANIZATIONS IN REGARD TO CERTAIN IDENTIFICATION MARKS, TO PROVIDE FOR THE VOLUNTARY PARTICIPATION OF DESIGNATED ORGANIZATIONS IN CERTAIN PROMOTIONAL AND CERTIFICATION PROGRAMS AND TO PROVIDE THAT THE IDAHO DEPARTMENT OF AGRICULTURE AND DESIGNATED ORGANIZATIONS SHALL BE EXEMPT FROM CERTAIN LIABILITY RELATING TO PARTICIPATION IN JOINT PROMOTIONAL ACTIVITY; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 1, 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 22-112, Idaho Code, and to read as follows:

22-112. PROMOTION AND CERTIFICATION OF IDAHO AGRICULTURAL PRODUCTS. (1) Except as provided in subsection (2) of this section, the department of agriculture may promulgate rules in compliance with chapter 52, title 67, Idaho Code, for the purpose of assisting others in the domestic and international promotion and certification of Idaho agricultural products. Programs authorized by this section are for the purpose of promoting Idaho agricultural products and/or to certify that Idaho agricultural products meet required standards in order to move in commerce. Programs authorized by this section are to be funded by the assessment of fees directly related to the provision of voluntary services and programs authorized and provided by rules adopted pursuant to this section. Fees assessed and collected pursuant to rules adopted according to this section shall be deposited in the agricultural department inspection fund and subject to the provisions of section 22-105, Idaho Code.

(2) Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or processed in the state of Idaho under Idaho law shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. Any trademarks, certification marks, brands, seals, logos or other identification marks, whether registered or not, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property, and any use or infringement of their ownership right is prohibited unless written permission is obtained from an authorized representative of the commission, board, association or organization.

(3) A commission, board, association or other organization referenced in subsection (2) of this section may, upon a request to and acceptance by the Idaho department of agriculture, participate in the promotion and certification programs administered by the department, including the payment of fees as required by rules adopted pursuant to subsection (1) of this section.

(4) Neither the Idaho department of agriculture, nor any agricultural entity referenced in subsection (2) of this section, shall be responsible for any negligent or other tortious act of the other while participating in a joint promotional activity.

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 May 1, 2003.

Approved March 27, 2003.

## CHAPTER 149
## (H.B. No. 307)

### AN ACT

RELATING TO THE COMMODITY DEALER LAW; AMENDING SECTION 69-506, IDAHO CODE, TO PROVIDE FOR IRREVOCABLE LETTERS OF CREDIT IN LIEU OF BOND, TO PROVIDE FOR SINGLE BONDS, TO REVISE PROVISIONS RELATING TO CERTIFICATES OF DEPOSIT AND IRREVOCABLE LETTERS OF CREDIT GIVEN IN LIEU OF BOND, TO REVISE PROVISIONS RELATING TO THE AMOUNT OF BOND AND TO REVISE BONDING REQUIREMENTS AND BONDING PROVISIONS FOR CERTAIN COM-

MODITY DEALERS; AMENDING SECTION 69-511, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO MAKE CERTAIN COPIES; AMENDING SECTION 69-515, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN RECORDS; AMENDING SECTION 69-522, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DAMAGES OF CERTAIN INJURED PRODUCERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 69-506, Idaho Code, be, and the same is hereby amended to read as follows:

69-506. BONDING REQUIREMENTS -- CANCELLATION -- IRREVOCABLE LETTER OF CREDIT OR CERTIFICATE OF DEPOSIT IN LIEU OF BOND — SINGLE BOND. Except as provided in chapter 2, title 69, Idaho Code, an applicant for a license to operate as a commodity dealer shall, before a license will be issued, file with the department a bond in favor of the commodity indemnity fund with a corporate surety approved by the department with the condition that the applicant will pay the purchase price of any agricultural commodity to the seller. The aggregate annual liability of the surety shall in no event exceed the sum of the bond.

At the discretion of the director, any person required to submit a bond to the department in accordance with this chapter, may give to the department a certificate of deposit or irrevocable letter of credit payable to the commodity indemnity fund in lieu of the bond required herein. The principal amount of the certificate of deposit or irrevocable letter of credit shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit shall be payable to the purchaser of the certificate. The certificate of deposit or irrevocable letter of credit shall remain on file with the department until it is released, canceled or discharged by the director. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each certificate of deposit or irrevocable letter of credit given in lieu of such bond. The certificate of deposit or irrevocable letter of credit shall remain on file with the department until it is released, canceled, or discharged by the director, or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the certificate of deposit or irrevocable letter of credit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the commodity dealer's license. Under the provisions of this chapter, an irrevocable letter of credit or certificate of deposit shall not be accepted unless it is issued by a national bank or federal thrift institution in Idaho or by a state-chartered bank or thrift institution authorized to conduct business in Idaho and insured by the federal deposit insurance corporation. A certificate of deposit shall be submitted with an audited or reviewed financial statement prepared in accordance with the rules of the department by an independent Idaho certified public accountant or Idaho licensed public accountant.

The amount of bond ~~for each class 1 license~~ to be furnished for each commodity dealer shall be ~~in the sum of twenty five thousand dollars ($25,000). The bond for each class 2 license shall be in the sum of fifteen thousand dollars ($15,000)~~ fixed at whichever of the following amounts is greater:

(1) The combined total indebtedness paid and owed to producers for agricultural commodity and seed crop for the previous license year; or

(2) The indebtedness owed and estimated to be owed to producers for agricultural commodity and seed crop for the current license year.

Subsequent to determining whichever of the preceding amounts is greater, and based on that amount, the amount of bond shall be calculated as follows:

| Gross Dollars: | Amount of Bond: |
|---|---|
| $0 - $450,000 | $20,000 bond or 6% of the gross dollars, whichever is less |
| $450,001 - $1,000,000 | $40,000 bond |
| $1,000,001 - $8,000,000 | $100,000 bond |
| Over $8,000,000 | $500,000 bond |

In any case, the amount of the bond shall not be more than five hundred thousand dollars ($500,000). A surety shall notify the commodity dealer and the department by certified mail at least ninety (90) days prior to the cancellation of a bond issued under the provisions of this chapter. The liability of the surety shall cover purchases made by the commodity dealer during the time the bond is in force. A commodity dealer's bond filed with this department shall be continuous until canceled by the surety upon ninety (90) days' notice. The director reserves the right to waive the ninety (90) day cancellation period.

If a commodity dealer is licensed pursuant to chapter 51, title 22, Idaho Code, that same commodity dealer may obtain a single bond, certificate of deposit or irrevocable letter of credit as a surety under chapter 5, title 69, Idaho Code, and chapter 51, title 22, Idaho Code. If a single bond, certificate of deposit or irrevocable letter of credit is written covering chapter 5, title 69, Idaho Code, and chapter 51, title 22, Idaho Code, the bond, certificate of deposit or irrevocable letter of credit shall be made out in favor of the commodity indemnity fund and the seed indemnity fund. In the event a commodity dealer fails as defined in section 69-202(8), Idaho Code, and a single bond, certificate of deposit or irrevocable letter of credit is written in favor of the commodity indemnity fund and seed indemnity fund, the proceeds of the bond, certificate of deposit or irrevocable letter of credit will be allocated based on the dollar amount of the verified claims approved pursuant to chapter 2, title 69, Idaho Code, and chapter 51, title 22, Idaho Code.

~~Any person required to submit a bond to the department in accordance with this chapter, may at his option give to the department a certificate of deposit payable to the commodity indemnity fund in lieu of the bond required herein. The principal amount of the certificate shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit shall be payable to the purchaser of the certificate. The certificate shall remain on file with the department until it is released, canceled or discharged by the director. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each certificate of deposit given in lieu of such bond. The certificate of deposit shall remain on file with the department until it is released, canceled, or discharged by the director, or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the cer-~~

~~tificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the commodity dealer's license.~~

SECTION 2. That Section 69-511, Idaho Code, be, and the same is hereby amended to read as follows:

69-511. INSPECTION OF PREMISES, BOOKS AND RECORDS -- AUTHORIZATION TO COPY. The department may inspect the premises used by any commodity dealer in the conduct of his business at any reasonable time. The department is authorized through officials, employees, or agents of the department designated by it, to examine all books, accounts, records and papers pertaining to any commodity or seed crop purchased, contracted for, or in the possession of, any commodity dealer licensed under the provisions of this chapter. A commodity dealer licensed in this state who does not have a place of business within the state shall, upon the request of the director, make available and furnish to the department at any reasonable time and place the department may set, all books, accounts, records and papers relating to agricultural commodity transactions within the state of Idaho. Where there is good cause to believe that a person is doing business as a commodity dealer in the state of Idaho without a license, the department may inspect the books, papers and records of the person which pertain to agricultural commodity purchases. The department is authorized to make copies of any documents or records relevant to compliance with the provisions of this chapter.

SECTION 3. That Section 69-515, Idaho Code, be, and the same is hereby amended to read as follows:

69-515. CONFIDENTIAL AND PROTECTED RECORDS. ~~All financial statements of commodity dealers~~ Records required ~~under the provisions of this chapter~~ by the department including, but not limited to, production summaries, receiving records, conditioning reports, records relating to the payment of agricultural commodities, commodity indemnity fund and seed indemnity fund reporting forms of a commodity dealer, and financial records that are required pursuant to sections 69-503(6) and 69-521, Idaho Code, shall be ~~subject to disclosure~~ held confidential and will be protected as production records according to chapter 3, title 9, Idaho Code. ~~Provided however, that a commodity dealer may provide written permission for~~ These records shall not be subject to disclosure ~~of any of the commodity dealer's financial statements~~ unless specifically authorized in writing by the licensee or as otherwise authorized pursuant to the provisions of chapter 3, title 9, Idaho Code.

SECTION 4. That Section 69-522, Idaho Code, be, and the same is hereby amended to read as follows:

69-522. ACTION ON BOND, CERTIFICATE OF DEPOSIT OR IRREVOCABLE LETTER OF CREDIT BY PRODUCERS INJURED. Any producer injured by the breach of any obligation for which a bond, certificate of deposit or irrevocable letter of credit is written, under the provisions of section 69-506, Idaho Code, must petition the director to make demand upon the commodity dealer, certificate of deposit, irrevocable letter of credit or bond. The director may thereupon make demand ~~upon the commodity dealer and his~~

~~surety~~ for payment of such damages and in the event such damages are not promptly paid the director may commence an action ~~on the bond~~ to enforce payment of such damages. The liability of ~~the surety upon the bond required to be given by~~ the bank on a certificate of deposit or irrevocable letter of credit, and the surety upon the bond required to be given by a commodity dealer as provided by section 69-506, Idaho Code, for any one (1) annual licensing period shall be limited to the amount specified in the bond, certificate of deposit. or irrevocable letter of credit and in case of recoveries had by two (2) or more ~~persons~~ producers for violation of the conditions of ~~such bond~~ this chapter in excess of the amount of the bond, certificate of deposit, or irrevocable letter of credit, such recovery shall be prorated and the total recovery ~~as against the surety~~ for any one (1) annual licensing period shall not exceed the amount of the bond, certificate of deposit, or irrevocable letter of credit. In the event the director sues and obtains a judgment against the commodity dealer and/or his surety or bank for payment of such damages under this ~~section~~ chapter, he shall be entitled to recover a reasonable attorney's fee.

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 27, 2003.

## CHAPTER 150
## (H.B. No. 308)

### AN ACT

RELATING TO THE BONDED WAREHOUSE LAW; AMENDING SECTION 69-208, IDAHO CODE, TO PROVIDE FOR SINGLE BONDS, TO REVISE PROVISIONS RELATING TO CERTIFICATES OF DEPOSIT AND IRREVOCABLE LETTERS OF CREDIT GIVEN IN LIEU OF BOND AND TO REVISE BONDING REQUIREMENTS AND BONDING PROVISIONS FOR CERTAIN WAREHOUSEMEN; AMENDING SECTION 69-208A, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AMOUNT OF BOND AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-209, IDAHO CODE, TO REVISE PROVISIONS RELATING TO DAMAGES OF CERTAIN INJURED PRODUCERS; AMENDING SECTION 69-230, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO MAKE COPIES OF CERTAIN BOOKS, RECORDS, PAPERS, AND ACCOUNTS OF WAREHOUSES; AMENDING SECTION 69-250, IDAHO CODE, TO REVISE PROVISIONS RELATING TO CERTAIN RECORDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 69-208, Idaho Code, be, and the same is hereby amended to read as follows:

69-208. BOND OF APPLICANT FOR LICENSE -- ADDITIONAL BOND — ADDITIONAL OBLIGATIONS -- CERTIFICATE OF DEPOSIT OR IRREVOCABLE LETTER OF CREDIT IN LIEU OF BOND — SINGLE BOND. Each warehouseman applying for a license to conduct a warehouse in accordance with this chapter shall, as

a condition to the granting thereof, execute and file with the department a good and sufficient bond other than personal security. The bond shall be in favor of the commodity indemnity fund to secure the faithful performance of his obligations as a warehouseman under all the laws of the state, including obligations arising by operation of the commodity indemnity fund program, and the rules prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural commodities in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department shall determine that a bond approved by it is, or for any cause has become, insufficient, it shall require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman shall be suspended or revoked.

The bond shall be approved by the department and shall be conditioned upon the faithful performance by the warehouseman of the duty to keep in the warehouse for the depositor the agricultural commodity delivered and to deliver the agricultural commodity to or for such depositors. The bond shall also be conditioned upon the faithful performance by the warehouseman of any additional obligations involving marketing transactions with a depositor.

The warehouseman may give a single bond meeting the requirements as provided in this chapter and all warehouses operated by the warehouseman shall be as one (1) warehouse for the purpose of compliance with the provisions of this section. At the discretion of the director, any person required to submit a bond to the department in accordance with this chapter, may give to the department a certificate of deposit or an irrevocable letter of credit payable to the commodity indemnity fund in lieu of the bond required herein. The principal amount of the certificate of deposit or irrevocable letter of credit shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit shall be payable to the purchaser of the certificate. The irrevocable letter of credit or certificate of deposit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the irrevocable letter of credit or certificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the bonded warehouse license. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each certificate of deposit or irrevocable letter of credit given in lieu of such bond.

Under provisions of this chapter, an irrevocable letter of credit or certificate of deposit shall not be acceptable unless it is issued by a national bank or federal thrift institution in Idaho or by a state-chartered bank or thrift institution authorized to conduct business in Idaho and insured by the federal deposit insurance corporation.

Any changes in the capacity of a warehouse or installation of any new warehouses involving a change in the bond liability under the provisions of this chapter shall be reported to the department prior to the operation thereof.

If a warehouseman is licensed pursuant to chapter 51, title 22, Idaho Code, that same warehouseman may obtain a single bond, certificate of deposit or irrevocable letter of credit as surety for both chapter 2, title 69, Idaho Code, and chapter 51, title 22, Idaho Code. If a single bond, certificate of deposit or irrevocable letter of credit is written covering chapter 2, title 69, Idaho Code, and chapter 51, title 22, Idaho Code, the bond, certificate of deposit or irrevocable letter of credit shall be made out in favor of the commodity indemnity fund and the seed indemnity fund. In the event a warehouseman fails as defined in section 69-202(8), Idaho Code, and a single bond, certificate of deposit or irrevocable letter of credit is written in favor of the commodity indemnity fund and seed indemnity fund, the proceeds of the bond, certificate of deposit or irrevocable letter of credit will be allocated based on the dollar amount of the verified claims approved pursuant to chapter 2, title 69, Idaho Code, and chapter 51, title 22, Idaho Code.

~~At--the--discretion-of-the-director,-any-person-required-to-submit-a bond-to-the-department-in-accordance--with--this--chapter,--may--at--his option-give-to-the-department-a-certificate-of-deposit-or-an-irrevocable letter--of-credit-payable-to-the-commodity-indemnity-fund-in-lieu-of-the bond-required-herein.-The-principal-amount-of-the-certificate-or--letter of--credit-shall-be-the-same-as-that-required-for-a-surety-bond-pursuant to-this-chapter.-Accrued-interest-upon-the-certificate-of-deposit--shall be--payable--to--the--purchaser-of-the-certificate.-The-letter-of-credit shall-remain-on-file-with-the-department-until-it-is-released,--canceled or--discharged--by-the-director-or-until-the-director-is-notified-ninety (90)-days-in-advance,-by-registered-or-certified--mail,--return--receipt requested,--that--the--letter-of-credit-is-renewed,-canceled-or-amended. Failure-to-notify-the-director-may-result-in-the-suspension--or--revocation--of--the--bonded--warehouse-license.-The-provisions-of-this-chapter that-apply-to-a-bond-required-pursuant-to-this--chapter--apply--to--each certificate-of-deposit-or-letter-of-credit-given-in-lieu-of-such-bond.~~

~~Under--provisions--of--this-chapter,-an-irrevocable-letter-of-credit shall-not-be-acceptable-unless-it-is-issued-by-a-national-bank-in--Idaho or--by--an--Idaho--state-chartered--bank--insured-by-the-federal-deposit insurance-corporation.~~

SECTION 2. That Section 69-208A, Idaho Code, be, and the same is hereby amended to read as follows:

69-208A. AMOUNT OF BOND -- CANCELLATION. The amount of bond to be furnished for each warehouse shall be fixed at ~~a-rate--of--twenty--cents (20¢)--per--bushel-of-licensed-capacity-or-six-percent-(6%)-of~~ whichever of the following amounts is greater:

(1) ~~T~~the combined total ~~value--of--the--agricultural--commodities stored,--whichever-is-greater.-In-the-event-a-variety-of-commodities-are stored,-the-bond-rate-may-be-calculated-using-either-factor-or-a--combination--thereof~~ indebtedness paid and owed to producers for agricultural commodity and seed crop stored for withdrawal or transferred during the previous license year; or

(2) The indebtedness owed and estimated to be owed to producers for agricultural commodity and seed crop for the current license year.

Subsequent to determining whichever of the preceding amounts is greater, and based on that amount, the amount of bond shall be calculated as follows:

| Gross Dollars: | Amount of Bond: |
|---|---|
| $0 - $450,000 | $20,000 bond or 6% of the gross dollars, whichever is less |
| $450,001 - $1,000,000 | $40,000 bond |
| $1,000,001 - $8,000,000 | $100,000 bond |
| Over $8,000,000 | $500,000 bond |

Any other bond that may be required shall be separate and in addition to the bond listed here. In any case, the amount of the bond ~~shall not be less than twenty-five thousand dollars ($25,000) and~~ shall not be more than five hundred thousand dollars ($500,000). This bond shall run continuously with the warehouse license until suspended, revoked or canceled by the bonding company. A ninety (90) day written notice shall be given to the department by the bonding company before any bond is suspended, revoked or canceled. The director reserves the right to waive the ninety (90) day cancellation period.

SECTION 3. That Section 69-209, Idaho Code, be, and the same is hereby amended to read as follows:

69-209. ACTION ON BOND, CERTIFICATE OF DEPOSIT OR IRREVOCABLE LETTER OF CREDIT BY PRODUCERS INJURED. Any producer injured by the breach of any obligation for which a bond, certificate of deposit or irrevocable letter of credit is written, under the provisions of section 69-208, Idaho Code, must petition the director to make demand upon the warehouseman, certificate of deposit, irrevocable letter of credit or bond. The director may thereupon make demand ~~upon the warehouseman and his surety~~ for payment of such damages and in the event such damages are not promptly paid the director may commence an action ~~on the bond~~ to enforce payment of such damages. The liability of the bank on a certificate of deposit or irrevocable letter of credit, and the surety upon the bond required to be given by warehousemen as provided in section 69-208, Idaho Code, for any one (1) annual licensing period shall be limited to the amount specified in the bond, certificate of deposit. or irrevocable letter of credit and in case of recoveries had by two (2) or more ~~persons~~ producers for violation of the conditions of ~~such bond~~ this chapter in excess of the amount of the bond, certificate of deposit, or irrevocable letter of credit, such recovery shall be prorated and the total recovery ~~against the surety~~ for any one (1) annual licensing period shall not exceed the amount of the bond, certificate of deposit, or irrevocable letter of credit. In the event the director sues and obtains a judgment against the warehouseman and/or his surety or bank for payment of such damages under this ~~section~~ chapter, he shall be entitled to recover a reasonable attorney's fee.

SECTION 4. That Section 69-230, Idaho Code, be, and the same is hereby amended to read as follows:

69-230. EXAMINATION OF BOOKS -- AUTHORIZATION TO COPY. The department is authorized through officials, employees, or agents of the department designated by it, to examine and make copies of all books, records, papers, and accounts of warehouses relating thereto, including those described in section 69-227, Idaho Code.

SECTION 5. That Section 69-250, Idaho Code, be, and the same is hereby amended to read as follows:

69-250. CONFIDENTIAL AND PROTECTED RECORDS. ~~All--financial--statements--of--warehousemen~~ Records required ~~under-the-provisions-of-this chapter~~ by the department including, but not limited to, production summaries, receiving records, conditioning reports, records relating to the payment of agricultural commodities, commodity indemnity fund and seed indemnity fund reporting forms of a warehouseman, and financial records that are required pursuant to section 69-206(6), Idaho Code, shall be ~~subject--to--disclosure--pursuant-to-the-provisions-of~~ held confidential and will be protected as production records according to chapter 3, title 9, Idaho Code. ~~Provided-however,--that-a-warehouseman-may-provide written-permission-for-disclosure-of-any-of-the-warehouseman's-financial statements~~ These records shall not be subject to disclosure unless specifically authorized in writing by the licensee or as otherwise authorized pursuant to the provisions of chapter 3, title 9, Idaho Code.

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

Approved March 27, 2003.

## CHAPTER 151
## (H.B. No. 309)

AN ACT

RELATING TO THE SEED INDEMNITY FUND LAW; AMENDING SECTION 22-5104, IDAHO CODE, TO PROVIDE FOR CERTIFICATES OF DEPOSIT AND SINGLE BONDS, TO STRIKE PROVISIONS RELATING TO CERTAIN SEED BUYERS OPERATING AS SEPARATE ENTITIES, TO PROVIDE FOR CERTIFICATES OF DEPOSIT IN LIEU OF BOND AND TO REVISE PROVISIONS RELATING TO LETTERS OF CREDIT GIVEN IN LIEU OF BOND AND TO REVISE BONDING REQUIREMENTS AND BONDING PROVISIONS FOR CERTAIN SEED BUYERS; AMENDING SECTION 22-5105, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AMOUNT OF BOND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-5106, IDAHO CODE, TO PROVIDE FOR ACTION BY CERTAIN INJURED PRODUCERS AND TO REVISE PROVISIONS FOR ACTIONS BASED ON BREACHES OF CERTAIN FINANCIAL OBLIGATIONS; AMENDING SECTION 22-5109, IDAHO CODE, TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO COPY CERTAIN DOCUMENTS AND RECORDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 22-5104, Idaho Code, be, and the same is hereby amended to read as follows:

22-5104. BONDS -- IRREVOCABLE LETTERS OF CREDIT -- CERTIFICATES OF DEPOSIT -- SINGLE BOND. Every person applying for a license shall execute and file with the department a good and sufficient bond issued by an insurer authorized to transact such insurance in this state. The bond shall be in favor of the seed indemnity fund to secure the faithful per-

formance of the applicant's obligations under this chapter, and of such additional unpaid obligations assumed under agreements with producers of seed crops transferred to or deposited with the applicant. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department determines that a previously approved bond is insufficient, it may require an additional bond or bonds conforming with the requirements of this chapter. Unless the additional bond is given within the time fixed by a written demand therefor, the license may be suspended or revoked.

~~Seed--buyers--with-common-ownership-or-management,-operated-as-separate-entities,-shall-have-individual-bonds-for-each-separate--entity--in an-amount-conforming-to-the-provisions-of-this-chapter.~~

~~At--the--discretion-of-the-director,-any-person-required-to-submit-a bond-to-the-department-may-give-to-the-department-an-irrevocable--letter of--credit--payable--to--the--seed--indemnity--fund--in-lieu-of-the-bond required-herein.-The-principal-amount-of-the-letter-of-credit--shall--be the--same--as--that-required-for-a-surety-bond-pursuant-to-this-chapter. The-letter-of-credit-shall-remain-on-file-with-the-department--until--it is--released,-canceled-or-discharged-by-the-director-or-until-the-director-is-notified-ninety-(90)-days-in-advance,-by-registered-or--certified mail,--return--receipt--requested,-that-the-letter-of-credit-is-renewed, canceled-or-amended.-Failure-to-notify-the-director-may--result--in--the suspension--or--revocation--of-the-seed-buyer-license.-The-provisions-of this-chapter-that-apply-to-a-bond-apply-to-each-letter-of--credit--given in-lieu-of-such-bond.-Under-the-provisions-of-this-chapter,-an-irrevocable--letter--of--credit--shall--not-be-accepted-unless-it-is-issued-by-a national-bank-in-Idaho-or-by-an-Idaho-state-chartered--bank--insured--by the-federal-deposit-insurance-corporation.~~

At the discretion of the director, any person required to submit a bond to the department may give to the department an irrevocable letter of credit or certificate of deposit payable to the seed indemnity fund in lieu of the bond required herein. A certificate of deposit shall be submitted with an audited or reviewed financial statement prepared in accordance with the rules of the department by an independent Idaho certified public accountant or Idaho licensed public accountant. The principal amount of the letter of credit or certificate of deposit shall be the same as that required for a surety bond pursuant to this chapter. The letter of credit or certificate of deposit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the letter of credit or certificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the seed buyer license. The provisions of this chapter that apply to a bond apply to each letter of credit or certificate of deposit given in lieu of such bond. Under the provisions of this chapter, an irrevocable letter of credit or certificate of deposit shall not be accepted unless it is issued by a national bank or federal thrift institution in Idaho or by a state-chartered bank or thrift institution authorized to conduct business in Idaho and insured by the federal deposit insurance corporation.

If a seed buyer is also licensed pursuant to either chapter 2 or 5, title 69, Idaho Code, that seed buyer may obtain a single bond, certifi-

cate of deposit or irrevocable letter of credit as surety for both chapter 51, title 22, Idaho Code, and chapter 2 or 5, title 69, Idaho Code. The bond, certificate of deposit or irrevocable letter of credit shall be made out in favor of the commodity indemnity fund and the seed indemnity fund. In the event a seed buyer fails as defined in section 22-5102(5), Idaho Code, and a single bond, certificate of deposit or irrevocable letter of credit is written in favor of the commodity indemnity fund and seed indemnity fund, the proceeds of the bond, certificate of deposit or irrevocable letter of credit will be allocated based on the dollar amount of the verified claims approved pursuant to chapter 51, title 22, Idaho Code, and chapter 2, title 69, Idaho Code.

SECTION 2. That Section 22-5105, Idaho Code, be, and the same is hereby amended to read as follows:

22-5105. AMOUNT OF BOND -- NOTICE OF CANCELLATION. The amount of bond to be furnished for each seed buyer will be fixed at ~~a rate of six percent (6%) of~~ whichever of the following amounts is greater:

(1) ~~T~~the combined total seed buyer indebtedness paid ~~or~~ and owed to producers for seed crop stored for withdrawal or transferred during the previous license year; or

(2) The ~~estimated current calendar year seed crop~~ indebtedness owed and estimated to be owed to producers~~, whichever is greater~~ for seed crop for the current license year.

Subsequent to determining whichever of the preceding amounts is greater, and based on that amount, the amount of bond shall be calculated as follows:

| Gross Dollars: | Amount of Bond: |
|---|---|
| $0 - $450,000 | $20,000 bond or 6% of the gross dollars, whichever is less |
| $450,001 - $1,000,000 | $40,000 bond |
| $1,000,001 - $8,000,000 | $100,000 bond |
| Over $8,000,000 | $500,000 bond |

In any case, the amount of the bond ~~shall not be less than twenty five thousand dollars ($25,000) and~~ shall not be more than five hundred thousand dollars ($500,000). This bond shall run concurrently with the seed buyer's license. A ninety (90) day written notice, by registered or certified mail, return receipt requested, shall be given to the director by the bonding company before it may amend or cancel any bond.

SECTION 3. That Section 22-5106, Idaho Code, be, and the same is hereby amended to read as follows:

22-5106. ACTION BY ~~PERSONS~~ PRODUCER INJURED. Any ~~person~~ producer injured by the breach of any financial obligation for which a bond, ~~or~~ irrevocable letter of credit or certificate of deposit is written under this chapter, must petition the director to make demand upon the seed buyer, the certificate of deposit, irrevocable letter of credit, or on the bond to enforce payment of claims.

SECTION 4. That Section 22-5109, Idaho Code, be, and the same is hereby amended to read as follows:

22-5109. MAINTENANCE OF RECORDS -- EXAMINATION OF RECORDS -- AUTHORIZATION TO COPY. The seed buyer shall maintain current and complete records at all times with respect to all seed crops handled, deposited, shipped or merchandised by it, including seed crops owned by it. Such records shall include, but are not limited to, records showing the total quantity of each kind and class of seed crop received and loaded out and the amount remaining on deposit at the close of each business day.

Records required by this section shall be legible and kept in a place of safety in this state for a period of five (5) years. If a person operates at more than one (1) location, records of each location's transactions must be identifiable.

The department is authorized to examine records to confirm the proper collection and remittance of seed indemnity fund assessments and payments. The records subject to examination shall include, but are not limited to, receipts, scale weight tickets, conditioning records, production summaries, and payments to producers. The department is authorized to make copies of any documents or records relevant to compliance with the provisions of this chapter.

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 27, 2003.

CHAPTER 152
(S.B. No. 1016)

AN ACT

RELATING TO CHILD WITNESS TESTIMONY; REPEALING SECTION 19-3024A, IDAHO CODE; AMENDING TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18, TITLE 9, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR APPLICABILITY, TO PROVIDE FOR A HEARING TO DETERMINE WHETHER TO ALLOW TESTIMONY BY AN ALTERNATIVE METHOD, TO SET FORTH STANDARDS FOR DETERMINING WHETHER A CHILD WITNESS' TESTIMONY MAY BE PRESENTED BY AN ALTERNATIVE METHOD, TO SET FORTH FACTORS FOR DETERMINING WHETHER TO PERMIT AN ALTERNATIVE METHOD, TO PROVIDE FOR AN ORDER REGARDING TESTIMONY BY AN ALTERNATIVE METHOD AND TO PROVIDE FOR THE RIGHT OF PARTIES TO EXAMINE A CHILD WITNESS; AND PROVIDING SEVERABILITY.

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

SECTION 1. That Section 19-3024A, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 18, Title 9, Idaho Code, and to read as follows:

## CHAPTER 18
## UNIFORM CHILD WITNESS TESTIMONY BY ALTERNATIVE METHODS ACT

9-1801. SHORT TITLE. This chapter may be cited as the "Uniform Child Witness Testimony by Alternative Methods Act."

9-1802. DEFINITIONS. In this chapter:

(1) "Alternative method" means a method by which a child witness testifies which does not include all of the following:

(a) Having the child present in person in an open forum;

(b) Having the child testify in the presence and full view of the finder of fact and presiding officer; and

(c) Allowing all of the parties to be present, to participate and to view and be viewed by the child.

(2) "Child witness" means an individual under the age of thirteen (13) years who has been or will be called to testify in a proceeding.

(3) "Criminal proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state and a juvenile delinquency proceeding involving conduct that if engaged in by an adult would constitute a violation of the criminal law of this state.

(4) "Noncriminal proceeding" means a trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.

9-1803. APPLICABILITY. This chapter applies to the testimony of child witnesses in all criminal or noncriminal proceedings. However, this chapter does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify, or in a juvenile courtroom proceeding involving conduct that if engaged in by an adult would constitute a violation of a criminal law of this state, testimony by a child witness in a closed forum as may be authorized or required by law.

9-1804. HEARING WHETHER TO ALLOW TESTIMONY BY ALTERNATIVE METHOD. (1) The presiding officer of a criminal or noncriminal proceeding may order a hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

(2) A hearing to determine whether to allow presentation of the testimony of a child witness by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence, except for the rules of privilege.

9-1805. STANDARDS FOR DETERMINING WHETHER CHILD WITNESS' TESTIMONY MAY BE PRESENTED BY ALTERNATIVE METHOD. (1) In a criminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method only in the following situations:

(a) A child witness' testimony may be taken otherwise than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum.

(b) A child witness' testimony may be taken other than in a face-to-face confrontation between the child and a defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

(2) In a noncriminal proceeding, the presiding officer may order the presentation of the testimony of a child witness by an alternative method if the presiding officer finds by a preponderance of the evidence that presenting the testimony of the child by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(a) The nature of the proceeding;

(b) The age and maturity of the child;

(c) The relationship of the child to the parties in the proceeding;

(d) The nature and degree of emotional trauma that the child may suffer in testifying; and

(e) Any other relevant factor.

9-1806. FACTORS FOR DETERMINING WHETHER TO PERMIT ALTERNATIVE METHOD. If the presiding officer determines that a standard under section 9-1805, Idaho Code, has been met, the presiding officer shall determine whether to allow the presentation of the testimony of a child witness by an alternative method and in doing so shall consider:

(1) Alternative methods reasonably available;

(2) Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;

(3) The nature of the case;

(4) The relative rights of the parties;

(5) The importance of the proposed testimony of the child;

(6) The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and

(7) Any other relevant factor.

9-1807. ORDER REGARDING TESTIMONY BY ALTERNATIVE METHOD. (1) An order allowing or disallowing the presentation of the testimony of a child witness by an alternative method must state the findings of fact and conclusions of law that support the presiding officer's determination.

(2) An order allowing the presentation of the testimony of a child witness by an alternative method must state:

(a) The method by which the testimony is to be presented;

(b) A list, individually or by category, of the persons either allowed to be present or required to be excluded during the taking of the testimony of the child;

(c) Any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

(d) Any condition or limitation upon the participation of persons present during the taking of the testimony of the child; and

(e) Any other condition necessary for taking or presenting the testimony.

(3) The alternative method ordered by the presiding officer must be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

9-1808. RIGHT OF PARTIES TO EXAMINE CHILD WITNESS. An alternative method ordered by the presiding officer must permit a full and fair opportunity for examination and cross-examination of the child witness.

SECTION 3. 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 27, 2003.

## CHAPTER 153
## (S.B. No. 1043)

AN ACT

RELATING TO RELEASE OF LIABILITY UPON SALE OF A MOTOR VEHICLE; AMENDING SECTION 49-526, IDAHO CODE, TO REQUIRE ADDITIONAL INFORMATION ON A MOTOR VEHICLE RELEASE OF LIABILITY STATEMENT UPON THE OWNER'S SALE OR TRANSFER OF A VEHICLE TO ANOTHER PARTY, TO PROVIDE THAT AN OWNER WHO FILES A RELEASE OF LIABILITY STATEMENT SHALL NOT BE LIABLE FOR SUBSEQUENT TOWING, STORAGE, REPAIR OR SERVICE CHARGES AND TO PROVIDE THAT IT IS UNLAWFUL FOR ANY PERSON TO KNOWINGLY FILE A RELEASE OF LIABILITY STATEMENT WHICH CONTAINS FALSE INFORMATION.

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

SECTION 1. That Section 49-526, Idaho Code, be, and the same is hereby amended to read as follows:

49-526. RELEASE OF LIABILITY UPON SALE OF VEHICLE. (1) The department shall require that a separate release of liability statement be completed by the owner of a motor vehicle upon sale or transfer of the motor vehicle to another party. The statement shall be forwarded to the department by the former owner, together with the proper fee as provided in section 49-202, Idaho Code, within five (5) days of delivery of the motor vehicle to a dealer, purchaser or other transferee. The statement shall include the motor vehicle identification number, vehicle description, name of seller, name <u>and address</u> of buyer <u>or other transferee,</u> date of sale, odometer reading, and sales price. Provided that:

(a) A lienholder may complete the release of liability on behalf of the registered owner when the title is released by the lienholder directly to a dealer or new purchaser.

(b) Motor vehicle dealers licensed under chapter 16, title 49,

Idaho Code, are not required to report dealer-to-dealer transfers to the department. However, dealers are required to maintain a record of the transfer for audit and tracking purposes.

(2) Any former owner who files a release of liability statement with the department pursuant to this section shall not be liable under section 49-2417, Idaho Code, nor shall the former owner be liable for any motor vehicle infractions, towing, storage, repair or service charges that may occur subsequent to delivery of the vehicle to a dealer, purchaser or other transferee.

(3) It shall be unlawful for any person to knowingly file or attempt to file a release of liability statement which contains false information.

Approved March 27, 2003.

## CHAPTER 154
## (S.B. No. 1059)

AN ACT

RELATING TO FISH AND GAME; AMENDING CHAPTER 1, TITLE 36, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 36-124, IDAHO CODE, TO PROVIDE FOR RECIPROCAL LICENSURE AGREEMENTS WITH CERTAIN INDIAN TRIBES.

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

SECTION 1. That Chapter 1, Title 36, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 36-124, Idaho Code, and to read as follows:

36-124. RECIPROCAL LICENSURE AGREEMENTS WITH INDIAN TRIBES. The commission is authorized to enter into a reciprocal licensure agreement with any federally recognized Indian tribe that possesses a reservation within this state. Pursuant to such a reciprocal licensure agreement, the commission may recognize licenses or permits issued by the tribe for the hunting, angling or trapping of wildlife as satisfying license or permit requirements imposed by the commission on such activities and the tribe may recognize licenses or permits issued by the commission for the hunting, angling or trapping of wildlife as satisfying license or permit requirements imposed by the tribe on such activities.

Approved March 27, 2003.

## CHAPTER 155
## (S.B. No. 1060, As Amended)

AN ACT

RELATING TO THE UNIFORM ELECTRONIC TRANSACTIONS ACT; AMENDING SECTION 28-50-107, IDAHO CODE, TO PROVIDE THAT ANY NOTICE OR RECORD REQUIRED TO BE SENT BY CERTIFIED MAIL MAY BE TRANSMITTED ELECTRONICALLY IF THE RECIPIENT HAS GIVEN EXPRESS CONSENT.

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

SECTION 1. That Section 28-50-107, Idaho Code, be, and the same is hereby amended to read as follows:

28-50-107. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES AND ELECTRONIC CONTRACTS -- ELECTRONIC TRANSMITTAL IN LIEU OF CERTIFIED MAIL. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

(e) If a law requires any notice or other record to be sent by certified mail, the record may, with the express consent of the recipient, be transmitted electronically.

Approved March 27, 2003.

## CHAPTER 156
## (S.B. No. 1061)

AN ACT

RELATING TO THE IDAHO ELECTRONIC SIGNATURE AND FILING ACT; REPEALING SECTIONS 67-2351, 67-2352, 67-2353, 67-2354, 67-2355, 67-2356 AND 67-2357, IDAHO CODE.

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

SECTION 1. That Sections 67-2351, 67-2352, 67-2353, 67-2354, 67-2355, 67-2356 and 67-2357, Idaho Code, be, and the same are hereby repealed.

Approved March 27, 2003.

## CHAPTER 157
## (S.B. No. 1064)

AN ACT

RELATING TO NOTICES AND MOTOR VEHICLES OR DRIVERS; AMENDING SECTION 18-8001, IDAHO CODE, TO REQUIRE THAT NOTICES OF DRIVER'S LICENSE SUSPENSION, REVOCATION OR DISQUALIFICATION BE SENT VIA FIRST CLASS MAIL RATHER THAN VIA CERTIFIED MAIL; AMENDING SECTION 49-320, IDAHO CODE, TO REQUIRE THAT NOTICE OF ANY OFFICIAL ACTION REGARDING DRIVER'S LICENSES OR DRIVING PRIVILEGES BE SENT VIA FIRST CLASS MAIL RATHER THAN BY CERTIFIED MAIL; AMENDING SECTION 49-508, IDAHO CODE, TO REQUIRE THAT NOTICE OF VEHICLE TITLE CANCELLATIONS BE SENT VIA FIRST CLASS MAIL RATHER THAN VIA CERTIFIED MAIL AND TO MAKE TECHNI-

CAL CORRECTIONS; AND AMENDING SECTION 49-520, IDAHO CODE, TO REQUIRE THAT NOTICE OF VEHICLE TITLE REVOCATION AND NOTICES OF REFUSAL TO ISSUE VEHICLE REGISTRATION BE SENT VIA FIRST CLASS MAIL RATHER THAN VIA CERTIFIED MAIL.

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

SECTION 1. That Section 18-8001, Idaho Code, be, and the same is hereby amended to read as follows:

18-8001. DRIVING WITHOUT PRIVILEGES. (1) Any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge or who has received legal notice pursuant to section 49-320, Idaho Code, that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction is guilty of a misdemeanor.

(2) A person has knowledge that his license, driving privileges or permit to drive is revoked, disqualified or suspended when:

(a) He has actual knowledge of the revocation, disqualification or suspension of his license, driving privileges or permit to drive; or

(b) He has received oral or written notice from a verified, authorized source, that his license, driving privileges or permit to drive was revoked, disqualified or suspended; or

(c) Notice of the suspension, disqualification or revocation of his license, driving privileges or permit to drive was mailed by ~~certified~~ first class mail to his address pursuant to section 49-320, Idaho Code, as shown in the transportation department records, and he failed to receive the notice or learn of its contents as a result of his own unreasonable, intentional or negligent conduct or his failure to keep the transportation department apprised of his mailing address as required by section 49-320, Idaho Code; or

(d) He has knowledge of, or a reasonable person in his situation exercising reasonable diligence would have knowledge of, the existence of facts or circumstances which, under Idaho law, might have caused the revocation, disqualification or suspension of his license, driving privileges or permit to drive.

(3) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for the first time:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than two (2) days, and may be sentenced to not more than six (6) months, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed five hundred dollars ($500); and

(c) Shall have his driving privileges suspended by the court for an additional six (6) months following the end of any period of suspension, disqualification or revocation existing at the time of the

violation; the defendant may request restricted driving privileges during the period of the suspension or disqualification, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(4) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for a second time within five (5) years, irrespective of the form of the judgment(s) or withheld judgment(s):

(a) Shall be sentenced to jail for a mandatory minimum period of not less than twenty (20) days, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed one thousand dollars ($1,000); and

(c) Shall have his driving privileges suspended by the court for an additional one (1) year following the end of any period of suspension, disqualification or revocation existing at the time of the second violation, during the first thirty (30) days of which time he shall have absolutely no driving privileges of any kind. The defendant may request restricted driving privileges during the period of the suspension or disqualification, to begin after the period of absolute suspension, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(5) Any person who has pled guilty to or been found guilty of more than two (2) violations of the provisions of subsection (1) of this section within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor; and

(a) Shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, and may be sentenced to not more than one (1) year; provided, however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed three thousand dollars ($3,000); and

(c) Shall have his driving privileges suspended by the court for an additional two (2) years following the end of any period of suspension, disqualification or revocation existing at the time of the violation, during the first ninety (90) days of which time he shall have absolutely no driving privileges of any kind. The defendant may request restricted driving privileges during the period of the sus-

pension or disqualification, to begin after the period of absolute suspension, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(6) A minor may be prosecuted for a violation of subsection (1) of this section under chapter 5, title 20, Idaho Code.

(7) If a person is convicted for a violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, and at the time of arrest had no driving privileges, the penalties imposed by this section shall be in addition to any penalties imposed under the provisions of section 18-8005, 18-8004A, 18-8004C or 18-8006, Idaho Code, and not in lieu thereof.

(8) For purposes of this section, the offenses referred to in subsections (3)(a), (4)(a) and (5)(a) of this section are:

(a) Section 18-1501(3), Idaho Code, transporting a minor in a motor vehicle while under the influence;

(b) Section 18-4006(3), Idaho Code, vehicular manslaughter;

(c) Section 18-8001, Idaho Code, driving without privileges;

(d) Section 18-8004, Idaho Code, driving under the influence of alcohol, drugs or other intoxicating substances;

(e) Section 18-8004C, Idaho Code, excessive alcohol concentration;

(f) Section 18-8006, Idaho Code, aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances;

(g) Section 18-8007, Idaho Code, leaving the scene of an accident resulting in injury or death;

(h) Section 49-1229, Idaho Code, required motor vehicle insurance;

(i) Section 49-1232, Idaho Code, certificate or proof of liability insurance to be carried in motor vehicle;

(j) Section 49-1401, Idaho Code, reckless driving;

(k) Section 49-1404, Idaho Code, eluding a police officer;

(l) Section 49-1428, Idaho Code, operating a vehicle without liability insurance;

or any substantially conforming foreign criminal violation.

(9) In no event shall a person be granted restricted driving privileges unless the person shows proof of liability insurance or other proof of financial responsibility, as provided in chapter 12, title 49, Idaho Code.

SECTION 2. That Section 49-320, Idaho Code, be, and the same is hereby amended to read as follows:

49-320. NOTICE OF CHANGE OF ADDRESS. It is the responsibility of every licensed driver and every person applying for a driver's license to keep a current address on file with the department.

(1) Whenever any person after applying for or receiving a driver's license shall move from the address shown in the application or in the driver's license issued, that person shall, within thirty (30) days, notify the department in writing of the old and new addresses.

(2) Whenever any statute or rule requires a driver to receive notice of any official action with regard to the person's driver's license or driving privileges taken or proposed by a court or the department, notification by ~~certified~~ first class mail at the address shown on the application for a driver's license or at the address shown on the driver's license or at the ~~address~~ given by the driver, shall constitute all the legal notice that is required.

(3) 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 (1) of this section.

SECTION 3. That Section 49-508, Idaho Code, be, and the same is hereby amended to read as follows:

49-508. CANCELLATION OF CERTIFICATES OF TITLE -- RETURN OF REGISTRATION RECEIPTS AND LICENSE PLATES. (1) If it appears that a certificate of title has been improperly issued, the department shall, after notice and hearing, cancel the certificate. The notice shall be served in person or by ~~certified mail, and shall be served upon~~ first class mail to the person to whom that certificate of title was issued, as well as any ~~lien holders~~ lienholders appearing thereon. The holder of the certificate of title shall return it to the department upon cancellation, but the cancellation of any certificate of title shall not affect the validity of any lien recorded on it.

(2) If a receipt of registration has been issued to the holder of a ~~cancelled~~ canceled certificate of title, the department shall immediately cancel it and demand the return of the receipt of registration and license plates, and the holder of the receipt of registration and license plates shall immediately return them to the department.

SECTION 4. That Section 49-520, Idaho Code, be, and the same is hereby amended to read as follows:

49-520. REFUSAL TO ISSUE CERTIFICATE OF TITLE OR REGISTER VEHICLE -- REVOCATION AFTER ISSUANCE OR REGISTRATION. If the department shall determine an applicant for a certificate of title to a vehicle is not entitled to it, it shall refuse to issue a certificate or to register the vehicle, and in that event unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction, the applicant shall have no further right to apply for a certificate of title or registration on the statements in the application. The department may for a like reason after notice and hearing, revoke registration already acquired or any outstanding certificate of title. The notice shall be served in person or by ~~certified~~ first class mail. An appeal may be taken from any decision of the department.

Approved March 27, 2003.

## CHAPTER 158
## (S.B. No. 1066)

### AN ACT

RELATING TO GARNISHMENTS; AMENDING SECTION 8-507, IDAHO CODE, TO CLARIFY THE TERM CORPORATION TO INCLUDE BANKING OR TRUST CORPORATIONS, TO PROVIDE FOR SERVICE UPON MANAGERS OR DESIGNATED AGENTS, TO REMOVE LANGUAGE RELATING TO SERVICE UPON CERTAIN BANKING OR TRUST CORPORATIONS, TO SPECIFY HOW BANKING OR TRUST CORPORATIONS MAY DESIGNATE OFFICES FOR SERVICE OF CERTAIN DOCUMENTS, TO PROVIDE THAT THE DEPARTMENT OF FINANCE SHALL POST A LIST OF DESIGNATED OFFICES ON ITS

WEB PAGE, TO REMOVE LANGUAGE REFERENCING BRANCHES OR BRANCH BANKS, TO PROVIDE THAT SERVICE ON A DESIGNATED OFFICE SHALL BE EFFECTIVE AS TO MONEYS IN THE BANKING OR TRUST CORPORATION'S OFFICES LOCATED OUTSIDE THE STATE OF IDAHO, TO SPECIFY THE EFFECT OF SERVICE MADE ON AN OFFICE NOT DESIGNATED BY BANKING OR TRUST CORPORATIONS AND TO SPECIFY THE EFFECT OF SERVICE GENERALLY; AND AMENDING SECTION 8-507D, IDAHO CODE, TO REVISE PROVISIONS RELATING TO PERSONAL SERVICE OF GARNISHMENT DOCUMENTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 8-507, Idaho Code, be, and the same is hereby amended to read as follows:

8-507. GARNISHMENT -- SERVICE OF WRIT OF ATTACHMENT, EXECUTION, OR GARNISHMENT -- BANKS. (a) Upon receiving written directions from the plaintiff or his attorney, that any person or corporation, public or private, has in his or its possession or control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon any such person, or corporation identified in the plaintiff's written directions all of the following documents:

(1) a copy of the writ;

(2) a notice that such credits, or other property, or debts, as the case may be, are attached in pursuance of such writ;

(3) a notice of exemptions available under federal and state law;

(4) instructions to debtors and third parties for asserting a claim of exemption;

(5) a form for making a claim of exemption; and

(6) if the garnishee is a bank or depository institution, a search fee of five dollars ($5.00) and the last known mailing address of the defendant and, if known, a tax identification number, that will enable the garnishee to identify the defendant on its records.

The documents specified in paragraphs (3) through (5) of this subsection shall be in a form substantially similar to the form provided in section 8-507C, Idaho Code.

(b) In case of service upon a corporation <u>including, but not limited to any banking or trust corporation,</u> the same may be had by delivering a copy of the papers to be served, if upon a private corporation, to any <u>officer, manager</u> or <u>designated</u> agent thereof, and if upon a public or municipal corporation, to the mayor, president of the council or board of trustees, or any presiding officer, or to the secretary or clerk thereof. ~~Provided, further, that no service of any writ of attachment, nor of execution, nor any garnishment, shall be made under this section, or otherwise, on any banking or trust corporation operating branch banks or more than one (1) office where deposits are received, except by delivery of copies of the writs, notices and/or other papers required, to one (1) of the officers or managing agents of such corporation employed in and at, and in charge of some particular office or branch of said corporation, and being so made, such writ or garnishment shall be valid and effective only as to moneys to the defendant's credit in that particular office or branch and as to other personal property belonging to the defendant held in the possession or control of the officers or managing agents of said corporation employed in and at, and~~

~~in-charge-of-such-office-or-branch.~~

In the event a banking or trust corporation operates more than one (1) office where deposits are received within the state of Idaho, the banking or trust corporation may, by notifying the Idaho department of finance, designate a particular office for the service of attachment, execution and garnishment papers. Such office may be located either within or outside the state of Idaho. The Idaho department of finance shall post the list of such designated offices on its web page for access by the public.

If a banking or trust corporation operating ~~branch-banks-or~~ more than one (1) office where deposits are received has designated a particular ~~branch-or~~ office for the attachment, execution, or garnishment, then service of such papers ~~shall-be~~ made on the ~~branch-or~~ office so designated~~.-In-such-case,-a-writ-of-attachment,-execution,--or--garnishment~~ shall be valid and effective as to moneys to the defendant's credit held in the possession or control of any of the banking or trust corporation's branches or offices located within or outside the state of Idaho.

If service of the attachment, execution or garnishment papers is not made on the designated office of the banking or trust corporation, but instead is made on another office of the banking or trust corporation located in the state of Idaho, then service of such papers shall be valid and effective as to moneys to the defendant's credit in that particular office and as to other personal property belonging to the defendant held in the possession or control of that particular office, but shall only become valid and effective as to moneys to the defendant's credit held in the possession or control of any of the bank or trust corporation's other offices upon receipt of the attachment, execution or garnishment papers by the designated office. Such banking or trust corporation may, but is under no obligation to, transmit the original or a copy of the papers from the particular office served to the designated office.

Service on any banking or trust corporation is effective as against the moneys and other personal property to the defendant's credit which are in the possession or control of the banking or trust corporation named in the garnishment, but not any affiliate, parent or subsidiary not named. If the garnishment fails to sufficiently distinguish the banking or trust corporation from any affiliate, parent or subsidiary thereof, such that it is not clear which entity is intended to be the garnishee, the garnishment may be returned unsatisfied.

(c) The provisions of this section and sections 8-507A through 8-507D, Idaho Code, shall apply to any levy by execution pursuant to chapters 2 and 3, title 11, Idaho Code.

SECTION 2. That Section 8-507D, Idaho Code, be, and the same is hereby amended to read as follows:

8-507D. DOCUMENTS TO BE PROVIDED BY PLAINTIFF — DUTIES OF SHERIFF -- SERVICE AND MAILING CRITERIA -- TIME COMPUTATION. With respect to any attachment, garnishment or execution, the plaintiff shall provide the sheriff with sufficient copies of the writ and other documents required to be served for service on the defendant and each additional party identified in the plaintiff's written directions and shall provide an envelope addressed to each person required to be served. If the docu-

ments are to be mailed, proper postage shall be affixed. The sheriff shall not delay service for lack of sufficient copies or postage and shall make any additional copies and affix any additional postage necessary. The sheriff may charge the plaintiff for the actual costs of any additional copies and postage required, which costs shall be in addition to the fees permitted under section 31-3203, Idaho Code.

Personal service shall be accomplished in the same manner provided for service of summons under the Idaho rules of civil procedure. Provided however, that in the case of garnishments the county sheriff shall have the option of accomplishing personal service by United States certified mail, return receipt requested, or United States first class mail with a facsimile acknowledgment of such service by the ~~employer, in the case of garnishments~~ garnishee. ~~Mailing shall be by first class mail.~~ Unless otherwise provided to the contrary, the date when an item is deposited in the United States mails shall constitute the date of mailing and the date of service ~~where service by mail is permitted~~ shall be the date when the garnishee signs the return receipt for the certified mail or the date the garnishee sends its facsimile acknowledgment of service. In computing any period of time within which an act is to be accomplished, the day of the act after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it falls on a weekend or legal holiday, in which event the period runs until the close of business of the first business day after the weekend or holiday, except that this provision shall not extend the time within which hearing on a motion to contest a claim of exemption or third party claim must be set as provided in section 8-540, Idaho Code, and section 11-203, Idaho Code.

The sheriff shall not be required to investigate or assure the accuracy and completeness of the addresses of the parties to be served or any other information provided by the plaintiff.

Approved March 27, 2003.

## CHAPTER 159
## (S.B. No. 1067)

### AN ACT

RELATING TO ENFORCEMENT ACTIONS OF TOBACCO PERMITTEES; AMENDING SECTION 39-5702, IDAHO CODE, TO FURTHER DEFINE TERMS; AND AMENDING SECTION 39-5710, IDAHO CODE, TO CLARIFY WHEN A MINOR SHALL PARTICIPATE IN AN INSPECTION.

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

SECTION 1. That Section 39-5702, Idaho Code, be, and the same is hereby amended to read as follows:

39-5702. DEFINITIONS. The terms used in this chapter are defined as follows:

(1) "Business" means any company, partnership, firm, sole proprietorship, association, corporation, organization, or other legal entity, or a representative of the foregoing entities.

(2) "Department" means the state department of health and welfare or its duly authorized representative.

(3) "Distribute" means to give, deliver, sell, offer to give, offer to deliver, offer to sell or cause any person to do the same or hire any person to do the same.

(4) "Minor" means a person under eighteen (18) years of age.

(5) "Minor exempt permit" means a permittee location whose revenues from the sale of alcoholic beverages for on-site consumption comprises at least fifty-five percent (55%) of total revenues, or whose products and services are primarily obscene, pornographic, profane or sexually oriented, is exempt from inspections assisted by a minor, if minors are not allowed in the location and such prohibition is posted clearly on all entrance doors.

(6) "Permit" means a permit issued by the department for the sale or distribution of tobacco products.

(~~6~~7) "Permittee" means the holder of a valid permit for the sale or distribution of tobacco products.

(~~7~~8) "Photographic identification" means state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military card, in all cases bearing a photograph and a date of birth, or a valid passport.

(~~8~~9) "Random unannounced inspection" means an inspection of retail outlets by a law enforcement agency or by the department, with or without the assistance of a minor, to monitor compliance of this chapter.

(~~9~~10) "Seller" means the person who physically sells or distributes tobacco products.

(~~10~~11) "Tobacco product" means any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco papers, or smokeless tobacco.

(~~11~~12) "Vending machine" means any mechanical, electronic or other similar device which, upon the insertion of tokens, money or any other form of payment, dispenses tobacco products.

(~~12~~13) "Vendor assisted sales" means any sale or distribution in which the customer has no access to the product except through the assistance of the seller.

(~~13~~14) "Without a permit" means a business that has failed to obtain a permit or a business whose permit is suspended or revoked.

SECTION 2. 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 one (1) random, unannounced inspection 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. The department shall conduct

inspections for minor exempt permittees without the assistance of a minor. The department shall conduct inspections for all other permittees with the assistance of a minor. 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.

Approved March 27, 2003.

## CHAPTER 160
## (S.B. No. 1068)

AN ACT

RELATING TO THE BOARD OF DENTISTRY; AMENDING SECTION 54-912, IDAHO CODE, TO AUTHORIZE THE BOARD OF DENTISTRY TO REQUIRE AND ACCEPT RESULTS OF DENTAL AND DENTAL HYGIENE EXAMINATIONS ADMINISTERED BY APPROVED REGIONAL AND NATIONAL DENTAL AND DENTAL HYGIENE TESTING ORGANIZATIONS; AMENDING SECTION 54-915, IDAHO CODE, TO SPECIFY THAT MULTIPLE EXAMINATIONS ARE REQUIRED TO BE PASSED TO QUALIFY FOR LICENSURE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-918, IDAHO CODE, TO REVISE EXAMINATIONS CRITERIA FOR APPLICANTS FOR LICENSURE, TO AUTHORIZE THE REQUIRING AND ACCEPTANCE OF THE RESULTS OF EXAMINATIONS CONDUCTED BY APPROVED REGIONAL AND NATIONAL TESTING ORGANIZATIONS, TO PROVIDE THAT THE REGIONAL AND NATIONAL TESTING ORGANIZATIONS SHALL ESTABLISH THE PASSING STANDARDS FOR THE EXAMINATIONS THEY CONDUCT AND TO REQUIRE THAT ANY APPLICANT WHO FAILS ANY EXAMINATION CONDUCTED BY THE BOARD BE NOTIFIED IN WRITING BY THE BOARD; AND AMENDING SECTION 54-921, IDAHO CODE, TO SPECIFY THAT A PERSON SEEKING REINSTATEMENT OF A LICENSE MAY BE REQUIRED BY THE BOARD OF DENTISTRY TO PASS SUCH EXAMINATIONS AS SHALL DEMONSTRATE THE PERSON'S COMPETENCE AND TO MAKE A TECHNICAL CORRECTION.

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

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

54-912. BOARD OF DENTISTRY -- POWERS AND DUTIES. The board shall have the following powers and duties:

(1) To ascertain the qualifications and fitness of applicants to

practice dentistry, a dental specialty or dental hygiene; to prepare, conduct and grade qualifying examinations; to require and accept passing results of written and clinical examinations from approved dental and dental hygiene testing organizations; to issue in the name of the board a certificate of qualification to applicants found to be fit and qualified to practice dentistry or dental hygiene.

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

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

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

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

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

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

to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or for refusal to testify. The licensed person accused in the proceedings shall have the same right of subpoena upon making application to the board.

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

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

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

SECTION 2. That Section 54-915, Idaho Code, be, and the same is hereby amended to read as follows:

54-915. QUALIFICATIONS REQUIRED FOR DENTIST OR DENTAL HYGIENIST LICENSURE. No person hereafter shall be eligible for licensure to practice dentistry or dental hygiene in this state unless the applicant:

(1) Is of good moral character and has not pled guilty to or been convicted of any felony, or of any misdemeanor involving moral turpitude, unless the person demonstrates that he has been sufficiently rehabilitated to warrant the public trust;

(2) Shall, for dentistry, have successfully completed the course of study in dentistry, and graduated and received a degree of doctor of dental surgery, doctor of dental medicine, or equivalent degree from a dental school accepted and approved by the board;

(3) Shall, for dental hygiene, have successfully completed the course of study in dental hygiene, and received a degree from a dental hygiene school accepted and approved by the board~~.~~;

(4) Shall, for dentistry and dental hygiene, pass the examinations provided for in section 54-918, Idaho Code.

SECTION 3. That Section 54-918, Idaho Code, be, and the same is hereby amended to read as follows:

54-918. EXAMINATIONS -- CERTIFICATE OF QUALIFICATION. (1) ~~At--least once--in--each-calendar-year,-the-board-or-its-agent-shall-conduct-separate~~ An applicant for licensure shall pass such examinations in dentistry and in dental hygiene as are conducted by the board. Examinations

shall be written or clinical, or both, and upon such subjects in dentistry and dental hygiene as the board shall determine will thoroughly test the fitness and ability of the applicant to practice dentistry or dental hygiene. An applicant for licensure shall pass the written jurisprudence examination conducted by the board. A passing score of seventy-five percent (75%) correct shall be required on the written jurisprudence examination. A passing score of at least seventy-five percent (75%) correct shall be required on any additional written or clinical examinations conducted by the board. It shall report and record the names of applicants who pass and of those who fail the examinations. Upon the candidate's request, the board will issue to each passing applicant in dentistry, who is qualified for Idaho licensure, a certificate of qualification to practice dentistry, and to each passing applicant in dental hygiene, who is qualified for Idaho licensure, a certificate of qualification to practice dental hygiene within the state of Idaho.

~~Prior to an examination, or by general rule, the board shall determine the relative weight of the written and of the clinical examination, the passing grade, not exceeding seventy percent (70%), for each subject, section, or part of the examination and the general average passing grade, not exceeding seventy five percent (75%). The board may recognize a certificate granted by the commission on national dental examinations.~~

(2) In lieu of conducting written examinations other than the jurisprudence examination, the board may require and accept the results of the national board dental and dental hygiene examinations administered by the American dental association. The American dental association shall set the standards for passing the national board dental and dental hygiene examinations. In lieu of conducting clinical examinations, the board may require and accept the results of clinical examinations administered by national or regional testing organizations approved by the board. The national or regional testing organizations shall set the standards for passing or acceptable level of competency on the clinical examinations administered.

(3) Applicants who fail ~~the~~ any examination conducted by the board shall be notified thereof in writing by the board, ~~or its agent,~~ which shall also record the fact of failure and the date and means of notification.

(4) Written questions and answers of applicants shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless exempt ~~from disclosure~~ in that chapter and title, and shall be destroyed by the board after the period of one (1) year following the examination.

SECTION 4. That Section 54-921, Idaho Code, be, and the same is hereby amended to read as follows:

54-921. REINSTATEMENT. A person whose license has been suspended or revoked for nonpayment of the required license fee may have such qualification reinstated by filing an application for licensure showing possession by him of the qualifications required of a first applicant for licensure, and additionally the fact, time and cause of ~~cancelation~~ cancellation of his previous qualification. He shall pay to the board an application fee in the same amount as prescribed by the board under the provisions of section 54-916, Idaho Code, which fee shall not be

refunded. If found qualified as in the case of a first applicant for licensure, he may be required to take and pass ~~the next qualifying~~ such examinations~~, or~~ as, in the discretion of the board, ~~he may be permitted to take such special examination as~~ shall show that he possesses the knowledge and skill requisite to the practice of dentistry or dental hygiene as the case may be. In the event he passes such examinations there shall be issued to him a certificate of qualification.

Approved March 27, 2003.

## CHAPTER 161
## (S.B. No. 1074)

AN ACT

RELATING TO ENFORCEMENT PROCEDURES RELATING TO HEALTH AND SAFETY; AMENDING SECTION 39-1606, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS.

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

SECTION 1. That Section 39-1606, Idaho Code, be, and the same is hereby amended to read as follows:

39-1606. CRIMINAL AND CIVIL PROCEEDINGS. The regulatory authority may seek to enforce the provisions of this chapter and any rule or standard adopted by the board pursuant to this chapter through a court of competent jurisdiction.

(1) Misdemeanor proceedings may be brought in accordance with sections ~~39-109, 39-117~~ 56-1008, 56-1010, 37-117 and 37-119, Idaho Code.

(2) Civil proceedings may be brought in accordance with sections ~~39-108~~ 56-1009 and ~~39-109~~ 56-1010, Idaho Code.

(3) Injunctive relief may be sought in accordance with sections ~~39-108, 39-109~~ 56-1009, 56-1010 and 37-116, Idaho Code.

Approved March 27, 2003.

## CHAPTER 162
## (S.B. No. 1078)

AN ACT

RELATING TO PARKING FOR PERSONS WITH A DISABILITY; AMENDING SECTION 49-213, IDAHO CODE, TO REVISE TERMINOLOGY, TO REQUIRE DESIGNATION OF SPACES, TO AUTHORIZE ADDITIONAL ENFORCEMENT AUTHORITY, TO PROHIBIT IMPROPER PARKING AND TO PROVIDE PENALTIES; AND AMENDING SECTION 49-410, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE ADDITIONAL AUTHORITY TO AUTHORIZE A TEMPORARY PLACARD, TO INCREASE FINES FOR MISUSE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-213, Idaho Code, be, and the same is hereby amended to read as follows:

49-213. PARKING SPACES FOR PERSONS WITH A DISABILITY -- MARKING AND SIGNING -- ENFORCEMENT. (1) Local governments and owners of private property open to public use ~~may~~ shall designate parking zones and spaces to be used exclusively by vehicles displaying a special license plate for a person with a disability, or a special placard as prescribed in section 49-410, Idaho Code. Any parking zones and spaces so designated shall conform to the following requirements:

(a) Parking lots will conform to the requirements of federal Public Law 101-336, Americans with disabilities act of 1990.

(b) One (1) ~~parking~~ space shall be designated for every thirty-five (35) spaces of on-street parking available on each downtown street block. These parking spaces shall be parallel with the sidewalk where parallel parking is required, or at an angle to the sidewalk where angle parking is required. Should angle parking be used, the parking spaces so designated for use by a person with a disability shall conform to the federal Americans with disabilities act. All accessible parking spaces shall be ~~near~~ located on the shortest route to curb cuts and ramps for use by wheelchairs and other ~~mechanical-device-usage~~ mobility aids and devices. For the purposes of this section, the term "downtown" means the business center of a city as designated by the ~~city council~~ of the city. The term "street block" means that portion of a city street between consecutive parallel intersections.

(c) For each designated parking space or area there shall be posted immediately adjacent to, and visible from each stall or space, a sign~~, which is at least thirty-six (36) inches above the ground,~~ consisting of the international accessibility symbol as shown in section 49-410, Idaho Code.

(d) Should any city desire to modify any of the requirements of subsection (1)(a) or (b) of this section, a city council may do so by ordinance, after complying with the following requirements:

1. The city council, or any other body designated by the city council by ordinance, shall receive a recommendation from a board, commission or committee created in conformity with section 50-210, Idaho Code, of which at least one-half (1/2) of the members shall be persons with a disability as defined in section 49-117, Idaho Code; and

2. The city shall cause notice of public hearing on the proposed ordinance modifying the standards specified in subsection (1)(a) or (b) of this section, to be published in a newspaper of general circulation in the city at least fourteen (14) days before the public hearing.

(2) Parking a vehicle or the standing of a vehicle in a space reserved for a person with a disability, which space is signed in conformance with the requirements specified in subsection (1)(c) of this section, is prohibited, unless a vehicle is momentarily in the space for the purpose of allowing a person with a disability to enter or leave the vehicle, or unless special license plates or placard or temporary placard for a person with a disability is displayed on the vehicle. It is prohibited for any person to park a motor vehicle in a properly marked access aisle in a manner which prevents or reasonably could restrict a person with a disability from entering or exiting their vehicle or in such manner as it would block access to a curb cut or ramp. The registered owner of a vehicle parked in violation of the provisions

of this subsection is guilty of an infraction, which is punishable by a fine ~~not exceeding fifty~~ of one hundred dollars ($~~50~~100). Vehicles parked in violation of this section may be towed pursuant to provisions of state law or local ordinance.

(3) Law enforcement officials and/or their designees as authorized by a city or county are empowered to enter upon private property open to public use to enforce the provisions of this section.

SECTION 2. That Section 49-410, Idaho Code, be, and the same is hereby amended to read as follows:

49-410. SPECIAL LICENSE PLATES AND PLACARDS FOR PERSONS WITH A DISABILITY -- PARKING PRIVILEGES -- PLACARDS FOR CERTAIN TEMPORARILY DISABLED PERSONS -- ENFORCEMENT. (1) Any person with a disability as defined in section 49-117, Idaho Code, or any parent or guardian of a dependent child with a disability as defined in section 49-117, Idaho Code, without regard to the age of the dependent child, shall be eligible for the use of special license plates bearing the international accessible symbol, for any vehicle owned by such person or owned by a qualified parent or guardian, but excluding any commercial vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. The parking privileges granted under the provisions of subsection (7) of this section shall apply to any vehicle displaying special license plates or placard issued pursuant to this section.

(2) Registration and license plate fees for vehicles owned by a person with a disability or qualified parent or guardian of a dependent child with a disability, shall be as provided, respectively, in sections 49-402, 49-434(1) and 49-450, Idaho Code. Nothing in this section shall be construed as abrogating provisions of section 49-445, Idaho Code. The use of the special placard issued under the provisions of subsection (4) of this section, shall not exempt the owner of a motor vehicle from otherwise properly registering and licensing the motor vehicle.

(3) Special license plates for persons with a disability and for the parent or guardian of a dependent child with a disability, shall be the same size and color as other license plates, and shall have displayed upon them the registration numbers assigned to the vehicle and to the owner. The plates shall be numbered in a manner prescribed by the department, but the plates shall display the international accessible symbol.

International Accessible Symbol

(4) The department shall issue a special placard bearing the international accessible symbol and other information the department may require, to:

(a) Any qualified person with a disability who does not own a motor vehicle;

(b) Any qualified person with a disability who owns a motor vehicle, without regard to weight or use of the vehicle;

(c) Any parent or guardian of a dependent child with a disability who owns a motor vehicle without regard to weight or use of the vehicle;

(d) Any business entity which is engaged in transportation of persons with a disability, which business shall not be required to submit a physician's certification. In addition to other application requirements, a business applicant shall sign a declaration that he is engaged in the transportation of persons with a disability. A business entity may include, but not be limited to, hospitals, nursing homes, federal, state and local governmental agencies and taxicabs.

(5) Any person or business issued a special placard shall affix the special placard to a motor vehicle in a conspicuous place designated by the department. The placard shall bear distinguishing marks, letters or numerals indicating the vehicle is utilized by a permanently disabled person. When the placard is affixed to a motor vehicle and the motor vehicle is transporting a person with a disability, special parking privileges are granted as provided in subsection (7) of this section.

(6) Application for special license plates, a special placard, or both as applicable and at the option of the applicant, shall be made upon a form furnished by the department and shall include a written certification by a licensed physician, licensed physician assistant, or licensed advanced practice professional nurse verifying that the applicant's stated impairment qualifies as a disability according to the provisions of section 49-117, Idaho Code.

(7) Any motor vehicle displaying special license plates for a person with a disability, without regard to the state of residence or displaying the special placard provided in subsections (4) and (8) of this section, shall be allowed to park for unlimited periods of time in parking zones or areas which are otherwise restricted as to the length of time parking is permitted, to park in spaces and zones designated for persons with a disability, and to park in any public parking space with metered parking without being required to pay any parking meter fee. The provisions of this subsection shall not be applicable to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles, to areas where vehicular parking is prohibited for periods in excess of forty-eight (48) hours, or to areas where parking is prohibited for certain periods of time in order to allow snow removal, street construction or maintenance or for other emergency purposes. Nothing herein shall prohibit the designation of parking spaces for use by disabled persons for unlimited periods of time.

(8) Any person who shall submit satisfactory proof to the department that he is so temporarily disabled as ~~to be unable to move without the aid of crutches or a wheelchair~~ defined in section 49-117(7)(b), Idaho Code, shall be entitled to receive for one (1) motor vehicle only, a special placard to be affixed to a motor vehicle in a conspicuous place designated by the department, bearing distinguishing marks, letters or numerals indicating that the vehicle is utilized by a temporarily disabled person. This special temporary placard shall ~~expire~~ be valid between one (1) and six (6) months ~~from the date of issuance, or sooner~~ depending on the written authorization of the licensed physician, licensed physician assistant, or licensed advanced practice professional nurse and as specified by the department on the placard.

(9) Any ~~unauthorized~~ use of the plate or placard by any person other than those meeting the definition of disability under section 49-117(7)(b), Idaho Code, or as otherwise authorized by this section, to

obtain parking shall constitute an infraction punishable by a fine of ~~fifty~~ one hundred dollars ($50.100). ~~The second offense shall be punishable by a fine of fifty dollars ($50.00) and loss of parking privileges for the registered owner of the vehicle displaying the plates or for the person to whom the card was issued, for a period of one (1) year.~~

(10) Any person who unlawfully possesses, sells, copies, duplicates, distributes, manufactures or aids and abets in the unlawful possession, sale, copying, duplicating, distributing or manufacturing of a special plate or placard is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail for a period not to exceed thirty (30) days or by both. The court shall also impose as a term of the sentence a period not to exceed forty (40) hours of community service provided to a nonprofit organization which serves people with disabilities. The unlawfully obtained special plate or placard shall be subject to confiscation by law enforcement officials. Following conviction or dismissal, the special plate or placard confiscated by law enforcement shall be sent to the department.

Law enforcement officials and/or their designees as authorized by a city or county shall enforce the provisions of ~~this~~ subsections (1) through (9) of this section and are empowered, using reasonable discretion, to check personal identification to determine if the user of the plate or placard is authorized to use accessible parking privileges. Any fines collected shall be retained by the city or county whose law enforcement official issued the citation.

Approved March 27, 2003.

## CHAPTER 163
## (S.B. No. 1085)

### AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-721, IDAHO CODE, TO ALLOW PARTICIPATION INTERESTS IN ANY BOND, NOTE OR EVIDENCE OF INDEBTEDNESS IF CERTAIN CONDITIONS OCCUR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 7, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-736, IDAHO CODE, TO PROVIDE A SIXTY-FIVE PERCENT ASSET LIMITATION FOR INSURERS INVESTING IN MORTGAGES; AMENDING SECTION 41-2804, IDAHO CODE, TO ALLOW INSURERS TO ISSUE MORE THAN ONE CLASS OF STOCK AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 41-2835, IDAHO CODE, TO DELETE LANGUAGE STATING THAT A DIRECTOR OF A STOCK INSURER SHALL BE A STOCKHOLDER.

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

SECTION 1. That Section 41-721, Idaho Code, be, and the same is hereby amended to read as follows:

41-721. MORTGAGE LOANS AND CONTRACTS. An insurer may invest any of its funds in:

(1) Bonds or evidences of debt which are secured by first mortgages or deeds of trust on improved unencumbered real property located in the United States.

(2) The equity of the seller of any such property in the contract for a deed, covering the entire balance due on a bona fide sale of such property, in an amount not to exceed ten thousand dollars ($10,000) or the amount permissible under section 41-706, Idaho Code, whichever is greater, in any one (1) such contract for deed; nor in any amount in excess of seventy-five ~~per cent~~ percent (75%) of the actual sale price or fair value of the property, whichever is the smaller.

(3) Purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to section 41-728, Idaho Code.

(4) Bonds or notes secured by mortgage or trust deed guaranteed or insured by the federal housing administration under the terms of an act of Congress of the United States for June twenty-seventh, nineteen hundred thirty-four, entitled the "National Housing Act," as amended.

(5) Bonds or notes secured by mortgage or trust deed guaranteed or insured as to principal in whole or in part by the administrator of veterans' affairs pursuant to the provisions of title III of an act of Congress of the United States of June twenty-second, nineteen hundred forty-four, entitled the "Servicemen's Readjustment Act of 1944," as amended, or by any other similar agency of the government of the United States.

(6) Evidences of debt secured by first mortgages or deeds of trust upon leasehold estates, running for a term of not less than fifteen (15) years beyond the maturity of the loan as made or as extended, in improved real property, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold.

(7) Bonds or notes secured by mortgage and insured by mortgage guarantee insurance as provided by chapter 26A, title 41, Idaho Code.

(8) Participation interests in any bond, note or evidence of indebtedness if the entire indebtedness would qualify as an investment under subsections (1) through (7) of this section. and:

(a) Such participation is senior and gives the holder substantially the rights of a first mortgagee; or

(b) Such participation is of equal priority, to the extent of such interest, with other interests therein.

SECTION 2. That Chapter 7, 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 41-736, Idaho Code, and to read as follows:

41-736. PERMITTED INVESTMENTS. Subject to other limitation in chapter 7, title 41, Idaho Code, an insurer shall not invest or have invested at any one time more than sixty-five percent (65%) of its assets in investments described in sections 41-721 and 41-728, Idaho Code. Any insurer which, on July 1, 2003, has in excess of sixty-five percent (65%) of its assets so invested shall not make any further such investments while the excess exists. The limitations prescribed in this section shall not apply to mortgage-backed securities rated one or two by the securities valuation office (SVO) of the national association of insurance commissioners or to mortgage-backed securities which qualify as provisionally exempt from filing with the SVO.

SECTION 3. That Section 41-2804, Idaho Code, be, and the same is hereby amended to read as follows:

41-2804. INCORPORATION. (1) This section applies to stock and mutual insurers hereafter incorporated in this state.

(2) Incorporators. Seven (7) or more individuals who are citizens of this state may incorporate a stock insurer; ten (10) or more of such individuals may incorporate a mutual insurer.

(3) Articles of incorporation. The incorporators shall prepare and execute in triplicate articles of incorporation in accordance with the applicable provisions of chapters 1 and 3, title 30, Idaho Code, known as the "General Business Corporation" ~~L~~laws of this state, but subject to the following requirements:

(a) In addition to matters required or permitted under such ~~G~~general ~~B~~business ~~C~~corporation ~~L~~laws which are not inconsistent with this provision or this code, the articles of incorporation shall set forth:

(i) The name of the corporation, which shall comply with section 41-311, Idaho Code.

(ii) The kinds of insurance, as defined in this code, which the corporation is formed to transact.

(iii) If a stock corporation, its authorized capital stock, the number of shares of stock into which divided and the par value of each such share, which par value shall be at least one dollar ($1.00). ~~The articles shall provide for but one (1) class of stock, which class must be voting common stock with uniform par value and rights throughout such class.~~ Shares without par value shall not be authorized.

(iv) If a stock corporation, the extent, if any, to which shares of its stock are subject to assessment.

(v) If a mutual corporation, the maximum contingent liability of its members, for payment of losses and expenses incurred, other than as to nonassessable policies issued as permitted under section 41-2849, Idaho Code; such liability shall be as stated in the articles of incorporation, but shall not be less than one (1) nor more than six (6) annual premiums for the member's policy.

(vi) The name and residence address of each incorporator, and whether each such incorporator is a citizen of this state.

(b) Articles of incorporation shall be filed as provided in section 41-2805, Idaho Code.

SECTION 4. That Section 41-2835, Idaho Code, be, and the same is hereby amended to read as follows:

41-2835. DIRECTORS. (1) The affairs of every domestic insurer shall be managed by a board of directors consisting of not less than five (5) directors nor more than fifteen (15) directors.

(2) Directors shall be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than five (5) years each and until their successors are elected and have qualified, and if to be elected for terms of more than one (1) year the insurer's bylaws shall provide for a staggered term system under which the terms of a proportionate part of the members of the board of directors shall expire on the date of each annual meeting of stockholders or members.

(3) A ~~director of a stock insurer shall be a stockholder thereof,~~

~~and a~~ director of a mutual insurer shall be a policyholder thereof.

(4) As to an insurer operating as an authorized insurer only in the state of Idaho, a majority of the members of the insurer's board of directors shall be citizens of and shall actually reside in this state.

(5) Notwithstanding the provisions of subsection (1) of this section, a service corporation converted to a mutual insurer pursuant to section 41-2854A, Idaho Code, shall be managed by a board of directors consisting of not less than five (5) directors nor more than twenty-five (25) directors. In the case of a service corporation that was a professional service corporation under chapter 34, title 41, Idaho Code, immediately prior to the effective date of its plan of mutualization, the board of directors after the effective date may include professionals of the kind or kinds designated in the corporation's articles of incorporation as participant licensees immediately prior to such effective date, so long as a majority of directors are not professionals of the kind or kinds so designated. In the case of a service corporation that was a hospital service corporation under chapter 34, title 41, Idaho Code, immediately prior to the effective date of its plan of mutualization, the board of directors after the effective date shall include one (1) or more individuals representing a hospital or hospitals, so long as a majority of directors are not representing or employed by any hospital. In the case of a service corporation that was a combined professional service and hospital service corporation under chapter 34, title 41, Idaho Code, immediately prior to the effective date of its plan of mutualization, the board of directors after the effective date shall include one (1) or more individuals representing a hospital or hospitals, and one (1) or more professionals of the kind or kinds designated in the corporation's articles of incorporation as participant licensees immediately prior to such effective date, so long as a majority of directors are neither such professionals nor representing or employed by any hospital, nor any combination thereof; further, the number of directors who are hospital representatives shall equal the number of directors who are professionals of the kind or kinds designated as participant licensees in the corporation's articles of incorporation in effect immediately prior to such effective date. Notwithstanding the provisions of subsection (3) of this section, a director elected as a hospital representative need not be a policyholder so long as the represented hospital is a policyholder.

Approved March 27, 2003.

## CHAPTER 164
## (S.B. No. 1096)

### AN ACT

RELATING TO THE DEPARTMENT OF JUVENILE CORRECTIONS; AMENDING SECTION 9-340B, IDAHO CODE, TO PROVIDE THAT RECORDS OF THE CUSTODY REVIEW BOARD OF THE IDAHO DEPARTMENT OF JUVENILE CORRECTIONS SHALL BE EXEMPT FROM DISCLOSURE; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-533A, IDAHO CODE, TO PROVIDE THAT MEETINGS OF THE CUSTODY REVIEW BOARD SHALL BE HELD IN ACCORDANCE WITH OPEN MEETING LAWS, TO PROVIDE EXCEPTIONS, TO PROVIDE FOR THE

CONFIDENTIALITY OF CERTAIN RECORDS PRODUCED BY THE BOARD, TO PROVIDE A PENALTY FOR IMPROPER DISCLOSURE OF CONFIDENTIAL RECORDS AND TO LIMIT APPLICABILITY OF THE SECTION; AND AMENDING SECTION 67-2345, IDAHO CODE, TO AUTHORIZE EXECUTIVE SESSIONS OF THE CUSTODY REVIEW BOARD.

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, EVACUATION AND EMERGENCY RESPONSE PLANS, 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) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles, shall be exempt from public disclosure pursuant to section 20-533A, Idaho Code.

(4) (a) The following records of the department of correction:

(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 that contain any identifying information, 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) Records of buildings, facilities, infrastructures and systems held by or in the custody of any public agency only when the disclosure of such information would jeopardize the safety of persons or the public safety. Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operation and security manuals, plans, blueprints or security codes. For purposes of this section "system" shall mean electrical, heating, ventilation, air conditioning and telecommunication systems.

(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~~5) 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~~6) 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~~7) 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~~8) 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~~9) 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~~10) 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 furnished or obtained pursuant to section 41-1019, Idaho Code, regarding termination of an appointment, employment, contract or other insurance business relationship between an insurer and a producer.

(13) 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.

(14) Except as provided in section 72-1007, Idaho Code, records of the Idaho industrial commission relating to compensation for crime victims under chapter 10, title 72, Idaho Code.

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 20-533A, Idaho Code, and to read as follows:

20-533A. COMPLIANCE WITH OPEN MEETING LAW -- EXECUTIVE SESSIONS AUTHORIZED -- CONFIDENTIALITY OF RECORDS. (1) All meetings of the custody review board of the Idaho department of juvenile corrections shall be held in accordance with the open meeting law as provided in chapter 23, title 67, Idaho Code, provided however:

(a) Deliberations and decisions of the board concerning whether or not a juvenile shall be held in custody of the Idaho department of juvenile corrections for an extended period of time past his or her nineteenth birthday may be made in executive session; and

(b) Votes of individual members in custody decisions shall not be made public, provided that the board shall maintain a record of the votes of the individual members as required in subsection (2) of this section.

(2) A written record of the vote to retain the juvenile in custody for an extended period of time by each board member in each case reviewed by that member shall be produced by the board. Such record shall be kept confidential and privileged from disclosure, provided the record shall be made available upon request 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.

(3) A board member or employee of the Idaho department of juvenile corrections who distributes to any person not specifically listed in this section any hearing information or records that are legally required to be kept confidential shall be guilty of a misdemeanor.

(4) Nothing contained in this section shall prevent any person from obtaining the results of any action by the board or director of the Idaho department of juvenile corrections without reference to the manner in which any member voted, and the board shall make such information public unless doing so would violate public records laws.

(5) Nothing contained in this section shall prevent the director, designated staff of the director, the governor, the chairman of the senate judiciary and rules committee or the chairman of the house of representatives judiciary, rules and administration committee from attending any meeting, including any executive session, of the custody review board.

SECTION 3. That Section 67-2345, Idaho Code, be, and the same is hereby amended to read as follows:

67-2345. EXECUTIVE SESSIONS -- WHEN AUTHORIZED. (1) Nothing contained in this act shall be construed to prevent, upon a two-thirds (2/3) vote recorded in the minutes of the meeting by individual vote, a governing body of a public agency from holding an executive session during any meeting, after the presiding officer has identified the authorization under this act for the holding of such executive session. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent. This paragraph does not apply to filling a vacancy in an elective office;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation;

(g) By the commission of pardons and parole, as provided by law;

(h) By the sexual offender classification board, as provided by chapter 83, title 18, Idaho Code;

<u>(i) By the custody review board of the Idaho department of juvenile corrections, as provided by law.</u>

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

Approved March 27, 2003.

## CHAPTER 165
## (S.B. No. 1099)

AN ACT

RELATING TO THE ILLEGAL DIVERSION OR USE OF WATER; AMENDING SECTION 42-351, IDAHO CODE, TO SPECIFY CONDUCT THAT CONSTITUTES AN ILLEGAL DIVERSION OR USE OF WATER AND TO AUTHORIZE THE DIRECTOR TO TAKE CERTAIN ACTIONS UPON INVESTIGATION OF AVAILABLE INFORMATION; AND AMENDING SECTION 42-1701B, IDAHO CODE, TO REVISE CONTENT REQUIREMENTS FOR NOTICES OF VIOLATION, TO REVISE CIVIL PENALTY PROVISIONS FOR SPECIFIED ILLEGAL DIVERSION OR USE OF WATER, TO PROVIDE THAT DESIGNATED ACTION DOES NOT AFFORD RELIEF FROM CERTAIN CIVIL LIABILITY AND TO PROVIDE CORRECT REFERENCES.

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

SECTION 1. That Section 42-351, Idaho Code, be, and the same is hereby amended to read as follows:

42-351. ILLEGAL DIVERSION OR USE OF WATER -- ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF. (1) ~~If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted~~ It is unlawful for any person to divert or use water from a natural watercourse or from a ground water source without having obtained a valid water right to do so, or ~~is applying water or has applied~~ to divert or use water not in conformance with a valid water right.~~, then~~

(2) It is unlawful for any person to divert or use water in substantial violation of any provision of this title, or any rule, permit, condition of approval or order issued or promulgated pursuant to this title that is related to the diversion or use of water.

(3) Upon investigation of available information, the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water.

(4) Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

SECTION 2. That Section 42-1701B, Idaho Code, be, and the same is hereby amended to read as follows:

42-1701B. ENFORCEMENT PROCEDURE -- NOTICE -- CONSENT ORDER -- CIVIL ACTION. (1) Authority to commence actions. The director of the department of water resources is authorized and may commence and pursue enforcement actions to remedy the designated violations set out in title 42, Idaho Code.

(2) Notice. When the director commences an administrative enforcement action the notice of violation shall be served upon the alleged violator in person or by certified mail. The notice of violation shall identify the alleged violation and shall specify each provision of the designated chapter, rule, permit, condition of approval or order which has been violated. The notice of violation shall state the remedy, including ~~all~~ any demand to cease and desist, restoration and mitigation measures, and the amount of any civil penalty the director seeks for redress of the violation. Factors the director may consider in seeking the appropriate remedy include the impact of the violation and whether the violation was willful, a repeat violation for which the violator had been given a prior written warning, or the violator has otherwise refused to comply with the department's lawful directives. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation.

(3) Response. A written response may be required within fourteen (14) days of the receipt of the notice of violation by the person to whom it is directed. If a recipient of a notice of violation contacts the department within fourteen (14) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty-one (21) days of the receipt of the notice unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in this section.

(4) Compliance conference and consent order. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstance of the alleged violation and, where appropriate, to present a proposal for remedying the damage caused by the violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty. The consent order shall be effective immediately upon signing by both parties and shall preclude a civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, specific performance of the consent order and other relief as authorized by law. If the parties cannot agree to a consent order within fifty-six (56) days after the receipt of the notice of violation, or if the recipient does not request a compliance conference, the director may commence and prosecute a civil enforcement action in the district court in accordance with this section.

(5) Civil enforcement actions.

(a) The director may initiate a civil enforcement action through the attorney general as provided in this section. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may

be brought against any person who is alleged to have substantially violated any provision of title 42, Idaho Code, or any rule promulgated pursuant to that title. The action may be brought to compel compliance with provisions of title 42, Idaho Code, or rules promulgated pursuant to that title. The director shall not be required to prosecute an administrative enforcement action before initiating a civil enforcement action.

(b) Nothing in this section shall preclude employees of the department designated by the director from issuing Idaho uniform citations or written administrative orders directing persons to cease and desist as authorized by law.

(c) If the person who is the subject of the notice of violation fails to cease and desist the activity or activities constituting the alleged violation within the time limits set in the notice of violation, the director may seek, by and through the attorney general, injunctive relief in the district court pending the outcome of the administrative enforcement action.

(d) In an action brought against a person for diverting water without having obtained a valid water right to do so, the director need not allege or prove that irreparable injury to the state or to other water users will occur should the preliminary injunction not be issued or that the remedy at law is inadequate, and the preliminary injunction or permanent injunction shall issue without those allegations and without that proof.

(6) Penalties.

(a) Any person determined in a judicial civil enforcement action to have substantially violated any designated provision of title 42, Idaho Code, or any rule promulgated pursuant to that title, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one hundred fifty dollars ($150) per day for a continuing violation, whichever is greater; except that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:

(i) For nonirrigation uses, fifty dollars ($50.00) per one-tenth (0.1) cubic feet per second of water or part thereof, diverted per calendar day, or fifty dollars ($50.00) per two tenths (0.2) of an acre foot of water or part thereof diverted to storage, up to a maximum penalty of fifty thousand dollars ($50,000) per year for water illegally used or diverted;

(ii) For irrigation uses, three hundred dollars ($300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

(b) Civil penalties shall not be assessed for violations that have occurred more than twelve (12) months prior to the issuance of the notice of violation. The court shall determine the amount of the penalty based upon the willfulness of the violation, the economic value obtained by the violator and the damage to public resources and other water right holders. A method of recovery of the penalty shall be a civil enforcement action in and for the county where the violation occurred.

(c) All civil penalties collected under this section shall be paid into the water right enforcement account established pursuant to section 42-1778, Idaho Code.

(d) Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(7) No action taken pursuant to this section shall relieve any person from any civil ~~action~~ liability and damages that may exist for injury or damage resulting to others. ~~from any violation of this chapter, or the rules promulgated pursuant to this chapter.~~

(8) Upon request of the director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions pursuant to this ~~chapter~~ section.

Approved March 27, 2003.

## CHAPTER 166
## (S.B. No. 1100)

AN ACT

RELATING TO WATER RIGHTS; AMENDING SECTION 42-223, IDAHO CODE, TO CLARIFY INTENT OF THE LEGISLATURE NOT TO DIMINISH OR IMPAIR CERTAIN STATUTORY OR COMMON LAW DEFENSES TO FORFEITURE AND TO PROVIDE THAT WATER CONSERVATION PRACTICES DO NOT SUBJECT WATER RIGHTS TO FORFEITURE; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-250, IDAHO CODE, TO RECOGNIZE AND DEFINE WATER CONSERVATION PRACTICES AND CONSERVED WATER; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-223, Idaho Code, be, and the same is hereby amended to read as follows:

42-223. EXCEPTIONS OR DEFENSES TO FORFEITURE. A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section 42-222, Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section. The legislature does not intend through enactment of this section to diminish or impair any statutory or common law exception or defense to forfeiture existing on the date of enactment or amendment of this section, or to preclude judicial or administrative recognition of other exceptions or defenses to forfeiture recognized in Idaho case law or other provisions of the Idaho Code. No provision of this section shall be construed to imply that the legislature does not recognize the existence or validity of any common law exception or defense to forfeiture existing on the date of enactment or amendment of this section.

(1) A water right appurtenant to land contracted in a federal cropland set-aside program shall not be lost or forfeited for nonuse during the contracted period. The running of any five (5) year period of nonuse for forfeiture of a water right shall be tolled during the time that the land remains in the cropland set-aside program.

(2) A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs.

(3) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to, discharge from dairy lagoons used in combination with or substituted for water diverted under the water right.

(4) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section 42-233a or 42-233b, Idaho Code.

(5) A water right shall not be lost or forfeited by a failure of the owner of the right to divert and apply the water to beneficial use while the water right is placed in the water supply bank or is retained in or rented from the water supply bank pursuant to sections 42-1761 through 42-1765A, Idaho Code, or while the water right is leased pursuant to sections 43-335 through 43-342, Idaho Code, or sections 42-2501 through 42-2509, Idaho Code, or while use of the water is made under any other provision of law authorizing the rental or lease of water rights.

(6) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

(7) No portion of a water right held by an irrigation district, a Carey Act operating company, or any other company, corporation, association, or entity which holds water rights for distribution to its landowners, shareholders or members shall be lost or forfeited due to nonuse by such landowners, shareholders or members, unless the nonuse is subject to the control of such entity.

(8) No portion of a water right held by an irrigation district shall be lost, forfeited or subject to forfeiture as a result of the exclusion of land from the district pursuant to chapter 11, title 43, Idaho Code, so long as any five (5) year period of nonuse following the exclusion does not result from circumstances over which the district has control.

(9) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from a water conservation practice, which maintains the full beneficial use authorized by the water right, as defined in section 42-250, Idaho Code.

SECTION 2. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-250, Idaho Code, and to read as follows:

42-250. WATER CONSERVATION. (1) The legislature finds that voluntary water conservation practices and projects can advance the policy of the state of Idaho to promote and encourage the conservation, development, augmentation and utilization of the water resources of this state. The legislature deems it appropriate, therefore, to encourage and support voluntary water conservation practices and projects.

(2) For purposes of this section, "water conservation practice" means any practice, improvement, project or management program, that results in the diversion of less than the authorized quantity of water while maintaining the full beneficial use(s) authorized by the water

right. Water conservation practices include, but are not limited to, practices that result in reductions in consumptive use as defined in section 42-202B, Idaho Code, reductions in conveyance losses, and reductions in surface and seepage losses occurring at the place of use.

(3) For the purposes of this section, "conserved water" means the quantity of water that is no longer diverted as a result of a water conservation practice. Conserved water shall not include quantities of water not diverted due to decreases in beneficial use.

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 27, 2003.

## CHAPTER 167
## (S.B. No. 1101)

AN ACT

RELATING TO DESCRIPTIONS OF WATER RIGHTS; AMENDING SECTION 42-1411, IDAHO CODE, TO PROVIDE THAT AN OBJECTION TO A DIGITAL BOUNDARY DESCRIPTION OF A WATER RIGHT IN THE SNAKE RIVER BASIN ADJUDICATION SHALL NOT BE REQUIRED TO USE SIMILAR TECHNOLOGY-BASED DESCRIPTIONS; AND AMENDING SECTION 42-1413, IDAHO CODE, TO PROVIDE THAT THE FILING OF A DECREE WITH THE COUNTY RECORDER SHALL NOT SUPERSEDE THE LEGAL DESCRIPTION OF IRRIGATION DISTRICT BOUNDARIES RECORDED AS PROVIDED IN CHAPTER 7, TITLE 43, IDAHO CODE.

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

SECTION 1. That Section 42-1411, Idaho Code, be, and the same is hereby amended to read as follows:

42-1411. REPORT OF THE DIRECTOR. (1) The director shall prepare a director's report on the water system. The director may file the director's report in parts as the director deems appropriate. The director may include such explanatory material as he deems appropriate in the director's report. Such explanatory material shall not impose any conditions or restrictions on the rights reported and shall not be subject to objection. This explanatory material shall not be used to support any notice of claim, objection to a notice of claim, or response to an objection.

(2) The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:

(a) the name and address of the claimant;

(b) the source of water;

(c) the quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right;

(d) the date of priority;

(e) the legal description of the point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(f) the purpose of use;

(g) the period of the year when water is used for such purposes;

(h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except that the place of use may be described using a general description in the manner provided under section 42-219, Idaho Code, which may consist of a digital boundary as defined in section 42-202B, Idaho Code, if the irrigation project would qualify to be so described under section 42-219, Idaho Code;

(i) conditions on the exercise of any water right included in any decree, license, or approved transfer application; and

(j) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

(3) The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights.

(4) The director shall file the director's report with the district court, and the director's report shall be a part of the record. Upon filing with the court, the director's report, except for the explanatory material referred to in subsection (1) of this section, shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law. The unobjected to portions of the director's report shall be decreed as reported.

(5) Each claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right. Since the director's report is prima facie evidence of the nature and extent of the water rights acquired under state law, a claimant of a water right acquired under state law has the burden of going forward with the evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report. Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection. Provided however, that a claimant objecting to the director's recommended place of use described by a digital boundary or other similar technology shall not be required to produce digital boundary or other similar technology-generated evidence in order to meet the burden provided by this section. Places of use described using digital boundaries or other similar technology-based descriptions shall not be entitled to any greater weight than descriptions by metes and bounds, the number of irrigated acres within each forty (40) acre subdivision, or other method adequate for the description of water rights. Any other party to the proceeding may submit evidence in opposition to the objector's position and in support of the director's report. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

(6) The director shall file an original of the director's report with the district court. The director shall also distribute for display and review at least one (1) copy of the director's report to the office

of the clerk of the district court for each county in which any part of the water system is located. The director shall also serve on each claimant or the claimant's attorney whose water right is listed in the director's report a notice of filing of the director's report. Notice shall be sent to the last known address of the claimant or the claimant's attorney. The notice shall be prepared by the director using plain and concise language and shall include:

(a) a statement that the director's report of the various water rights acquired under state law has been filed with the district court, naming the district court(s) to which the report was filed;

(b) a copy of that portion of the report setting forth the claimant's water right;

(c) a statement that a complete copy of the director's report is available for inspection, listing the locations at which the director's report is available, which shall include the office of the clerk of the district court for each county in which any part of the water system is located, the offices of the department, and any other locations the director may designate;

(d) a statement that all or a portion of the director's report is available upon request at the offices of the department, subject to payment of a reasonable fee to cover costs of reproduction and mailing;

(e) a statement that any claimant may file objections to any portion of the director's report with the district court specified in the notice and must mail a copy of the objection to the director, and to the claimant of each claimed right objected to, if the objector is not also the claimant of the right for which the objection is filed;

(f) the date prior to which all objections must be filed, which shall not be less than sixty (60) days for any director's report containing five hundred (500) claims or less, one hundred twenty (120) days for any director's report containing more than five hundred (500) claims and not more than five thousand (5,000) claims, and one hundred eighty (180) days for any director's report containing more than five thousand (5,000) claims; the above-stated periods of time shall commence on the date of service by mail of the notice of filing;

(g) a statement that claimants may file responses with the court to objections filed against their claims, and that a copy of any response must be mailed to the director and to the objector;

(h) the date prior to which all responses to objections must be filed with the court, which shall not be less than sixty (60) days following receipt of a copy of the objection; and

(i) a statement that any part of the report to which no objections are filed shall be decreed by the district court and the time and location set for the hearing at which the unobjected parts of the report will be decreed, which time shall not be less than sixty (60) days following the expiration of the period for filing objections.

(7) The director shall file an affidavit with the district court demonstrating compliance with the notice requirements of subsection (6) of this section.

SECTION 2. That Section 42-1413, Idaho Code, be, and the same is hereby amended to read as follows:

42-1413. FILING OF FINAL DECREE. (1) When a decree has become final in an adjudication in which the director filed a report, the director shall file a certified copy of the decree or a transcript thereof in the office of the county recorder of each county in which the place of use or point of diversion of the water rights contained in the decree is located.

(2) Upon entry of a final decree, the director shall administer the water rights by distributing water in accordance with the final decree and with title 42, Idaho Code.

(3) When a decree has become final in an adjudication in which the director has not filed a report, the clerk of the district court in which the decree is entered shall file a certified copy of the decree or a transcript thereof in the office of the county recorder for each county in which the place of use or point of diversion of the water rights decreed is located, and shall send a certified copy of the decree to the director as required in section 42-1403, Idaho Code.

(4) The transcript of decree shall contain the following:

(a) title of the district court;

(b) name of the case;

(c) the case number;

(d) names of each party;

(e) date of entry;

(f) the description of the boundaries of the water system, which is the subject of the general adjudication;

(g) a statement that the decree is entered in the records of the clerk of the district court;

(h) a statement that information as to the rights decreed is available at the offices of the department; and

(i) such other information as may be necessary to assist any person searching the title of a parcel to find the decree.

(5) A decree or transcript recorded pursuant to this section from the time it is filed with the recorder for record, is constructive notice of the contents of the decree within the county in which the decree or transcript is recorded to subsequent purchasers and mortgagees.

(6) Notwithstanding the filing of a certified copy of the decree or a transcript thereof in the office of the county recorder, only the legal description of an irrigation district's boundaries recorded in compliance with title 43, Idaho Code, shall constitute conclusive proof of the district's boundaries. The decree shall not be construed to define, limit or otherwise affect the apportionment of benefits to lands within an irrigation district pursuant to chapter 7, title 43, Idaho Code. A notice consistent with this subsection shall be filed with the certified copy of the decree or a transcript thereof.

Approved March 27, 2003.

CHAPTER 168
(S.B. No. 1130, As Amended)

AN ACT

RELATING TO COMPENSATION FOR STATE EMPLOYEES; AMENDING SECTION 67-5309C, IDAHO CODE, TO PROVIDE FOR GRANTING OF BONUSES TO EMPLOYEES FOR SUGGESTIONS OR RECOMMENDATIONS WHICH RESULTED IN COST SAVINGS OR GREATER EFFICIENCIES; AND AMENDING SECTION 59-1603, IDAHO CODE, TO PROVIDE FOR GRANTING OF BONUSES TO EMPLOYEES FOR SUGGESTIONS OR RECOMMENDATIONS WHICH RESULTED IN COST SAVINGS OR GREATER EFFICIENCIES AND TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 67-5309C, Idaho Code, be, and the same is hereby amended to read as follows:

67-5309C. PAY GRADES AND MERIT INCREASES. (a) The following schedule establishes the pay grades for all positions classified pursuant to chapter 53, title 67, Idaho Code.

STATE OF IDAHO
PAY GRADE SCHEDULE

| GRADE | JOB EVALUATION POINTS | | | GRADE | JOB EVALUATION POINTS | | |
|---|---|---|---|---|---|---|---|
| | Minimum | Mid-point | Maximum | | Minimum | Mid-point | Maximum |
| A | 93 or less | 99 | 106 | M | 493 | 531 | 566 |
| B | 107 | 114 | 122 | N | 567 | 610 | 655 |
| C | 123 | 131 | 140 | O | 656 | 702 | 753 |
| D | 141 | 151 | 161 | P | 754 | 807 | 867 |
| E | 162 | 173 | 185 | Q | 868 | 928 | 997 |
| F | 186 | 200 | 213 | R | 998 | 1067 | 1146 |
| G | 214 | 229 | 245 | S | 1147 | 1227 | 1319 |
| H | 246 | 263 | 281 | T | 1320 | 1412 | 1516 |
| I | 282 | 303 | 325 | U | 1517 | 1623 | 1744 |
| J | 326 | 349 | 374 | V | 1745 | 1867 | 2006 |
| K | 375 | 401 | 430 | W | 2007 | 2147 | 2307 |
| L | 431 | 461 | 492 | X | 2308 | 2469 | — |

(b) It is hereby declared to be the intent of the legislature that an employee may expect to advance in the salary range to the labor market average rate for the pay grade assigned to a classification. Advancement in pay shall be based solely on performance, including factors such as productivity, reliability, effectiveness, and the ability to achieve the goals and objectives of the particular position. No employee shall advance in a salary range without performance evaluation by the employee's immediate supervisor, approved by the departmental director or the director's designee certifying that the employee meets the performance criteria of the assigned position.

(i) When necessary to obtain or retain qualified personnel in a particular classification, upon petition of the appointing authority to the administrator containing acceptable reasons therefor, a higher temporary pay grade may be authorized by the administrator which, if granted, shall be reviewed annually to determine the need for continuance.

(ii) Each employee's work performance shall be evaluated after one

thousand forty (1,040) hours of credited state service from the date of initial appointment or promotion and after each two thousand eighty (2,080) hours of credited state service thereafter by his or her immediate supervisor. Employees may be eligible for advancement in pay, if certified as meeting the performance requirements of subsection (b) of this section; however, such in-grade advancement shall not be construed as a vested right. The department director shall designate, upon agreement with the employee, whether such in-grade advancement is temporary, conditional or permanent. It shall be the specific responsibility of the supervisor and the departmental director to effect the evaluation prescribed in subsection (b) of this section on an evaluation form approved by the administrator for that purpose.

(iii) In addition to pay increases authorized in paragraph (ii) of this subsection, the department director may grant a classified employee holding permanent status a lump sum bonus not to exceed one thousand dollars ($1,000) in any given fiscal year based upon excellent performance as indicated by the performance evaluation as outlined in subsection (b) of this section. Exceptions to the one thousand dollar ($1,000) limit provided in this ~~section~~ paragraph may be granted if approved in advance by the state board of examiners.

(iv) In addition to pay increases authorized in paragraph (ii) of this subsection, the department director may grant a classified employee holding permanent status a lump sum bonus not to exceed one thousand dollars ($1,000) in any given fiscal year based upon suggestions or recommendations made by the employee which resulted in taxpayer savings as a result of cost savings or greater efficiencies to the department or to the state of Idaho in excess of the amount of the bonus. Exceptions to the one thousand dollar ($1,000) limit provided in this paragraph may be granted if approved in advance by the state board of examiners.

SECTION 2. That Section 59-1603, Idaho Code, be, and the same is hereby amended to read as follows:

59-1603. CONFORMITY WITH CLASSIFIED POSITIONS. (1) To the extent possible, each nonclassified position in the executive department will be paid a salary or wage comparable to classified positions with similar duties, responsibilities, training, experience and other qualifications. Temporary employees and agricultural inspectors referred to in subsections (n) and (p) of section 67-5303, Idaho Code, shall not be entitled to sick leave accruals provided in section 59-1605, Idaho Code, vacation leave provided in section 59-1606, Idaho Code, nor holiday pay defined in subsection (14~~5~~) of section 67-5302, Idaho Code, unless contributions are being made to the public employee retirement system in accordance with chapter 13, title 59, Idaho Code, and rules promulgated by the retirement board. Vacation and sick leave accruals, but not holiday pay, shall be awarded retroactively, if necessary, to the date such employees become eligible for retirement system membership.

(2) To the extent possible, each nonclassified position in the legislative department will be paid a salary or wage comparable to classified positions with similar duties, responsibilities, training, experience and other qualifications.

(3) The supreme court shall determine the schedules of salary and compensation for all officers and employees of the judicial department which are not otherwise fixed by law. To the extent possible, the supreme court shall adopt schedules which are compatible with the state's accounting system. The judicial department may also maintain personnel records and files under such system as is ordered by the supreme court.

(4) The state board of education shall determine the schedules of salary and compensation, and prescribe policies for overtime and compensatory time off from duty, for all officers and employees of the state board of education who are not subject to the provisions of chapter 53, title 67, Idaho Code, and which are not otherwise fixed by law. To the extent possible, the state board of education shall adopt schedules and policies which are compatible with the state's accounting system. The state board of education may also maintain personnel records and files under a system of its own, if approved by the state controller.

(5) Members of the legislature, the lieutenant governor, other officers whose salaries are fixed by law, and members of part-time boards, commissions and committees shall be paid according to law.

(6) Any schedule of salary and compensation, if not the schedule prescribed by section 67-5309C(a), Idaho Code, must be approved by the appointing authority and be communicated to the state controller in writing at least thirty (30) days in advance of the effective date of the schedule.

(7) In addition to salary increases provided by any compensation schedule adopted pursuant to paragraph (6) of this section, nonclassified officers and employees, except those who are elected officials or whose salaries are fixed by law, may be granted a lump sum bonus not to exceed one thousand dollars ($1,000) in any given fiscal year based upon an affirmative certification of meritorious service. Exceptions to the one thousand dollar ($1,000) limit provided in this section may be granted if approved in advance by the state board of examiners.

(8) In addition to salary increases provided by any compensation schedule, nonclassified officers and employees holding permanent status, except those who are elected officials or whose salaries are fixed by law, may be granted a lump sum bonus not to exceed one thousand dollars ($1,000) in any given fiscal year based upon suggestions or recommendations made by the employee which resulted in taxpayer savings as a result of cost savings or greater efficiencies to the department, office or institution or to the state of Idaho in excess of the amount of the bonus. Exceptions to the one thousand dollar ($1,000) limit provided in this subsection may be granted if approved in advance by the state board of examiners.

(9) Each appointing authority, including the elective offices in the executive department, the legislative department, the judicial department, and the state board of education and the board of regents, shall comply with all reporting requirements necessary to produce the list of employee positions prescribed by section 67-3519, Idaho Code.

(~~9~~10) The adjutant general, with the approval of the governor, shall prescribe personnel policies for all officers and employees of the national guard which are not otherwise fixed by law. Such policies will include an employee grievance procedure with appeal to the adjutant gen-

eral. The adjutant general shall determine schedules of salary and compensation which are, to the extent possible, comparable to the schedules used for federal civil service employees of the national guard and those employees serving in military status. Schedules adopted shall be compatible with the state's accounting system to the extent possible.

Approved March 27, 2003.

## CHAPTER 169
## (S.B. No. 1140)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Insurance the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|---|
| I. INSURANCE REGULATION: | | | | | |
| FROM: | | | | | |
| Self-Governing Operating Fund | $3,103,900 | $1,713,500 | $ 99,100 | | $4,916,500 |
| Miscellaneous Revenue Fund | 38,300 | 8,900 | | | 47,200 |
| Federal Grant Fund | 103,700 | 48,600 | | $2,500 | 154,800 |
| TOTAL | $3,245,900 | $1,771,000 | $ 99,100 | $2,500 | $5,118,500 |
| II. STATE FIRE MARSHAL: | | | | | |
| FROM: | | | | | |
| Self-Governing State Fire Marshal Fund | $ 550,200 | $ 267,600 | $ 16,400 | | $ 834,200 |
| GRAND TOTAL | $3,796,100 | $2,038,600 | $115,500 | $2,500 | $5,952,700 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Insurance is authorized no more than sixty-eight and one-half (68.5) full-time equivalent positions at any point during the

period July 1, 2003, through June 30, 2004, 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 28, 2003.

## CHAPTER 170
## (S.B. No. 1141)

### AN ACT
### APPROPRIATING MONEYS TO THE LIEUTENANT GOVERNOR FOR FISCAL YEAR 2004; 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 amount from the listed fund for the period July 1, 2003, through June 30, 2004:

| | |
|---|---|
| FOR: | |
| Lieutenant Governor | $112,700 |
| FROM: | |
| General Fund | $112,700 |

SECTION 2. 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, 2003, through June 30, 2004, 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 28, 2003.

## CHAPTER 171
## (S.B. No. 1142)

### AN ACT
### APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Finance the following amount, to be expended according to the designated expense classes from the listed fund for the period July 1, 2003, through June 30, 2004:

| | |
|---|---|
| FOR: | |
| Personnel Costs | $2,589,300 |
| Operating Expenditures | 712,800 |
| Capital Outlay | 105,000 |
| TOTAL | $3,407,100 |

FROM:

| | |
|---|---|
| State Regulatory Fund | $3,407,100 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than forty-three (43) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 28, 2003.

## CHAPTER 172
## (S.B. No. 1145)

AN ACT

APPROPRIATING MONEYS TO THE LEGISLATIVE COUNCIL FOR FISCAL YEAR 2004; AND PROVIDING THAT THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL DIRECT THE STATE CONTROLLER TO LIMIT THE FUNDS TRANSFER TO THE LEGISLATIVE FUND.

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

SECTION 1. There is hereby appropriated to the Legislative Council the following amounts to be expended from the listed funds for the period July 1, 2003, through June 30, 2004:

| | |
|---|---|
| A. LEGISLATIVE SERVICES OFFICE: | |
| FROM: | |
| General Fund | $3,440,900 |
| Miscellaneous Revenue Fund | 44,000 |
| Professional Services Fund | 1,086,400 |
| TOTAL | $4,571,300 |
| B. LEGISLATIVE TECHNOLOGY: | |
| FROM: | |
| General Fund | $ 342,300 |
| C. OFFICE OF PERFORMANCE EVALUATIONS: | |
| FROM: | |
| General Fund | $ 557,100 |
| GRAND TOTAL | $5,470,700 |

SECTION 2. On July 1, 2003, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall direct the State Controller to limit the amount transferred from the General Fund to the Legislative Fund pursuant to Section 67-451(2), Idaho Code, to $4,793,800 for the period July 1, 2003, through June 30, 2004.

Approved March 28, 2003.

CHAPTER 173
(S.B. No. 1146)

AN ACT

APPROPRIATING MONEYS TO THE BOARD OF LAND COMMISSIONERS FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 2004; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; PROVIDING A CONTINUOUS APPROPRIATION FOR CERTAIN COSTS; AND EXPRESSING LEGISLATIVE INTENT REGARDING THE TRANSFER OF MONEYS FROM THE EARNINGS RESERVE FUNDS TO THE INCOME FUNDS.

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

SECTION 1. There is hereby appropriated to the State Board of Land Commissioners for the Endowment Fund Investment Board the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| ENDOWMENT FUND INVESTMENT BOARD: | | | | |
| FROM: | | | | |
| Endowment Administrative Fund | $296,600 | $171,600 | $4,300 | $472,500 |
| Miscellaneous Revenue Fund | 107,400 | 44,100 | 1,500 | 153,000 |
| TOTAL | $404,000 | $215,700 | $5,800 | $625,500 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Endowment Fund Investment Board is authorized no more than five (5) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. The Endowment Fund Investment Board is hereby granted continuous appropriation authority for moneys in the Endowment Administrative Fund for consulting fees, bank custodial fees and portfolio-related external costs for the period July 1, 2003, through June 30, 2004.

SECTION 4. It is legislative intent that for fiscal year 2004, the Endowment Fund Investment Board transfer $55,105,000 as follows: $37,750,000 from the Public School Earnings Reserve Fund to the Public School Income Fund; $960,000 from the Agricultural College Earnings Reserve Fund to the Agricultural College Income Fund; $3,430,000 from the Charitable Institutions Earnings Reserve Fund to the Charitable Institutions Income Fund; $3,195,000 from the Normal School Earnings Reserve Fund to the Normal School Income Fund; $1,215,000 from the Penitentiary Earnings Reserve Fund to the Penitentiary Income Fund; $3,785,000 from the Scientific School Earnings Reserve Fund to the Scientific School Income Fund; $1,660,000 from the Mental Hospital Earnings

Reserve Fund to the Mental Hospital Income Fund; and $3,110,000 from the University Earnings Reserve Fund to the University Income Fund.

Approved March 28, 2003.

## CHAPTER 174
## (H.B. No. 328)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 2004; 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, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| I. RETIREMENT ADMINISTRATION: | | | | |
| FROM: | | | | |
| PERSI Administrative Fund | $2,747,000 | $2,520,100 | $ 99,600 | $5,366,700 |
| II. PORTFOLIO INVESTMENT: | | | | |
| FROM: | | | | |
| PERSI Special Fund | $ 413,300 | $ 204,000 | $ 15,500 | $ 632,800 |
| GRAND TOTAL | $3,160,300 | $2,724,100 | $115,100 | $5,999,500 |

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-three (63) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 28, 2003.

## CHAPTER 175
## (H.B. No. 330)

### AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF HUMAN RESOURCES FOR FISCAL YEAR 2004; 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 Governor 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, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| DIVISION OF HUMAN RESOURCES: | | | | |
| FROM: | | | | |
| Division of Human Resources Fund | $2,034,500 | $578,000 | $27,200 | $2,639,700 |
| Seminars and Publications Fund | | 130,000 | | 130,000 |
| TOTAL | $2,034,500 | $708,000 | $27,200 | $2,769,700 |

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, 2003, through June 30, 2004, 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 28, 2003.

## CHAPTER 176
## (H.B. No. 340)

### AN ACT

APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 2004; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND REAPPROPRIATING 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, 2003, through June 30, 2004:

| | |
|---|---|
| FOR: | |
| Personnel Costs | $ 6,851,800 |
| Operating Expenses | 3,006,400 |
| Capital Outlay | 159,000 |
| TOTAL | $10,017,200 |
| FROM: | |
| Liquor Control Fund | $10,017,200 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Liquor Dispensary is authorized no more than one hundred fifty (150) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 2003, to be used for the same purpose for the period July 1, 2003, through June 30, 2004. The reappropriation is limited to $450,000 from the Liquor Control Fund.

Approved March 28, 2003.

## CHAPTER 177
## (H.B. No. 341)

AN ACT
APPROPRIATING MONEYS FOR THE IDAHO WOMEN'S COMMISSION FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Idaho Women's Commission the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| FROM: | | | |
| General Fund | $27,700 | $ 9,100 | $36,800 |
| Miscellaneous Revenue Fund | | 6,700 | 6,700 |
| TOTAL | $27,700 | $15,800 | $43,500 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho Women's Commission is authorized no more than fifty-two hundredths (0.52) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 28, 2003.

## CHAPTER 178
## (H.B. No. 342)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO STATE LOTTERY FOR FISCAL YEAR 2004; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT TO CLARIFY THE SCOPE OF THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Idaho State Lottery in the Department of Self-Governing Agencies the following amounts, to be expended for administrative costs according to the designated expense classes from the listed fund for the period July 1, 2003, through June 30, 2004:

| | |
|---|---|
| FOR: | |
| Personnel Costs | $ 2,371,100 |
| Operating Expenditures | 7,996,000 |
| Capital Outlay | 62,400 |
| TOTAL | $10,429,500 |
| FROM: | |
| State Lottery Fund | $10,429,500 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho State Lottery is authorized no more than forty-seven (47) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that amounts necessary to pay prizes, retailer commissions, advertising and promotional costs shall be continuously appropriated to the Idaho State Lottery under the provisions of Section 67-7428, Idaho Code.

Approved March 28, 2003.

## CHAPTER 179
## (H.B. No. 343)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE OFFICE OF SPECIES CONSERVATION FOR FISCAL YEAR 2004; 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 Office of Species Conservation the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|
| FROM: | | | | |
| General Fund | $417,700 | $105,200 | | $ 522,900 |
| Miscellaneous Revenue Fund | | 15,000 | | 15,000 |
| Federal Grant Fund | 100,000 | 300,000 | $1,100,000 | 1,500,000 |
| TOTAL | $517,700 | $420,200 | $1,100,000 | $2,037,900 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Office of Species Conservation is authorized no more than six (6) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 28, 2003.

## CHAPTER 180
## (S.B. No. 1147)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 2004; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; REAPPROPRIATING CERTAIN FUNDS FOR CAPITAL OUTLAY; AUTHORIZING THE CONTINUOUS APPROPRIATION OF CERTAIN FUNDS TO OPERATE THE DEPARTMENT'S ENTREPRENEURIAL BUDGET SYSTEM; APPROPRIATING MONEYS TO THE LAVA HOT SPRINGS FOUNDATION FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Parks and Recreation the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|---|
| I. MANAGEMENT SERVICES DIVISION: | | | | | |
| FROM: | | | | | |
| General Fund | $ 1,456,600 | $ 293,100 | | | $ 1,749,700 |
| Indirect Cost Recovery Fund | 103,800 | 36,700 | $ 2,000 | | 142,500 |
| Parks and Recreation Fund | 627,900 | 647,000 | 23,000 | $ 50,000 | 1,347,900 |
| Recreational Fuels Fund | 347,200 | 62,100 | 27,000 | 2,118,700 | 2,555,000 |
| Parks and Recreation Registration Fund | 124,100 | 213,300 | 4,000 | 6,971,000 | 7,312,400 |
| Miscellaneous Revenue Fund | 3,000 | 17,600 | | | 20,600 |
| Petroleum Price Violation Fund | | | | 100,000 | 100,000 |
| Federal Grant Fund | 78,700 | 5,200 | | 1,492,400 | 1,576,300 |
| TOTAL | $ 2,741,300 | $1,275,000 | $ 56,000 | $10,732,100 | $14,804,400 |
| II. PARK OPERATIONS: | | | | | |
| FROM: | | | | | |
| General Fund | $ 3,801,900 | $ 737,400 | | | $ 4,539,300 |
| Indirect Cost Recovery Fund | 33,300 | 2,400 | | | 35,700 |
| Parks and Recreation Fund | 1,729,800 | 1,147,600 | | | 2,877,400 |
| Recreational Fuels Fund | 262,900 | 105,100 | $1,273,200 | | 1,641,200 |
| Parks and Recreation Registration Fund | 211,400 | 185,200 | 109,600 | | 506,200 |
| Miscellaneous Revenue Fund | 6,700 | 77,500 | | | 84,200 |
| Public Recreation Enterprise Fund | 304,400 | 644,500 | 120,000 | | 1,068,900 |
| Parks and Recreation Expendable Trust Fund | 260,100 | 243,700 | 150,000 | | 653,800 |
| Federal Grant Fund | 901,600 | 306,000 | 50,000 | | 1,257,600 |
| TOTAL | $ 7,512,100 | $3,449,400 | $1,702,800 | | $12,664,300 |

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|---|
| III. CAPITAL DEVELOPMENT: | | | | | |
| FROM: | | | | | |
| Parks and Recreation Fund | | | $ 60,000 | | $ 60,000 |
| Recreational Fuels Fund | | | 1,140,000 | | 1,140,000 |
| Public Recreation Enterprise Fund | | | 400,000 | | 400,000 |
| Parks and Recreation Expendable Trust Fund | | | 500,000 | | 500,000 |
| Federal Grant Fund | | | 755,000 | | 755,000 |
| TOTAL | | | $2,855,000 | | $ 2,855,000 |
| GRAND TOTAL | $10,253,400 | $4,724,400 | $4,613,800 | $10,732,100 | $30,323,700 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Parks and Recreation is authorized no more than one hundred fifty-eight and twenty-five one-hundredths (158.25) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. Notwithstanding Section 67-3511(2), Idaho Code, the trustee and benefit payments in the Management Services Program may be transferred to the Capital Development Program to reflect project grants awarded to the Department of Parks and Recreation. Unexpended and unencumbered capital outlay balances in the Capital Development Program for fiscal year 2003 are hereby reappropriated for capital outlay in that program for the period July 1, 2003, through June 30, 2004.

SECTION 4. All revenue generated from the operation of an Entrepreneurial Budget System (EBS) shall be deposited in the department's special revenue funds and is hereby continuously appropriated to the department to cover expenses directly related to EBS activities. The department shall prepare fiscal year annual reports for the Joint Finance-Appropriations Committee showing receipts and expenditures.

SECTION 5. There is hereby appropriated to the Lava Hot Springs Foundation the following amounts, to be expended according to the designated expense classes from the listed fund for the period July 1, 2003, through June 30, 2004:

| | |
|---|---|
| LAVA HOT SPRINGS FOUNDATION: | |
| FOR: | |
| Personnel Costs | $ 549,900 |
| Operating Expenditures | 527,400 |
| Capital Outlay | 241,300 |
| TOTAL | $1,318,600 |
| FROM: | |
| Public Recreation Enterprise - Lava Hot Springs Fund | $1,318,600 |

SECTION 6. In accordance with Section 67-3519, Idaho Code, the Lava Hot Springs Foundation is authorized no more than ten (10) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the program specified in Section 5 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 28, 2003.

## CHAPTER 181
## (S.B. No. 1120)

AN ACT

RELATING TO THE SANITARY SUPERVISION OF BARBER SHOPS, HAIRDRESSING ESTABLISHMENTS AND PUBLIC BATHING PLACES; REPEALING CHAPTER 20, TITLE 39, IDAHO CODE.

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

SECTION 1. That Chapter 20, Title 39, Idaho Code, be, and the same is hereby repealed.

Approved March 31, 2003.

## CHAPTER 182
## (H.B. No. 206, As Amended)

AN ACT

RELATING TO PAYDAY LOANS; AMENDING CHAPTER 46, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW PART 4, CHAPTER 46, TITLE 28, IDAHO CODE, TO DEFINE TERMS, TO REQUIRE LICENSURE, TO SET FORTH QUALIFICATIONS FOR LICENSURE, TO PROVIDE FOR LICENSE APPLICATIONS, TO PROVIDE FOR DENIAL OF A LICENSE, TO SET FORTH PROVISIONS RELATING TO THE TRANSFERABILITY OF LICENSES AND CHANGE IN CONTROL OF LICENSEES, TO PROVIDE FOR SUSPENSION OR REVOCATION OF A LICENSE, TO REQUIRE REPORTS, TO PROVIDE FOR THE MAINTENANCE OF RECORDS AND TO REQUIRE ANNUAL REPORTS, TO PROVIDE FOR EXAMINATIONS AND INVESTIGATIONS BY THE ADMINISTRATOR, TO APPLY THE IDAHO ADMINISTRATIVE PROCEDURE ACT AND TO SET FORTH PAYDAY LOAN PROCEDURES AND BUSINESS PRACTICES.

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

SECTION 1. That Chapter 46, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW PART, to be known and designated as Part 4, Chapter 46, Title 28, Idaho Code, and to read as follows:

PART 4.
PAYDAY LOANS

28-46-401. DEFINITIONS. (1) As used in this act, unless the context otherwise requires, "payday loan" means a transaction pursuant to a written agreement between a creditor and the maker of a check whereby the creditor:

(a) Accepts a check from the maker;

(b) Agrees to hold the check for a period of time prior to negotiation, deposit or presentment; and

(c) Pays to the maker of the check the amount of the check, less the fee permitted by this chapter.

(2) Payday loans are regulated consumer credit transactions, and all provisions of the Idaho credit code relating to regulated loans apply to payday loans and to persons engaged in the business of payday loans except for part 3, chapter 46, title 28, Idaho Code.

(3) As used in this section, "check" refers to a check or the electronic equivalent of a check.

28-46-402. LICENSE REQUIRED. No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

28-46-403. QUALIFICATIONS FOR PAYDAY LOAN LICENSE. (1) To qualify for a license, an applicant shall satisfy the following requirements:

(a) The applicant shall have liquid assets of at least thirty thousand dollars ($30,000) determined in accordance with generally accepted accounting principles, provided that applicants seeking to engage in the business of payday loans at more than one (1) location in the state shall have liquid assets of at least an additional five thousand dollars ($5,000) for each additional location in the state up to a maximum of seventy-five thousand dollars ($75,000) for all locations in the state; and

(b) The financial responsibility, financial condition, business experience, character and general fitness of the applicant shall reasonably warrant the administrator's belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this act, the administrator may review and approve:

(i) The relevant business records and the capital adequacy of the applicant;

(ii) The competence, experience, integrity and financial ability of any applicant, and if the applicant is an entity, of any person who is a member, partner, director, senior officer or

twenty-five percent (25%) or more equity owner of the applicant; and

(iii) Any record of conviction, on the part of the applicant, or any person referred to in subparagraph (ii) of this paragraph, of any criminal activity; any fraud or other act of personal dishonesty; any act, omission or practice which constitutes a breach of a fiduciary duty; or any suspension, revocation, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(2) The requirements set forth in subsection (1) of this section are continuing in nature and may be reviewed periodically by the administrator.

28-46-404. APPLICATION FOR PAYDAY LOAN LICENSE. (1) Each application for a license shall be in writing and under oath to the administrator, in a form prescribed by the administrator, and shall include at least the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is an entity, of every member, partner, director, senior officer or twenty-five percent (25%) or more equity owner of the applicant;

(b) The location at which the principal place of business of the applicant is located; and

(c) Other data and information the administrator may require with respect to the applicant, and if the applicant is an entity, such data and information of its members, partners, directors, senior officers, or twenty-five percent (25%) or more equity owners of the applicant.

(2) Each application for a license shall be accompanied by an application and investigation fee in an amount prescribed by the administrator. Such fee shall not be subject to refund.

(3) The fee set forth in subsection (2) of this section shall be required for each location for which an application is submitted.

(4) Within sixty (60) days of the filing of an application in a form prescribed by the administrator, accompanied by the fee required in subsection (2) of this section, the administrator shall investigate to ascertain whether the qualifications prescribed by subsection (1) of section 28-46-403, Idaho Code, have been satisfied. If the administrator finds that the qualifications have been satisfied and approves the documents, the administrator shall issue to the applicant a license to engage in the payday loan business.

(5) A license issued pursuant to this section shall remain in force and effect through the remainder of the calendar year after its date of issuance unless earlier surrendered, suspended or revoked pursuant to this act.

28-46-405. DENIAL OF LICENSE. (1) If the administrator determines that an applicant is not qualified to receive a license, the administrator shall notify the applicant in writing that the application has been denied, and shall state the basis for denial.

(2) If the administrator denies an application, or if the administrator fails to act on an application within sixty (60) days after the filing of a properly completed application, the applicant may make writ-

ten demand to the administrator for a hearing on the question of whether the license should be granted. Written demand for a hearing may not be made more than fifteen (15) days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating the basis for denial. In the event of a hearing, the administrator shall reconsider the application and, after the hearing, issue a written order granting or denying the application.

28-46-406. NONTRANSFERABILITY -- CHANGE IN CONTROL. (1) Other than the transfer of a license to a new location as set forth in subsection (3) of this section, a license issued pursuant to this chapter is not transferable or assignable.

(2) The prior written approval of the administrator is required for the continued operation of a payday loan business whenever a change in control of a licensee is proposed. Control in the case of an entity means direct or indirect ownership, or the right to vote or otherwise control, twenty-five percent (25%) or more of the governance interests of the entity, or the ability of any person to elect a majority of the directors. The administrator may require information deemed necessary to determine whether a new application is required. Costs incurred by the administrator in investigating a change of control request shall be paid by the licensee requesting such approval.

(3) A licensee shall notify the administrator in writing at least fifteen (15) days before any proposed changes in the licensee's business location or name.

28-46-407. SUSPENSION OR REVOCATION OF LICENSE. (1) The administrator may, after notice and hearing, suspend or revoke any license if the administrator finds that the licensee:

(a) Has knowingly or through the lack of due care failed to pay the annual fee imposed by this act, or any examination fee imposed by the administrator under the authority of this act;

(b) Has committed any fraud, engaged in any dishonest activities or made any misrepresentations;

(c) Has violated any provision of this act or any rule or order lawfully made pursuant to this act or has violated any other law in the course of the licensee's dealing as a licensee;

(d) Has made a materially false statement in the application for the license or failed to give a true reply to a question in the application; or

(e) Has demonstrated incompetence or untrustworthiness to act as a licensee.

(2) If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the administrator may revoke or suspend all licenses issued to a licensee.

28-46-408. REPORTS TO ADMINISTRATOR. Within fifteen (15) days of the occurrence of any of the events listed below, a licensee shall file a written report with the administrator describing such events and their expected impact on the activities of the licensee in the state:

(1) The filing for bankruptcy or reorganization by the licensee;

(2) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;

(3) Any felony indictment of the licensee and, if the licensee is an entity, of any of its members, partners, directors, senior officers or twenty-five percent (25%) or more equity owners;

(4) Any felony conviction of the licensee and, if the licensee is an entity, of any of its members, partners, directors, senior officers or twenty-five percent (25%) or more equity owners; and

(5) Such other events as the administrator may determine and identify by rule.

28-46-409. RECORDS -- ANNUAL REPORTS. (1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with the provisions of this act. The recordkeeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where payday loans are made if the administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two (2) years after the due date of the loan.

(2) On or before May 31 of each year, every licensee shall file with the administrator a composite annual report for the prior calendar year in the form prescribed by the administrator relating to all payday loans made by him. Information contained in annual reports shall be subject to disclosure according to chapter 3, title 9, Idaho Code, and may be published only in composite form.

28-46-410. EXAMINATIONS AND INVESTIGATIONS. (1) The administrator shall examine periodically, at intervals he deems appropriate, the loans and business records of every payday lender. In addition, for the purpose of discovering violations of this act or securing information lawfully required, the administrator may at any time investigate the loans, business and records of any payday lender. For these purposes, the administrator shall have free and reasonable access to the offices, places of business, and records of the lender. The administrator, for purposes of examination of licensees herein, shall be paid the cost of examination by the licensee within thirty (30) days of demand for payment. The administrator shall, on July 1 of each year, fix such per diem examination cost.

(2) If the lender's records are located outside this state, the lender, at his option, shall make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the administrator may administer oaths or affirmations and, upon his own motion or upon request of any party, may subpoena witnesses, compel the attendance of witnesses, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible items and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony, and upon reasonable notice to all persons affected thereby, the administrator may apply to the district court for an order compelling compliance.

28-46-411. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Except as otherwise provided, the Idaho administrative procedure act, as set forth in chapter 52, title 67, Idaho Code, applies to and governs all administrative action taken by the administrator pursuant to this act.

28-46-412. PAYDAY LOAN PROCEDURES. (1) Each payday loan must be documented in a written agreement signed by the borrower. The loan agreement must include the name of the licensee, the loan date, the principal amount of the loan, and a statement of the total amount of fees charged as a condition of making the loan, expressed both as a dollar amount and as an annual percentage rate (APR).

(2) The maximum principal amount of any payday loan is one thousand dollars ($1000).

(3) A licensee may charge a fee for each payday loan. Such fee shall be deemed fully earned as of the date of the transaction and shall not be deemed interest for any purpose of law. No other fee or charges may be charged or collected for the payday loan except as specifically set forth in this act.

(4) Each licensee shall conspicuously post in each licensed location a notice of the fees, expressed as a dollar amount per one hundred dollars ($100), charged for payday loans.

(5) Before disbursing funds pursuant to a payday loan, a licensee shall provide written notice to the borrower indicating the following:

(a) A payday loan is intended to address short-term, not long-term, financial needs.

(b) The borrower will be required to pay additional fees if the payday loan is renewed rather than paid in full when due.

(c) The borrower has the right to rescind the payday loan, at no cost, no later than the end of the next business day following the day on which the payday loan is made.

(6) (a) A payday loan may be made pursuant to a transaction whereby the licensee:

(i) Accepts a check from a borrower who is the maker of the check; and

(ii) Agrees not to negotiate, deposit or present the check for an agreed upon period of time and pays to the maker the amount of the check, less the fees permitted by this act.

(b) In such a transaction, the licensee may accept only one (1) postdated check for each loan as security for the loan. Before the licensee may negotiate or present a check for payment, the check shall be endorsed with the actual name under which the licensee is doing business. The borrower shall have the right to redeem the check from the licensee at any time prior to the presentment or deposit of the check by making payment to the licensee of the full amount of the check in cash or immediately available funds.

(7) The amount advanced to the borrower by the licensee in a payday loan may be paid to the borrower in the form of cash, the licensee's business check, a money order, an electronic funds transfer to the borrower's account, or other reasonable electronic payment mechanism,

provided however, that no additional fee may be charged to the borrower by a licensee to access the proceeds of the payday loan.

(8) A payday loan may be repaid by the borrower in cash, by negotiation of the borrower's check in a transaction pursuant to subsection (6) of this section or, with the agreement of the licensee, a debit card, a cashier's check, an electronic funds transfer from the borrower's bank account, or any other reasonable electronic payment mechanism to which the parties may agree.

28-46-413. PAYDAY LOAN BUSINESS PRACTICES. (1) No licensee or person related to a licensee by common control may have outstanding at any time to a single borrower a loan or loans with an aggregate principal balance exceeding one thousand dollars ($1,000), plus allowable fees.

(2) No payday loan shall be repaid by the proceeds of another payday loan made by the same licensee or a person related to the licensee by common control.

(3) If the borrower's check is returned unpaid to the licensee from a payor financial institution, the licensee shall have the right to collect charges authorized by section 28-22-105, Idaho Code, provided such charges are disclosed in the loan agreement. A licensee may not charge treble damages. If the borrower's obligation is assigned to any third party for collection, the provisions of this section shall apply to such third party collector.

(4) A licensee shall not threaten a borrower with criminal action as a result of any payment deficit.

(5) No licensee shall engage in unfair or deceptive acts, practices or advertising in the conduct of a payday loan business.

(6) A licensee may renew a payday loan no more than three (3) consecutive times, after which the payday loan shall be repaid in full by the borrower. A borrower may enter into a new loan transaction with the licensee at any time after a prior loan to the borrower is completed. A loan secured by a borrower's check is completed when the check is presented or deposited by the licensee or redeemed by the borrower pursuant to section 28-46-412(6), Idaho Code.

(7) Other than a borrower's check in a transaction pursuant to section 28-46-412(6), Idaho Code, a licensee shall not accept any property, title to property, or other evidence of ownership as collateral for a payday loan.

(8) A licensee may conduct other business at a location where it engages in payday lending unless it carries on such other business for the purpose of evading or violating the provisions of this act.

(9) A borrower may rescind the payday loan at no cost at any time prior to the close of business on the next business day following the day on which the payday loan was made by paying the principal amount of the loan to the licensee in cash or other immediately available funds.

Approved March 31, 2003.

CHAPTER 183
(H.B. No. 303)

AN ACT

RELATING TO SAFETY RESTRAINT USE; AMENDING SECTION 49-673, IDAHO CODE, TO REQUIRE MOTOR VEHICLE OCCUPANTS TO WEAR SAFETY RESTRAINTS, TO PROVIDE THAT A CITATION MAY BE ISSUED TO OCCUPANTS EIGHTEEN YEARS OF AGE OR OLDER WHO FAIL TO WEAR SAFETY RESTRAINTS, TO PROVIDE THAT A CITATION MAY BE ISSUED TO THE MOTOR VEHICLE OPERATOR IF THE OPERATOR IS EIGHTEEN YEARS OF AGE OR OLDER AND ANY OCCUPANT UNDER EIGHTEEN YEARS OF AGE FAILS TO WEAR A SAFETY RESTRAINT, TO PROVIDE FOR A FINE OF TEN DOLLARS, TO APPORTION THE FINE, TO PROVIDE THAT A CITATION MAY BE ISSUED TO THE OPERATOR OF THE MOTOR VEHICLE IF THE OPERATOR IS UNDER EIGHTEEN YEARS OF AGE AND THE OPERATOR OR ANY OTHER OCCUPANT WHO IS UNDER EIGHTEEN YEARS OF AGE FAILS TO WEAR A SAFETY RESTRAINT, TO PROVIDE FOR A FINE OF TEN DOLLARS PLUS COURT COSTS, TO APPORTION THE FINE, TO STATE THAT VIOLATIONS CONSTITUTE A SINGLE VIOLATION, TO LIMIT APPLICATION FOR PURPOSES OF VIOLATION POINTS AND INSURANCE RATES, TO PROVIDE THAT ENFORCEMENT MAY BE ACCOMPLISHED ONLY AS A SECONDARY ACTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-673, Idaho Code, be, and the same is hereby amended to read as follows:

49-673. SAFETY RESTRAINT USE. (1) Except as provided in section 49-672, Idaho Code, and subsection (2)~~(b)~~ of this section, each occupant ~~of the front seat~~ of a motor vehicle which has a gross vehicle weight of not more than eight thousand (8,000) pounds, and which was manufactured with safety ~~belts~~ restraints in compliance with federal motor vehicle safety standard no. 208, shall have a safety ~~belt~~ restraint properly fastened about his body at all times when the vehicle is in motion.

(2) The provisions of this section shall not apply to:

(a) An occupant of a motor vehicle who possesses a written statement from a licensed physician that he is unable for medical reasons to wear a safety ~~belt~~ restraint;

(b) Occupants of motorcycles, implements of husbandry and emergency vehicles;

(c) Occupants of ~~the front~~ seats of a motor vehicle in which all safety ~~belts~~ restraints are then properly in use by other occupants of that vehicle; or

(d) Mail carriers.

(3) ~~If a person is convicted of a violation of any traffic law, other than a violation of the provisions of sections 49-1229 or 49-1230, Idaho Code, relating to proof of liability insurance, it shall be an additional infraction for any person to violate the provisions of this section, for which a fine of five~~ (a) A citation may be issued to:

(i) Any occupant of the motor vehicle aged eighteen (18) years or older who fails to wear a safety restraint as required in this section; and

(ii) The operator of the motor vehicle if the operator is aged

eighteen (18) years or older and any occupant under eighteen (18) years of age fails to wear a safety restraint as required in this section. For purposes of this paragraph (a)(ii), it shall be deemed a single violation regardless of the number of occupants not properly restrained.

(b) A person issued a citation pursuant to this subsection shall be subject to a fine of ten dollars ($5~~1~~0.00), ~~shall be imposed~~ with five dollars ($5.00) of such fine to be apportioned to the catastrophic health care cost fund, as set forth in section 57-813, Idaho Code. A conviction under this subsection shall not result in violation point counts as prescribed in section 49-326, Idaho Code, nor shall such a conviction be deemed to be a moving traffic violation for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer.

(4) A citation may be issued to the operator of the motor vehicle if the operator is under eighteen (18) years of age and the operator or any other occupant who is under eighteen (18) years of age fails to wear a safety restraint as required in this section. For purposes of this subsection, it shall be deemed a single violation regardless of the number of occupants not properly restrained. A person issued a citation pursuant to this subsection shall be subject to a fine of ten dollars ($10.00), five dollars ($5.00) of such fine to be apportioned to the catastrophic health care cost fund as set forth in section 57-813, Idaho Code, plus court costs. A conviction under this subsection shall not result in violation point counts as prescribed in section 49-326, Idaho Code. In addition, a conviction under this subsection shall not be deemed to be a moving traffic violation for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer.

(5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when the operator of the motor vehicle has been detained for a suspected violation of another law.

(~~4~~6) The department shall initiate and conduct an educational program, to the extent sufficient private donations or federal funds for this specific purpose are available to the department, to encourage compliance with the provisions of this section and to publicize the effectiveness of use of safety ~~belts~~ restraints and other restraint devices in reducing risk of harm to occupants of motor vehicles.

(~~5~~7) The department shall evaluate the effectiveness of the provisions of this section and shall include a report of its findings in its annual evaluation report on the Idaho ~~H~~highway ~~S~~safety ~~P~~plan which it submits to the ~~N~~national ~~H~~highway ~~T~~traffic ~~S~~safety ~~A~~administration and ~~F~~federal ~~H~~highway ~~A~~administration pursuant to 23 U.S.C. section 402.

(~~6~~8) The failure to use a safety ~~belt~~ restraint shall not be considered under any circumstances as evidence of contributory or comparative negligence, nor shall such failure be admissible as evidence in any civil action with regard to negligence.

Approved March 31, 2003.

## CHAPTER 184
## (H.B. No. 345)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Public Utilities Commission the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| FROM: | | | |
| Public Utilities Commission Fund | $3,043,800 | $1,430,400 | $4,474,200 |
| Federal Grant Fund | 39,000 | 25,900 | 64,900 |
| TOTAL | $3,082,800 | $1,456,300 | $4,539,100 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Public Utilities Commission is authorized no more than forty-nine (49) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 31, 2003.

## CHAPTER 185
## (H.B. No. 237)

AN ACT

RELATING TO CONTROLLED SUBSTANCES AND THE IDAHO BOARD OF PHARMACY; AMENDING SECTION 37-2705, IDAHO CODE, TO EXPAND THE DESCRIPTION OF GAMMA HYDROXYBUTYRIC ACID PRODUCTS LISTED TO MATCH THE DESCRIPTION IN SCHEDULE I OF CONTROLLED SUBSTANCES UNDER FEDERAL LAW, TO ALLOW SPECIFIC PRODUCTS CONTAINING GAMMA HYDROXYBUTYRIC ACID TO BE PLACED IN OTHER SCHEDULES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-2709, IDAHO CODE, TO ADD THE SUBSTANCE BUPRENORPHINE TO SCHEDULE III AND TO ADD TO SCHEDULE III ANY DRUG PRODUCT CONTAINING GAMMA HYDROXYBUTYRIC ACID, INCLUDING ITS SALTS, ISOMERS AND SALTS OF ISOMERS FOR WHICH AN APPLICATION IS APPROVED UNDER SECTION 505 OF THE FEDERAL FOOD, DRUG AND COSMETIC ACT; AMENDING SECTION 37-2713, IDAHO CODE, TO REMOVE THE SUBSTANCE BUPRENORPHINE FROM SCHEDULE V AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 37-2732C, IDAHO CODE, TO INCLUDE THE SUBSTANCES LISTED IN SUBSECTION (e) OF

SECTION 37-2705, IDAHO CODE, AND ANY DRUG PRODUCT CONTAINING GAMMA HYDROXYBUTYRIC ACID, INCLUDING ITS SALTS, ISOMERS AND SALTS OF ISOMERS FOR WHICH AN APPLICATION IS APPROVED UNDER SECTION 505 OF THE FEDERAL FOOD, DRUG AND COSMETIC ACT UNDER THE PENALTY PROVISIONS FOR PERSONS BEING UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE AND BEING ON A PUBLIC ROADWAY OR CONVEYANCE.

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

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(2) Acetylmethadol;
(3) Allylprodine;
(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
(5) Alphameprodine;
(6) Alphamethadol;
(7) Alpha-methylfentanyl;
(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
(9) Benzethidine;
(10) Betacetylmethadol;
(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
(12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
(13) Betameprodine;
(14) Betamethadol;
(15) Betaprodine;
(16) Clonitazene;
(17) Dextromoramide;
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;

(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-Methylfentanyl;
(35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
(36) Morpheridine;
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(38) Noracymethadol;
(39) Norlevorphanol;
(40) Normethadone;
(41) Norpipanone;
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(44) Phenadoxone;
(45) Phenampromide;
(46) Phenomorphan;
(47) Phenoperidine;
(48) Piritramide;
(49) Proheptazine;
(50) Properidine;
(51) Propiram;
(52) Racemoramide;
(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(54) Tilidine;
(55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy amphetamine;
(2) 2,5-dimethoxyamphetamine;
(3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
(4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
(5) 4-methoxyamphetamine (PMA);
(6) 5-methoxy-3,4-methylenedioxy-amphetamine;
(7) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
(8) 3,4-methylenedioxy amphetamine;
(9) 3,4-methylenedioxymethamphetamine (MDMA);
(10) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
(11) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA);
(12) 3,4,5-trimethoxy amphetamine;
(13) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
(14) Bufotenine;
(15) Diethyltryptamine (DET);
(16) Dimethyltryptamine (DMT);
(17) Ibogaine;
(18) Lysergic acid diethylamide;
(19) Marihuana;
(20) Mescaline;
(21) Parahexyl;
(22) Peyote;
(23) N-ethyl-3-piperidyl benzilate;
(24) N-methyl-3-piperidyl benzilate;
(25) Psilocybin;
(26) Psilocyn;
(27) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
$\Delta^1$ cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.
$\Delta^6$ cis or trans tetrahydrocannabinol, and their optical isomers.
$\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
(28) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclo-

hexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(29) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexy~~l~~l)-pyrrolidine, PCPy, PHP;

(30) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(31) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy.

(e) Unless specifically excepted or unless listed in another schedule, a~~A~~ny material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers ~~wherever~~ whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma ~~hydroxybutyrate~~ hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hvroxvbutanoic acid; sodium oxvbate; sodium oxvbutvrate);

(2) Flunitrazepam (also known as "R2", "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some other names: alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);

(3) Fenethylline;

(4) Methcathinone (some other names: 2-(methyl-amino)-propiophenone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);

(5) (t)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethylbenzeneethanamine).

(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) N-(1-benzyl-4-piperidyl)-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

(3) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).

SECTION 2. That Section 37-2709, Idaho Code, be, and the same is hereby amended to read as follows:

37-2709. SCHEDULE III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in

another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (whether optical or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under C.F.R. Sec. 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

i. Amobarbital;

ii. Secobarbital;

iii. Pentobarbital or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

i. Amobarbital;

ii. Secobarbital;

iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;

(4) Chlorhexadol;

(5) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;

(6) Ketamine, its salts, isomers, and salts of isomers - 7285. (Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).

(~~6~~7) Lysergic acid;

(~~7~~8) Lysergic acid amide;

(~~8~~9) Methyprylon;

(~~9~~10) Sulfondiethylmethane;

(~~10~~11) Sulfonethylmethane;

(~~11~~12) Sulfonmethane;

(~~12~~13) Tiletamine and zolazepam or any salt thereof.

(d) Nalorphine.

(e) Narcotic drugs.

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing lim-

ited quantities of any of the following narcotic drugs, or any salts thereof:

(~~1~~i) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(~~2~~ii) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(~~3~~iii) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(~~4~~iv) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(~~5~~v) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(~~6~~vi) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(~~7~~vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(~~8~~viii) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(i) Buprenorphine.

(ii) [Reserved].

(f) Anabolic steroids and human growth hormones. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.

(1) Boldenone;
(2) Chlorotestosterone (4-chlortestosterone);
(3) Chorionic gonadotropin;
(4) Clostebol;
(5) Dehydrochlormethyltestosterone;
(6) Dihydrotestosterone (4-dihydrotestosterone);
(7) Drostanolone;
(8) Ethylestrenol;
(9) Fluoxymesterone;
(10) Formebulone;

(11) Human growth hormones;
(12) Mesterolone;
(13) Methandienone;
(14) Methandranone;
(15) Methandriol;
(16) Methandrostenolone;
(17) Methenolone;
(18) Methyltestosterone;
(19) Mibolerone;
(20) Nandrolone;
(21) Norethandrolone;
(22) Oxandrolone;
(23) Oxymesterone;
(24) Oxymetholone;
(25) Stanolone;
(26) Stanozolol;
(27) Testolactone;
(28) Testosterone;
(29) Testosterone cypionate;
(30) Testosterone enanthate;
(31) Testosterone propionate;
(32) Trenbolone.

Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in the federal Food and Drug Administration approved product - 7369. (Some other names for dronabinol: (6aR-trans) -6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(h) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Butorphanol.

(i) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which

have a stimulant or depressant effect on the central nervous system.

SECTION 3. That Section 37-2713, Idaho Code, be, and the same is hereby amended to read as follows:

37-2713. SCHEDULE V. (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

~~(1) Buprenorphine~~.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Propylhexedrine (except as Benzedrex (TM) inhaler);

(2) Pyrovalerone.

SECTION 4. That Section 37-2732C, Idaho Code, be, and the same is hereby amended to read as follows:

37-2732C. USING OR BEING UNDER THE INFLUENCE -- PENALTIES. (a) Except as authorized in this chapter, it is unlawful for any person on a public roadway, on a public conveyance, on public property or on private property open to the public, to use or be under the influence of any controlled substance specified in subsection (b), (c), (d), (e) and (f) of section 37-2705, Idaho Code, or subsection (b), (c) and (d) of section 37-2707, Idaho Code, or subsection (c)(5) of section 37-2709, Idaho Code, or any narcotic drug classified in schedule III, IV or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within this exception.

(b) Any person convicted of violating the provisions of subsection (a) of this section is guilty of a misdemeanor and is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

(c) Any person who is convicted of violating subsection (a) of this section, when the offense occurred within five (5) years of that person being convicted of two (2) or more separate violations of that subsection and who refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subsection (d) shall be punished by imprisonment in the county jail for a mandatory minimum period of time of not less than one hundred twenty (120) days, nor more than one (1) year. The court may not reduce the mandatory minimum period of incarceration provided in this subsection.

(d) The court may, when it would be in the interest of justice, permit any person convicted of a violation of subsection (a) of this section, punishable under subsection (b) or (c) of this section, to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in the county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program. In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subsection, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(e) Notwithstanding subsection (a), (b) or (c) of this section, or any other provision of law to the contrary, any person who is unlawfully under the influence of cocaine, cocaine base, methamphetamine, heroin, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense and is punishable by imprisonment in the county jail or the state prison for not more than one (1) year. As used in this subsection, "immediate possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subsection (e) of this section is punishable upon the second and each subsequent conviction by imprisonment in the state prison for a period of time not in excess of four (4) years.

(g) In addition to any fine assessed under this section and notwithstanding the provisions of section 19-4705, Idaho Code, the court may, upon conviction, assess an additional cost to the defendant in the way of restitution, an amount not to exceed two hundred dollars ($200) to the arresting and/or prosecuting agency or entity. These funds shall be remitted to the appropriate fund to offset the expense of toxicology testing.

Approved March 31, 2003.

CHAPTER 186
(H.B. No. 348)

AN ACT
APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Industrial Commission the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|---|
| I. COMPENSATION: | | | | | |
| FROM: | | | | | |
| Industrial Administration Fund | $2,214,800 | $ 995,400 | $25,100 | $1,209,200 | $ 4,444,500 |
| Federal Grant Fund | 2,700 | 2,300 | | | 5,000 |
| Miscellaneous Revenue Fund | | 20,800 | | | 20,800 |
| TOTAL | $2,217,500 | $1,018,500 | $25,100 | $1,209,200 | $ 4,470,300 |
| II. REHABILITATION: | | | | | |
| FROM: | | | | | |
| Industrial Administration Fund | $2,608,500 | $ 674,100 | $33,000 | | $ 3,315,600 |
| III. CRIME VICTIMS COMPENSATION: | | | | | |
| FROM: | | | | | |
| Crime Victims Compensation Fund | $ 459,900 | $ 203,000 | $ 5,100 | $2,193,600 | $ 2,861,600 |
| Federal Grant Fund | | | | 524,700 | 524,700 |
| TOTAL | $ 459,900 | $ 203,000 | $ 5,100 | $2,718,300 | $ 3,386,300 |
| IV. ADJUDICATION: | | | | | |
| FROM: | | | | | |
| Industrial Administration Fund | $1,331,700 | $ 492,100 | $ 6,000 | | $ 1,829,800 |
| GRAND TOTAL | $6,617,600 | $2,387,700 | $69,200 | $3,927,500 | $13,002,000 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Industrial Commission is authorized no more than one hundred thirty-seven and one-half (137.5) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 31, 2003.

## CHAPTER 187
## (H.B. No. 349)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Labor the following amounts, to be expended for the designated program according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| I. WAGE AND HOUR: | | | |
| FROM: | | | |
| General Fund | $369,400 | $60,300 | $429,700 |
| Miscellaneous Revenue Fund | | 10,400 | 10,400 |
| TOTAL | $369,400 | $70,700 | $440,100 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Labor is authorized no more than eight (8) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, 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 31, 2003.

## CHAPTER 188
## (H.B. No. 203)

AN ACT

RELATING TO PRACTICE OF NURSING; AMENDING SECTION 54-1401, IDAHO CODE, TO CLARIFY THE PROHIBITION AGAINST INDIVIDUALS REPRESENTING THEMSELVES TO THE PUBLIC AS NURSES UNLESS THEY ARE LICENSED AS PROVIDED BY LAW AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-1401, Idaho Code, be, and the same is hereby amended to read as follows:

54-1401. PURPOSE -- LICENSE REQUIRED -- REPRESENTATION TO THE PUBLIC. In order to safeguard the public health, safety and welfare, it is in the public interest to regulate and control nursing in the state of Idaho, to promote quality health care services, to prohibit unqualified

and dishonest persons from practicing nursing, and to protect against acts or conduct which may endanger the health and safety of the public.

(1) License required. ~~To--that-end,-i~~It shall be unlawful for any person to practice nursing or offer to practice nursing~~,-or-to--use--any titles,--abbreviations,-and-designations-to-indicate-the-person-is-practicing-nursing-in-this-state~~ unless that person is duly licensed pursuant to this act.

(2) Representation to the public. Only a person who holds a valid and current license to practice professional nursing in this state or a party state pursuant to sections 54-1409 and 54-1418, Idaho Code, may use the title "nurse," "registered nurse," "graduate nurse" or "professional nurse" or the abbreviation "R.N." or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state. Only a person who holds a valid and current license to practice practical nursing in this state or a party state pursuant to sections 54-1407 and 54-1418, Idaho Code, may use the title "nurse," "licensed practical nurse," or the abbreviation "L.P.N." or any other designations, titles or abbreviations to indicate that the person is practicing nursing in this state.

Approved April 1, 2003.

## CHAPTER 189
## (H.B. No. 213)

AN ACT

RELATING TO STERILIZATION; REPEALING CHAPTER 39, TITLE 39, IDAHO CODE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 39, TITLE 39, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE INTENT CONCERNING STERILIZATION, TO DEFINE TERMS, TO PROVIDE FOR STERILIZATION OF PERSONS SUBJECT TO THIS CHAPTER, TO PROVIDE FOR INITIATION OF PROCEEDINGS, TO REQUIRE APPOINTMENT OF COUNSEL, TO PROVIDE FOR NOTICE, TO REQUIRE CONSIDERATION BY THE EVALUATION COMMITTEE, TO REQUIRE A HEARING, TO PROVIDE CRITERIA TO BE CONSIDERED BY THE COURT, TO LIMIT THE PROCEDURES WHICH MAY BE AUTHORIZED, TO PROVIDE FOR APPEALS, TO PROVIDE MEMBERSHIP AND DUTIES OF THE EVALUATION COMMITTEE, TO PROVIDE FOR CONFIDENTIALITY OF AND ACCESS TO RECORDS, TO PROVIDE CIVIL AND CRIMINAL IMMUNITY UNDER CONDITIONS SPECIFIED AND TO GOVERN CONDITIONS WHEN A HOSPITAL OR HOSPITAL EMPLOYEE MAY REFUSE TO PARTICIPATE IN STERILIZATION; AND AMENDING SECTION 9-340C, IDAHO CODE, TO PROVIDE EXEMPTION FROM DISCLOSURE OF RECORDS FOR COURT PROCEEDINGS REGARDING JUDICIAL AUTHORIZATION OF STERILIZATION PROCEDURES AND TO MAKE TECHNICAL CORRECTIONS.

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

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

SECTION 2. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 39, Title 39, Idaho Code, and to read as follows:

## CHAPTER 39
## STERILIZATION

39-3901. LEGISLATIVE INTENT. The legislature of the state of Idaho acknowledges that sterilization procedures are highly intrusive, generally irreversible and represent potentially permanent and highly significant consequences for individuals incapable of giving informed consent. The legislature recognizes that certain legal safeguards are required to prevent indiscriminate and unnecessary sterilization of such individuals, and to assure equal access to desired medical procedures for all Idaho citizens.

39-3902. DEFINITIONS. For purposes of this chapter, the following words and terms have the meaning hereinafter stated:

(1) "Emergency medical treatment" means immediate medical intervention required, according to the prevailing medical standards of judgment and practice within the community, because of the medical condition of the person subject to this chapter.

(2) "Evaluation committee" means an interdisciplinary team consisting of at least four (4) individuals qualified by education and training to evaluate an individual as required by the provisions of this chapter, and an advocate designated by the person subject to this chapter. Each committee must include: two (2) social workers, at least one (1) of whom must be a master's level; a clinical psychologist or a psychiatrist; and a physician.

(3) "Informed assent" means a process by which a person subject to this chapter who lacks or is alleged to lack the capacity to consent to sterilization is given a fair opportunity to acknowledge the nature, risks and consequences of the procedures and, insofar as he or she is able to, indicates willingness and choice to undergo sterilization.

(4) "Interested person" means an interested, responsible adult including, but not limited to, the legal guardian, spouse, parent, legal counsel, adult child, or next of kin of a person subject to this chapter, or if none of these are available, the department of health and welfare.

(5) "Medically necessary" means that, according to the prevailing medical standards of judgment and practice within the community, the procedure is reasonably calculated to prevent or treat conditions in the person subject to this chapter that endanger life, cause severe pain, or cause functionally significant deformity or malfunction, and for which there is not an equally effective alternative course of treatment available or suitable.

(6) "Person subject to this chapter" means all adults, except adults who may consent to their own treatment pursuant to chapter 43, title 39, Idaho Code. Adults who are alleged to lack this capacity are also persons subject to this chapter.

(7) "Physician" means a person duly licensed in the state of Idaho to practice medicine and surgery without restriction pursuant to laws of the state of Idaho.

(8) "Records" includes, but is not limited to, all court files of judicial proceedings brought under this chapter, written clinical information, observations and reports, or fiscal documents relating to a person subject to this chapter who has undergone or is about to undergo sterilization and which are related to the sterilization.

(9) "Sterilization" means any medical or surgical operation or procedure which can be expected to result in a patient's permanent inability to reproduce.

39-3903. STERILIZATION OF PERSONS SUBJECT TO THIS CHAPTER. Persons subject to this chapter have the legal right to be sterilized following the entry of an order providing for sterilization and the expiration of the time allowed by law for perfecting an appeal. In no event shall persons subject to this chapter be sterilized without court approval in accordance with this chapter unless sterilization occurs as part of emergency medical treatment.

39-3904. INITIATION OF PROCEEDING. A person subject to this chapter or any interested person may file a petition in the district court in which the person subject to this chapter resides, alleging that said person meets the requirements for sterilization.

39-3905. APPOINTMENT OF COUNSEL. Persons subject to this chapter shall have counsel at all stages of the proceedings provided for in this chapter. Unless independently provided for by the persons subject to this chapter, counsel shall be appointed by the district court which shall also conduct an investigation to determine whether or not the person has funds in trust or otherwise to pay reasonable compensation to counsel. If the investigation discloses that the person is without such funds, the court shall order that counsel be paid reasonable compensation at public expense.

39-3906. NOTICE. The court shall order that the petition be served personally upon the person subject to this chapter, his or her guardian or parent, his or her counsel, his or her guardian ad litem, and such other persons as the court may designate.

39-3907. REFERRAL TO THE EVALUATION COMMITTEE. The court shall refer the petition to the evaluation committee for review and recommendation.

39-3908. HEARING. (1) The court shall set a hearing on the petition upon receipt of the recommendation of the evaluation committee and shall order that copies of the evaluation committee's reports and notice of the time and place of the hearing be provided the person subject to this chapter, their guardian, their counsel, their guardian ad litem, and such other persons as the court may designate.

(2) The person subject to this chapter is entitled to be present at the hearing, and to see and hear all evidence bearing on the petition. The person subject to this chapter may be absent from the hearing if he or she is unwilling or is unable to participate.

(3) A hearing shall be held in district court with the right of cross-examination preserved at all stages. The members of the evaluation committee may be subpoenaed and questioned by any party to the proceedings. Any party to the proceedings may submit additional evidence.

(4) The court must enter findings of fact and conclusions of law as well as an order either directing sterilization of the person subject to this chapter or dismissing the petition for insufficiency of evidence or any other reason.

39-3909. CRITERIA. (1) The court may grant an order authorizing a specific sterilization procedure if the court finds by clear and convincing evidence that the person subject to this chapter is functionally capable of giving and withholding informed assent to the proposed sterilization and has given informed assent to the proposed sterilization, or that the person is functionally incapable of giving or withholding informed assent but sterilization is in the best interest of the person.

(2) The person subject to this chapter assents to sterilization if the person manifests an uncoerced willingness to undergo sterilization after being fully informed of the nature, risks, consequences and alternatives to the procedure. A person who lacks the capacity to manifest an uncoerced willingness or unwillingness to sterilization cannot assent to the procedure. To determine whether the person is capable of giving informed assent, the court shall consider whether the person understands and appreciates:

(a) The causal relationship between sexual intercourse and pregnancy or parenthood;

(b) The causal relationship between sterilization and the impossibility of pregnancy or parenthood;

(c) The nature of the sterilization operation including the pain, discomfort and risks of the procedure;

(d) The probable permanency and irreversibility of the sterilization procedure;

(e) All medically approved alternatives to sterilization;

(f) The consequences of initiation of pregnancy or becoming pregnant, mothering or fathering a child, and becoming a parent; and

(g) The power to change one's mind about being sterilized at any time before the procedure is performed.

To assure the adequacy of the person's informed assent, evidence shall be presented showing that the person received appropriate counseling from the physician who will perform the sterilization and at least one (1) other qualified independent counselor such as a social worker with a master's degree, a clinical nurse specialist, or a licensed psychologist or psychiatrist. The counseling shall cover the benefits or advantages to sterilization and conversely the losses and disadvantages of sterilization including the feelings, values and lifestyle changes attendant with sterilization.

Witnesses who attest in court as to the soundness of informed assent shall comment on and assess the person's understanding of each issue and shall comment on and assess the degree to which the person expresses an uncoerced willingness to accept each risk and consequence. Any reservations or resistance expressed or otherwise evidenced by the person shall be disclosed to the court.

(3) The persons subject to this chapter may be sterilized if the court finds by clear and convincing evidence that:

(a) The person is functionally incapable of giving or withholding informed assent and that the incapacity is not likely to change in the foreseeable future; and

(b) Sterilization is in the best interest of the person.

(4) To determine whether sterilization is in the best interest of the person subject to this chapter the court shall find by clear and convincing evidence that:

(a) The person is likely to be fertile. Fertility may be conclusively presumed if the medical evidence indicates normal develop-

ment of the sexual organs, and the evidence does not otherwise raise doubts about fertility;
(b) There is a likelihood that the person will engage in sexual intercourse;
(c) The nature and extent of the person's disability, as determined by empirical evidence and not solely the basis of standardized tests, renders him or her permanently incapable of caring for a child, even with reasonable assistance;
(d) The person will suffer severe physical or psychological harm if he or she were to parent a child, which may include any harm occurring from the removal of the child from the person's custody;
(e) The person will not suffer severe physical or psychological harm from the sterilization;
(f) Less restrictive alternatives to sterilization, both at the present time and under foreseeable future circumstances, are not feasible or medically advisable;
(g) The proposed method of sterilization entails the least invasion of the body of the individual; and
(h) Scientific or medical advances will not occur within the foreseeable future which will materially make possible the improvement of the person's condition with respect to sterilization.

39-3910. AUTHORIZED STERILIZATION PROCEDURE. A sterilization procedure authorized under this chapter shall not include hysterectomy or castration unless the court finds by clear and convincing evidence that hysterectomy or castration is medically necessary treatment, independent of the need for sterilization. No sterilization procedure authorized under this chapter shall be performed by any person other than a physician.

39-3911. APPEALS. The order approving, denying or otherwise disposing of the petition for sterilization shall be appealable to the supreme court of Idaho. Such appeal may be perfected in the same manner as in civil actions. In the case of appeals from any order directing sterilization, the order of the district court shall be stayed pending disposition of such appeal and no sterilization shall take place until after the expiration of the time allowed by law for perfecting appeal.

39-3912. EVALUATION COMMITTEE. (1) There is established the evaluation committee composed of persons contracted by or employees of the department of health and welfare.

(2) The committee shall review and make recommendations to the court on all petitions for sterilization. In making its recommendation to the court, the committee shall investigate and determine whether the person subject to this chapter is capable of giving informed assent and, if not, whether sterilization is in the best interest of the person. The committee shall consider the criteria set forth in section 39-3909, Idaho Code, in determining whether the person is capable of providing informed assent or whether sterilization is in the best interest of the person.

(3) The committee or designated member of the committee may interview or request a written statement from the person subject to this chapter, physicians, relatives, concerned individuals, and others who, in the committee member's judgment, possess relevant information con-

cerning the petition for sterilization. Conversely, the person subject to this chapter, the guardian ad litem, the petitioner, or any other person may request to speak to the committee or submit a written statement to the committee concerning the proposed sterilization.

(4) The committee shall submit a report in writing to the court containing its recommendations together with supporting documents. Committee members who do not concur with the majority recommendation shall submit a report in writing to the court detailing the basis for their dissent.

39-3913. CONFIDENTIALITY OF AND ACCESS TO RECORDS. Records developed by the evaluation committee and records contained in court files of judicial proceedings brought under this chapter shall be governed by the provisions of chapter 3, title 9, Idaho Code.

39-3914. CIVIL AND CRIMINAL IMMUNITY -- EXCEPTION. When an operation shall have been performed in compliance with the provisions of this law, no physician duly licensed to, without restriction, practice medicine and surgery in this state or other person legally participating in the execution of the provisions of this chapter shall be liable civilly or to criminal prosecution on account of such operation or participation therein, except in the case of negligence in the performance of said procedures. Nothing in this chapter shall be construed so as to prevent sterilization of persons subject to this chapter as part of emergency medical treatment or the voluntary sterilization of a person competent to give his or her consent.

39-3915. REFUSAL TO PARTICIPATE IN STERILIZATION. No hospital shall be required to furnish facilities or admit any patient for sterilization procedures if, upon determination by its governing board, it elects not to do so. No physician, nurse, technician or other employee of any hospital, physician or governmental agency shall be required to assist or participate in any sterilization procedure if he or she, for religious or moral reasons, objects thereto. Any such objection shall be made in writing and shall state the reason for such objection. No refusal to accept a patient for sterilization procedures shall form the basis for any claim for damages or for recriminatory action against the declining person or hospital.

SECTION 3. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the

public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency or independent public body corporate and politic pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height,

weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under section 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of

immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

(a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;

(b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;

(c) Mortgage portfolio loan documents;

(d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer's assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-48901, Idaho Code.

(~~22~~23) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

(24) Records contained in the court files, or other records prepared as part of proceedings for judicial authorization of sterilization procedures pursuant to chapter 39, title 39, Idaho Code.

Approved April 1, 2003.

## CHAPTER 190
(H.B. No. 238, As Amended)

AN ACT

RELATING TO THE UNLAWFUL PRACTICE OF DENTISTRY; AMENDING SECTION 54-905, IDAHO CODE, TO PROVIDE FOR CIVIL PENALTIES FOR THE UNLAWFUL PRACTICE OF DENTISTRY, TO PROVIDE A FORMULA FOR ASSESSING THE PENALTIES AND TO PROVIDE THAT THE CIVIL PENALTIES WILL BE REMITTED TO THE GENERAL FUND.

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

SECTION 1. That Section 54-905, Idaho Code, be, and the same is hereby amended to read as follows:

54-905. UNLAWFUL PRACTICE OF DENTISTRY. (1) Any person who shall practice, or shall in any manner hold himself out to any other person, or to the public, as qualified or licensed to practice dentistry, or who represents himself to be a dentist, within the state of Idaho, without at the time thereof being a dentist, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both.

Each act of practice, or holding out, or representation, shall constitute a separate offense. In addition, a person found guilty of violating the provisions of this section for commercial gain may be assessed a civil penalty by the court, commensurate with the gain realized by the defendant, of up to twenty-five thousand dollars ($25,000) for each violation of the provisions of this section. The civil penalty collected by the court shall be remitted to the general fund of the state.

(2) Conviction under the provisions of this section shall not prevent issuance of an injunction as provided in section 54-933, Idaho Code.

Approved April 1, 2003.

## CHAPTER 191
(S.B. No. 1150)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 2003; APPROPRIATING MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 2004; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; DIRECTING THE TRANSFER OF FUNDS ON JUNE 30, 2003; AND DECLARING AN EMERGENCY FOR SECTIONS 1 AND 4 OF THIS ACT.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 229, Laws of 2002, there is hereby appropriated to the Office of the Attorney General 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, 2002, through June 30, 2003:

| | |
|---|---|
| STATE LEGAL SERVICES: | |
| FOR: | |
| Operating Expenditures | $10,000 |
| FROM: | |
| Consumer Protection Fund | $10,000 |

SECTION 2. There is hereby appropriated to the Attorney General 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, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| I. STATE LEGAL SERVICES: | | | |
| FROM: | | | |
| General Fund | $12,132,600 | $ 649,800 | $12,782,400 |
| Consumer Protection Fund | 686,700 | 93,300 | 780,000 |
| TOTAL | $12,819,300 | $ 743,100 | $13,562,400 |
| II. SPECIAL LITIGATION: | | | |
| FROM: | | | |
| General Fund | | $ 326,600 | $ 326,600 |
| GRAND TOTAL | $12,819,300 | $1,069,700 | $13,889,000 |

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Attorney General is authorized no more than one hundred seventy-seven and sixty-five hundredths (177.65) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the programs specified in Section 2 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 4. On or before June 30, 2003, the State Controller, at the request of the Attorney General, shall transfer $134,200 from the Self-Governing Operating Fund in the Insurance Regulation Program in the Department of Insurance, to the Consumer Protection Fund within the Office of the Attorney General. The intent of this transfer is to mitigate the impact of adding staff for the Office of the Attorney General to provide additional legal services to the Idaho Department of Insurance in fiscal year 2004.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 and 4 of this act shall be in full force and effect on and after passage and approval.

Approved April 1, 2003.

CHAPTER 192
(S.B. No. 1156)

AN ACT

APPROPRIATING MONEYS TO THE SECRETARY OF STATE FOR FISCAL YEAR 2004; EXPRESSING LEGISLATIVE INTENT REGARDING THE TRANSFER OF ANY UNEXPENDED AND UNENCUMBERED GENERAL FUND MONEYS TO THE DEMOCRACY FUND; 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 Secretary of State, 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, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| I. ADMINISTRATION: | | | | |
| FROM: | | | | |
| General Fund | $1,589,000 | $324,400 | $15,000 | $1,928,400 |
| II. COMMISSION ON UNIFORM LAWS: | | | | |
| FROM: | | | | |
| General Fund | | $ 28,800 | | $ 28,800 |
| GRAND TOTAL | $1,589,000 | $353,200 | $15,000 | $1,957,200 |

SECTION 2. It is legislative intent that the unexpended and unencumbered cash balance of any General Fund appropriation made to the Secretary of State for fiscal year 2003 be transferred to the Democracy Fund to provide matching fund support for the Help America Vote Act of 2002 (P.L. 107-252).

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Office of the Secretary of State is authorized no more than thirty-one (31) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 1, 2003.

CHAPTER 193
(H.B. No. 351)

AN ACT

APPROPRIATING MONEYS TO THE STATE TREASURER FOR FISCAL YEAR 2004; PROVIDING FOR THE RECOVERY OF BANKING SERVICES COSTS TO THE GENERAL FUND; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the State Treasurer the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| FROM: | | | |
| General Fund | $ 871,800 | $303,900 | $1,175,700 |
| State Treasurer LGIP Fund | 151,600 | 87,500 | 239,100 |
| Treasurer's Office - Professional Services Fund | 219,100 | 92,900 | 312,000 |
| TOTAL | $1,242,500 | $484,300 | $1,726,800 |

SECTION 2. The moneys assessed by the Division of Financial Management in accordance with Section 67-3531, Idaho Code, for State Treasurer banking services shall be placed in the Indirect Cost Recovery Fund. On June 30, 2004, the State Controller shall transfer the amount assessed in the statewide cost allocation plan from the Indirect Cost Recovery Fund to the General Fund.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Office of the State Treasurer is authorized no more than eighteen (18) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 1, 2003.

## CHAPTER 194
## (H.B. No. 352)

### AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER FOR FISCAL YEAR 2004; PRESCRIBING BILLING METHODOLOGIES FOR STATEWIDE ACCOUNTING AND STATEWIDE PAYROLL; REQUIRING CERTAIN PURCHASES BE SUBJECT TO CERTAIN CONDITIONS; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the State Controller the following amounts, to be expended for the designated programs from the listed funds, for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| I. ADMINISTRATION: | | | | |
| FROM: | | | | |
| GENERAL FUND | $ 390,800 | $ 58,600 | | $ 449,400 |
| Miscellaneous Revenue Fund | | | $ 8,700 | 8,700 |
| TOTAL | $ 390,800 | $ 58,600 | $ 8,700 | $ 458,100 |
| II. STATEWIDE ACCOUNTING: | | | | |
| FROM: | | | | |
| General Fund | $1,379,000 | $1,167,700 | $ 5,000 | $ 2,551,700 |
| III. STATEWIDE PAYROLL: | | | | |
| FROM: | | | | |
| General Fund | $1,202,800 | $ 784,700 | $15,000 | $ 2,002,500 |
| IV. COMPUTER CENTER: | | | | |
| FROM: | | | | |
| Data Processing Services Fund | $3,507,800 | $2,273,000 | $44,000 | $ 5,824,800 |
| GRAND TOTAL | $6,480,400 | $4,284,000 | $72,700 | $10,837,100 |

SECTION 2. Any other provision of law notwithstanding, the State Controller shall assess state agencies in accordance with the statewide cost allocation plan as described in Section 67-3531, Idaho Code, for Statewide Accounting services and Statewide Payroll services. The State Controller shall issue a single bill for these services. Funds collected shall be placed in the Indirect Cost Recovery Fund. On June 30, 2004, the State Controller shall transfer the amount assessed in the statewide cost allocation plan from the Indirect Cost Recovery Fund to the General Fund.

SECTION 3. Any purchases or obligations involving information technology items for the period July 1, 2003, through June 30, 2004, are to be submitted to and coordinated with the Information Technology Resource Management Council.

SECTION 4. In accordance with Section 67-3519, Idaho Code, the State Controller is authorized no more than one hundred one and eighty-five hundredths (101.85) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 1, 2003.

## CHAPTER 195
## (H.B. No. 360)

### AN ACT

APPROPRIATING MONEYS TO THE EXECUTIVE OFFICE OF THE GOVERNOR FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Executive Office of the Governor the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| FROM: | | | |
| I. GOVERNOR'S OFFICE ADMINISTRATION: | | | |
| General Fund | $1,111,700 | $258,200 | $1,369,900 |
| II. GOVERNOR'S EXPENSE ALLOWANCE: | | | |
| TO BE EXPENDED PURSUANT TO SECTION 67-808d, IDAHO CODE: | | | |
| FROM: | | | |
| General Fund | | $ 4,900 | $ 4,900 |
| III. SOCIAL SERVICES: | | | |
| FROM: | | | |
| Miscellaneous Revenue Fund | $ 50,000 | $ 80,000 | $ 130,000 |
| Federal Grant Fund | 405,300 | 110,800 | 516,100 |
| TOTAL | $ 455,300 | $190,800 | $ 646,100 |
| IV. ACTING GOVERNOR PAY: | | | |
| FROM: | | | |
| General Fund | $ 19,200 | | $ 19,200 |
| GRAND TOTAL | $1,586,200 | $453,900 | $2,040,100 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Executive Office of the Governor is authorized no more than twenty-four (24) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 1, 2003.

## CHAPTER 196

(H.B. No. 195, As Amended in the Senate, As Amended in the Senate)

AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1418, IDAHO CODE, TO INCREASE THE MAXIMUM COMPENSATION FOR FIRE PROTECTION BOARD COMMISSIONERS.

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

SECTION 1. That Section 31-1418, Idaho Code, be, and the same is hereby amended to read as follows:

31-1418. FIRE PROTECTION BOARD COMMISSIONERS -- COMPENSATION AND EXPENSES. The fire protection board commissioners may receive a reasonable compensation for their services as commissioners but not to exceed ~~that provided by section 59-509(g), Idaho Code~~ the sum of seventy-five dollars ($75.00) per day. The board shall fix the compensation, if any, to be paid to the officers named in this act, and of the agents, attorneys and other employees of the board to be paid out of the treasury of the district.

Approved April 2, 2003.

## CHAPTER 197
## (S.B. No. 1149)

AN ACT

REDUCING THE GENERAL FUND APPROPRIATION TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2003; APPROPRIATING ADDITIONAL DEDICATED MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2003; AND DECLARING AN EMERGENCY.

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

SECTION 1. The appropriation made in Section 1, Chapter 175, Laws of 2002, to the Department of Correction is hereby reduced by the following amount from the designated program according to the designated expense class from the listed fund for the period July 1, 2002, through June 30, 2003:

I. OPERATIONS DIVISION:
A. OPERATIONS ADMINISTRATION:
FOR:
Operating Expenditures $2,345,200
FROM:
General Fund $2,345,200

SECTION 2. In addition to the appropriation made in Section 1, Chapter 175, Laws of 2002, there is hereby appropriated to the Department of Correction, 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, 2002, through June 30, 2003:

I. OPERATIONS DIVISION:
A. COMMUNITY SUPERVISION:
FOR:
Operating Expenditures $140,000
FROM:
Parolee Supervision Fund $140,000

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

Approved April 2, 2003.

CHAPTER 198
(S.B. No. 1152)

AN ACT
APPROPRIATING MONEYS TO THE SOIL CONSERVATION COMMISSION FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Soil Conservation Commission in the Department of Agriculture, the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|
| FROM: | | | | |
| General Fund | $1,128,100 | $569,600 | $2,037,500 | $3,735,200 |
| Resource Conservation and Rangeland Development Fund | | 50,600 | | 50,600 |
| Revolving Loan Fund (SCC) | | 80,000 | | 80,000 |
| Federal Grant Fund | 173,100 | 240,400 | 75,000 | 488,500 |
| TOTAL | $1,301,200 | $940,600 | $2,112,500 | $4,354,300 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Soil Conservation Commission is authorized no more than twenty-one (21) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 2, 2003.

CHAPTER 199
(S.B. No. 1153)

AN ACT
APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE COMMISSION ON THE ARTS FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission on the Arts, the following amounts from the listed funds for the period July 1, 2003, through June 30, 2004:

COMMISSION ON THE ARTS:

FROM:

| | |
|---|---|
| General Fund | $ 822,800 |
| Federal Grant Fund | 576,700 |
| Miscellaneous Revenue Fund | 71,500 |
| TOTAL | $1,471,000 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on the Arts is authorized no more than eleven (11) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 2, 2003.

## CHAPTER 200
## (H.B. No. 4)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1403, IDAHO CODE, TO STRIKE CERTAIN REQUIREMENTS FOR THE DEPARTMENT'S COMPILATION AND DISBURSEMENT OF A LIST OF FISHING AND/OR HUNTING PRIVILEGE REVOCATIONS TO CONSERVATION OFFICERS AND FISH AND GAME LICENSE VENDORS; AND REPEALING SECTION 36-1506, IDAHO CODE, RELATING TO CERTAIN REQUIREMENTS FOR THE DIRECTOR'S DISBURSEMENT OF A LIST OF HUNTING LICENSE REVOCATIONS TO HUNTING LICENSE VENDORS.

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

SECTION 1. That Section 36-1403, Idaho Code, be, and the same is hereby amended to read as follows:

36-1403. MAGISTRATE TO REPORT REVOCATIONS. Records of all revocations of fishing and/or hunting privileges shall be submitted to the department by the magistrates concerned. ~~A--list--of--all--such revocations-so-received-by-said-department-shall-be-compiled-and-sent-to all--conservation--officers--and--fish--and-game-license-vendors-showing thereon-the-name,-address,-and-term-of-revocation--of--all--persons--who have-been-denied-fishing-and/or-hunting-privileges.~~

SECTION 2. That Section 36-1506, Idaho Code, be, and the same is hereby repealed.

Approved April 2, 2003.

CHAPTER 201
(H.B. No. 15)

AN ACT

RELATING TO RESIDENTIAL CARE FACILITY ADMINISTRATORS; AMENDING SECTIONS 39-3321 AND 39-3371, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3561, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-4201, IDAHO CODE, TO REVISE THE SHORT TITLE; AMENDING SECTION 54-4202, IDAHO CODE, TO REVISE DEFINITIONS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-4203, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO MAKE GRAMMATICAL CHANGES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-4204, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REMOVE LANGUAGE PROVIDING FOR THE APPOINTMENT OF AN EXECUTIVE SECRETARY, CLERK, DEPUTY CLERKS AND BOARD EMPLOYEES; AMENDING SECTION 54-4205, IDAHO CODE, TO REVISE BOARD FUNCTIONS AND DUTIES, TO PROVIDE CORRECT TERMINOLOGY, TO MAKE GRAMMATICAL CHANGES AND TO AUTHORIZE THE BOARD TO ADOPT A CODE OF ETHICS FOR RESIDENTIAL CARE FACILITY ADMINISTRATORS; AMENDING SECTION 54-4206, IDAHO CODE, TO REVISE QUALIFICATIONS FOR EXAMINATION FOR LICENSE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4207, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING RESIDENTIAL OR ASSISTED LIVING FACILITY ADMINISTRATORS; AMENDING SECTION 54-4208, IDAHO CODE, TO REVISE PROVISIONS RELATING TO ISSUANCE OF LICENSES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4209, IDAHO CODE, TO REVISE PROVISIONS PROVIDING FOR LICENSURE AND RENEWAL AND REINSTATEMENT OF LICENSES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4210, IDAHO CODE, TO REVISE LICENSE ENDORSEMENT PROVISIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4211, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE FOR PROVISIONAL PERMITS FOR PERIODS NOT EXCEEDING THREE MONTHS; AMENDING SECTION 54-4212, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4213, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE, TO REVISE PROVISIONS RELATING TO DISCIPLINARY ACTIONS TAKEN BY THE BOARD AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4214, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTIONS 67-2601 AND 67-2602, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 39-3321, Idaho Code, be, and the same is hereby amended to read as follows:

39-3321. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR/OPERATOR. Each licensed residential or assisted living facility must employ at least one (1) full-time administrator licensed by the board responsible for licensing residential ~~or assisted living~~ <u>care facility</u> administrators for the state of Idaho who:

(1) Is of good moral and responsible character and has not been convicted, or is not under the influence or control of anyone convicted, of:

(a) A criminal offense related to the delivery of an item or service under medicare, medicaid or other state health care program; or

(b) A criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service; or

(c) A criminal offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct; or

(d) A criminal offense resulting in death or injury to a person.

(2) Has sufficient physical, emotional, and mental capacity to carry out the requirements of this chapter.

(3) Has sufficient management and administrative ability to carry out the requirements of this chapter.

Multiple facilities under one (1) administrator may be allowed by the department based on an approved plan of operation.

SECTION 2. That Section 39-3371, Idaho Code, be, and the same is hereby amended to read as follows:

39-3371. RULES. The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the standards for certified family homes pursuant to this act including, but not limited to, the following:

(1) A home shall not be certified for more than two (2) adults, however, upon an application by the owner and upon a finding by the department that residents can be cared for safely and appropriately based on the residents' specific needs, the department may authorize not more than four (4) adults to be placed in a certified family home which is owner-occupied and which applies to the department for the authorization. Certification as a four (4) resident certified family home shall not be transferable to another person or entity. Four (4) resident certified family homes shall be subject to all statutes and rules governing certified family homes but shall not be subject to the residential ~~or assisted--living~~ care facility administrator licensing requirements of chapter 42, title 54, Idaho Code, section 39-3340, Idaho Code, licensing of residential or assisted living facilities for the mentally ill, developmentally disabled and physically disabled, or section 39-3540, Idaho Code, licensing of residential or assisted living facilities for the elderly. This provision implementing four (4) resident certified family homes shall be effective on July 1, 2001. Prior to the effective date, the department shall promulgate rules for four (4) resident certified family homes through the negotiated rulemaking process. Nothing in this subsection shall be construed to authorize increased group size for providers of any form of care other than certified family homes.

(2) A care provider may be a couple or a single individual.

(3) A home cannot be approved as a certified family home if it also provides room and board for other persons.

(4) A home cannot be approved as a certified family home and for child foster care at the same time, unless a waiver of this requirement is granted by the department.

(5) The care provider must have sufficient income to maintain the home and the services offered.

(6) Information obtained by the care provider shall be held confidential except to representatives of the department to provide services or determine compliance with this chapter or upon consent of the individual or his legal guardian.

(7) Recordkeeping and reporting requirements as may be deemed necessary.

(8) Requirements to assure the safety and adequate care of residents.

SECTION 3. That Section 39-3561, Idaho Code, be, and the same is hereby amended to read as follows:

39-3561. RULES. The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the standards for certified family homes pursuant to this act including, but not limited to, the following:

(1) A home shall be certified for no more than two (2) adults, however, upon an application by the owner and upon a finding by the department that residents can be cared for safely and appropriately based on the residents' specific needs, the department may authorize not more than four (4) adults to be placed in a certified family home which is owner-occupied and which applies to the department for the authorization. Certification as a four (4) resident certified family home shall not be transferable to another person or entity. Four (4) resident certified family homes shall be subject to all statutes and rules governing certified family homes but shall not be subject to the residential ~~or assisted-living~~ care facility administrator licensing requirements of chapter 42, title 54, Idaho Code, section 39-3340, Idaho Code, licensing of residential or assisted living facilities for the mentally ill, developmentally disabled and physically disabled, or section 39-3540, Idaho Code, licensing of residential or assisted living facilities for the elderly. This provision implementing four (4) resident certified family homes shall be effective on July 1, 2001. Prior to the effective date, the department shall promulgate rules for four (4) resident certified family homes through the negotiated rulemaking process. Nothing in this subsection shall be construed to authorize increased group size for providers of any form of care other than certified family homes.

(2) A care provider may be a couple or a single individual.

(3) A home cannot be approved as a certified for family home care if it also provides room and board for other persons.

(4) A home cannot be approved as a certified family home and for child foster care at the same time, unless a waiver is granted by the department.

(5) The care provider must have sufficient income to maintain the home and the services offered.

(6) Information obtained by the care provider shall be held confidential except to representatives of the department to provide services or determine compliance with this chapter or upon consent of the individual or his legal guardian.

(7) Recordkeeping and reporting requirements as may be deemed necessary.

(8) Requirements to assure the safety and adequate care of residents.

(9) Until July 1, 1994, residential care facilities serving four (4) or fewer residents and holding a valid license or with an application for a license pending with the department as of July 1, 1994, shall have the option of being certified as a certified family home. Certification as a certified family home under this subsection shall not be

transferable to another person or entity. Certified family home providers certified under this subsection shall not be subject to the licensing requirements of chapter 42, title 54, Idaho Code, section 39-3340, Idaho Code, or section 39-3540, Idaho Code. This provision in and of itself shall not be construed to authorize increased group size for providers of any form of care other than certified family homes.

SECTION 4. That Section 54-4201, Idaho Code, be, and the same is hereby amended to read as follows:

54-4201. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Residential ~~or-Assisted-Living~~ Care Facility Administrators Act."

SECTION 5. That Section 54-4202, Idaho Code, be, and the same is hereby amended to read as follows:

54-4202. DEFINITIONS. As used in this chapter:

(1) "Board" means the board of examiners of residential ~~or-assisted living~~ care facility administrators of the state of Idaho.

(2) "Examiner" means a member of the board of examiners of residential ~~or--assisted--living~~ care facility administrators of the state of Idaho.

(3) "Executive secretary" means the secretary of the board of examiners of residential ~~or-assisted-living~~ care facility administrators of the state of Idaho.

(4) "Practice of residential ~~or--assisted--living~~ care facility administration" means that planning, organizing, directing~~,~~ and control of the operation of a residential ~~or-assisted-living~~ care facility.

(5) "Provisional ~~license~~ permit" means a temporary ~~license~~ permit issued to a provisional residential ~~or--assisted--living~~ care facility administrator under ~~and-pursuant-to~~ the provisions of this chapter.

(6) "Provisional residential ~~or--assisted--living~~ care facility administrator" means an individual who has been ~~licensed~~ issued a permit as such under ~~and-pursuant-to~~ the provisions of this chapter.

(7) "Residential ~~or-assisted-living~~ care facility" means a residential or assisted living facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more elderly, developmentally disabled, physically disabled and/or mentally ill adults not related to the owner.

(8) "Residential ~~or--assisted--living~~ care facility administrator" means any individual responsible for planning, organizing, directing~~,~~ and controlling the operation of a residential ~~or-assisted-living~~ care facility, or who in fact performs such functions, whether or not such functions are shared by one (1) or more other persons, and who is licensed under the provisions of this chapter.

SECTION 6. That Section 54-4203, Idaho Code, be, and the same is hereby amended to read as follows:

54-4203. FACILITY SUPERVISION BY LICENSED ADMINISTRATOR REQUIRED -- PRACTICE BY UNLICENSED PERSON PROHIBITED -- PROVISIONAL LICENSE. Effective July 1, 1991, no residential ~~or-assisted-living~~ care facility in

the state shall be operated unless it is under the supervision of ~~an administrator~~ a person who holds a currently valid residential ~~or assisted-living~~ care facility administrator's license, ~~and registration,~~ or provisional ~~license~~ permit, issued pursuant to this chapter. No person shall practice or offer to practice residential ~~or--assisted--living~~ care facility administration in this state or use any title, sign, card, or device to indicate that he is a residential ~~or-assisted-living~~ care facility administrator unless such person ~~shall--have--been~~ is duly licensed ~~and--registered--as--a-residential-or-assisted-living-facility administrator-or-licensed-as~~ or holds a current provisional ~~residential or--assisted--living--facility--administrator~~ permit as required by this chapter.

SECTION 7. That Section 54-4204, Idaho Code, be, and the same is hereby amended to read as follows:

54-4204. BOARD OF EXAMINERS OF RESIDENTIAL ~~OR-ASSISTED-LIVING~~ CARE FACILITY ADMINISTRATORS. (1) There is hereby created in the department of self-governing agencies a board of examiners of residential ~~or assisted-living~~ care facility administrators, which board shall consist of five (5) members, and composed of two (2) residential ~~or-assisted living~~ care facility administrators, duly licensed and registered under this chapter, and three (3) other members as hereinafter described, except that such members of the initial board shall be required only to possess the qualifications and be eligible for licensure as required under this chapter, one (1) member shall be selected from any other profession or agency or institution concerned with the care of persons requiring assistance with the daily activities of living; one (1) licensed nurse from the nursing profession; and one (1) member representative of the public at large; but no more than two (2) of the members of the board shall be officials or full-time employees of state or local governments. All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state.

(2) One (1) member of the initial board shall be appointed for a one (1) year term of office, two (2) members of the initial board shall be appointed for a two (2) year term of office, and two (2) members of the initial board shall be appointed for a three (3) year term of office. Thereafter, the term of office for each member of the board shall be three (3) years.

(3) (a) Appointments to the board shall be made by the governor after consultation with the executive board of any organized and generally recognized group concerned with residential ~~or--assisted living~~ care facility administration. Each member of the board shall hold office until his successor is duly appointed and qualified. Dismissals shall be by the governor, for reasonable cause.

(b) The two (2) residential ~~or-assisted-living~~ care facility administrators must be appointed from a list of three (3) submitted by any organized and generally recognized group concerned with residential ~~or-assisted-living~~ care facility administration.

(c) Members of the board shall be compensated as provided in section 59-509(f), Idaho Code.

(4) The board shall elect annually from its membership a chairman and vice chairman. The board shall hold two (2) or more meetings each

year. A majority of the board membership shall constitute a quorum.

(5) The board shall exercise its powers and perform its duties and functions specified by this chapter.

(6) ~~The board may appoint an executive secretary. He shall be the executive officer to the board but shall not be a member of the board. He shall have such powers and shall perform such duties as are prescribed by law and the rules of the board. A clerk and sufficient deputy clerks to adequately assist the board and the executive secretary in the keeping of the records and in the performance of their duties may be appointed by the board. All employees of the board shall be appointed, and serve in accordance with the provisions of law.~~

~~(7)~~ The board may, by written agreement, authorize the bureau of occupational licenses, or other appropriate body as provided by law, as agent to act in its interest.

SECTION 8. That Section 54-4205, Idaho Code, be, and the same is hereby amended to read as follows:

54-4205. FUNCTIONS AND DUTIES OF THE BOARD -- FEE FOR LICENSE APPLICANTS -- RULES. (1) It shall be the functions and duties of such board to:

(a) Develop, impose and enforce standards consistent with this chapter which shall be met by individuals in order to receive and retain a license or permit as a residential ~~or assisted living~~ care facility administrator. ~~which~~ Such standards shall be designed to ensure that residential ~~or assisted living~~ care facility administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as residential ~~or assisted living~~ care facility administrators;

(b) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(c) Issue licenses and ~~registrations~~ permits to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses and ~~registrations~~ permits previously issued by the board in any case where the individual holding any such license or ~~registration~~ permit is determined ~~substantially~~ to have ~~failed to conform to~~ violated the ~~requirements~~ provisions of ~~such standards~~ this chapter;

(d) Establish and carry out procedures designed to ensure that individuals licensed as residential ~~or assisted living~~ care facility administrators will, during any period that they serve as such, comply with the requirements of such standards;

(e) Receive, investigate~~,~~ and take appropriate action with respect to any charge or complaint filed with the board charging that any individual licensed as a residential ~~or assisted living~~ care facility administrator has failed to comply with the requirements of such standards;

(f) Conduct a continuing study and investigation of ~~administrators of~~ residential ~~or assisted living facilities within the state with a view~~ care facility administrators to ~~the improvement of~~ improve the standards imposed ~~for the licensing of such administrators~~ in order to obtain a license or a permit and ~~of~~ to improve the procedures and

methods for the enforcement of such standards with respect to ~~administrators of residential or assisted living facilities~~ those who have ~~been licensed as such~~ obtained a license or a permit;

(g) The board shall establish by rule a fee schedule not to exceed one hundred dollars ($100) each for applications for licenses, provisional ~~licenses~~ permits, annual ~~recertification of registration~~ renewal and applications for ~~a reciprocal~~ endorsement of a license issued by the proper authorities in another state.

(2) The board or any committee or member thereof or any hearing officer designated by such board, acting in an official capacity, shall have powers and duties as provided by law. Such board shall not be bound by the strict rules of evidence in the conduct of its proceedings but any determinations made shall be founded upon sufficient legal evidence to sustain them.

(3) The board shall also have the authority to make rules not inconsistent with law as may be necessary for the proper performance of its duties.

(4) The board shall have the authority to adopt a code of ethics for residential care facility administrators in the state which shall be adopted in compliance with chapter 52, title 67, Idaho Code.

SECTION 9. That Section 54-4206, Idaho Code, be, and the same is hereby amended to read as follows:

54-4206. QUALIFICATIONS FOR EXAMINATION FOR LICENSE. (1) The board shall admit to the examination for licensure as a residential ~~or assisted living~~ care facility administrator any candidate who submits the required application, pays a fee as determined by the board, ~~and~~ submits evidence of good moral character and suitability prescribed by the board~~,~~ and is at least twenty-one (21) years old except:

(a) ~~That on and after July 1, 1991, n~~No applicant for a license ~~as a residential or assisted living facility administrator~~ shall be admitted to such licensing examination ~~nor shall such applicant be entitled to~~ or be granted a license ~~as a residential or assisted living facility administrator~~ unless such applicant shall submit written evidence~~, on forms provided for such purpose by the board, that he has successfully completed a course of study and has been graduated~~ of graduation from a high school ~~approved and recognized by the educational authorities of the state in which such school is located, or a political division thereof or has submitted a certificate indicating that he has~~ or of having obtained high school or secondary school equivalency~~, such certificate being duly certified by a state educational authority or a political division thereof, and except that he shall have complied with the provisions of subsection (2) of this section.~~

(b) ~~On or after July 1, 1991, e~~Each applicant ~~who has not completed a regular course of study or program which course of study or program shall have been approved by the board as being adequate academic preparation for residential or assisted living facility administration,~~ shall submit evidence satisfactory to the board that he has successfully completed specialized courses or a program of study in the area of residential ~~or assisted living~~ care facility administration as required and approved by the rules of the board.

(2) A candidate who applies for examination under and pursuant to

subsection (1) of this section, in lieu of the educational requirements provided for therein, may submit evidence satisfactory to the board that such applicant has obtained two (2) years of satisfactory practical experience in residential ~~or assisted living~~ care facility administration or in a related health administration area for each year of high school education.

SECTION 10. That Section 54-4207, Idaho Code, be, and the same is hereby amended to read as follows:

54-4207. SUBJECT MATTER OF EXAMINATION -- FREQUENCY. (1) The board shall determine the subjects of examination for applicants for licensure ~~as residential or assisted living facility administrators~~ and the scope, content, and format of such examinations which in any examination shall be the same for all candidates; except that such examination shall include examination of the applicant to demonstrate his proficiency in the practice of, and knowledge of, applicable rules of health and safety within the state.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate.

SECTION 11. That Section 54-4208, Idaho Code, be, and the same is hereby amended to read as follows:

54-4208. ISSUANCE OF LICENSE ~~--EXEMPTION~~ -- EDUCATIONAL PROGRAMS. (1) An applicant for a license as a residential ~~or assisted living~~ care facility administrator who has successfully complied with the requirements of section 54-4206, Idaho Code, and the standards provided for therein, has passed the examination provided for in section 54-4207, Idaho Code, and, where applicable, has complied with the requirements of section 54-4211, Idaho Code, shall be issued a license~~, on a form provided for that purpose by the board, certifying that such applicant has met the requirements of the laws and rules entitling him to serve, act, practice, and otherwise hold himself out as a duly licensed residential or assisted living facility administrator.~~

(2) ~~(a) The board shall issue a provisional license to any individual applying therefor who has served as a residential or assisted living facility administrator for all of the calendar year immediately preceding July 1, 1991, meets the standards of the board and of this chapter relating to good character, suitability, age, and citizenship, and has paid the fee as set by the board. No license shall be issued under the provisions of this section prior to July 1, 1991.~~

~~(b) Such provisional license shall terminate two (2) years from date of issuance but shall be subject to the payment of the annual fee, and shall be canceled and be of no legal force or effect except that if, prior to the expiration of such provisional license, such provisional residential or assisted living facility administrator shall have passed a qualifying examination and otherwise complied with the provisions of section 54-4206, Idaho Code, as required by the board, a residential or assisted living facility administrator license shall be issued to him.~~

~~(3)~~ Any license issued by the board under or pursuant to the provisions of this section shall be under the hand and seal of the chairman

~~and executive secretary~~ of the board.

(~~4~~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 residential ~~or assisted living~~ care facility administrators' licenses and residential ~~or assisted living~~ care facility administrators to meet requirements established pursuant to this chapter, it shall institute and conduct or arrange with others to conduct one (1) or more such programs, and shall make provision for their accessibility to appropriate residents of this state. The board may approve programs conducted within and ~~without~~ outside of this state as sufficient to meet education and training requirements established pursuant to this chapter.

SECTION 12. That Section 54-4209, Idaho Code, be, and the same is hereby amended to read as follows:

54-4209. ~~CERTIFICATE OF REGISTRATION~~ LICENSURE ~~--~~ ATTENDANCE AT CONTINUING EDUCATION PROGRAM ~~--- REVOCATION OR SUSPENSION~~ -- RENEWAL OF ~~LAPSED REGISTRATIONS~~ LICENSES. ~~--- REGISTER OF APPLICATIONS.~~ (1) Every individual who ~~holds a valid license as a residential or assisted living facility administrator issued~~ qualifies for licensure by the board under section 54-4208(1), Idaho Code, shall ~~immediately upon issuance thereof be deemed registered with the board and~~ be issued a ~~certificate of registration~~ license. Thereafter, such individual shall annually be required to apply to the board for a ~~recertification of registration~~ license renewal and report any facts requested by the board on forms provided for such purpose. All licenses issued under the provisions of this chapter shall be subject to annual renewal and shall expire unless renewed in the manner prescribed by the board regarding applications for renewal, continuing education, and fees. License renewal and reinstatement shall be in accordance with section 67-2614, Idaho Code.

(2) Upon making an application for ~~a recertification of registration, such~~ license renewal, each individual shall pay an annual ~~registration~~ renewal fee, and ~~at the same time shall~~ submit ~~evidence~~ proof of the satisfactory ~~to the board that during the twelve (12) month period immediately preceding such application for recertification of registration he has successfully attended a~~ completion of the required continuing education ~~program or course of study~~ as may be provided in the rules of the board.

(3) Upon receipt of ~~such~~ the renewal application, ~~for recertification of registration,~~ the ~~registration~~ required fee, and the ~~evidence required with respect to~~ proof of continuing education, the board shall issue a ~~recertification of registration to such residential or assisted living facility administrator~~ current license.

(4) ~~The license of a residential or assisted living facility administrator who fails to comply with the provisions of this section, and who continues to act as a residential or assisted living facility administrator, shall be suspended or revoked by the board, in accordance with the provisions of this chapter.~~

~~(5)~~ A residential ~~or assisted living~~ care facility administrator who has been duly licensed ~~and registered~~ in this state and whose license ~~shall~~ has not ~~have~~ been revoked or suspended, and whose ~~registration~~ license has expired for a period of not longer than five (5) years, may ~~reregister within the state upon complying with the provi-~~

~~sions of this section for recertification of registration and also~~ apply for the reinstatement of his license by filing with the board an ~~affidavit~~ application together with proof of having met the continuing education requirement within the previous twelve (12) months in accordance with the rules of the board, and payment of a twenty-five dollar ($25.00) reinstatement fee together with the renewal fees for ~~back~~ all lapsed years.

~~(6) A residential or assisted living facility administrator whose license has been expired for five (5) or more years, must reapply for licensure under the provisions of section 54-4206, Idaho Code.~~

(~~7~~5) The board shall maintain a register of all applications for licensing ~~and registration~~ of residential ~~or assisted living~~ care facility administrators, which register shall show: The ~~place of residence,~~ name and address of each applicant, the name and address of employer or business connection of each applicant, the date of application, complete information of educational and experiential qualifications, the ~~action taken by the board~~ license issue date, the ~~serial~~ license number, ~~of the license and of registration certificates issued to the applicant~~ the certificate issue date, the date on which the board reviewed and acted upon the application, and such other pertinent information as the board may deem necessary.

SECTION 13. That Section 54-4210, Idaho Code, be, and the same is hereby amended to read as follows:

54-4210. 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~~ care facility administrator license issued by the proper authorities of any other state upon payment of a fee and upon submission of evidence ~~satisfactory to~~ meeting such requirements as are established by the rules of 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.~~

SECTION 14. That Section 54-4211, Idaho Code, be, and the same is hereby amended to read as follows:

54-4211. ~~TEMPORARY~~ PROVISIONAL PERMITS. ~~EXCEPTIONS.~~ (1) Pending issuance of a license, the board may issue a ~~temporary~~ provisional permit for a period not exceeding ~~six~~ three (6~~3~~) months, without an examination to an applicant who files a written application for a ~~temporary~~ provisional permit and who is other~~wise~~ qualified but does not meet the ~~experience~~ examination requirements ~~or who~~ and is applying to fill a vacancy on an emergency basis.

(2) Any individual who holds a valid Idaho nursing home administrator's license and is in good standing according to the provisions of chapter 16, title 54, Idaho Code, shall be deemed to meet the requirements for issuance of a residential ~~or assisted living~~ care facility administrator's license and shall be issued one, upon application and payment of appropriate fees.

SECTION 15. That Section 54-4212, Idaho Code, be, and the same is hereby amended to read as follows:

54-4212. MISDEMEANORS LISTED -- PENALTIES. (1) It shall be a misdemeanor for any person to:

(a) Sell or fraudulently obtain or furnish any license or aid or abet therein; or

(b) Practice as a residential ~~or--assisted--living~~ care facility administrator under cover of any license or ~~registration~~ permit illegally or fraudulently obtained or unlawfully issued; or

(c) Practice as a residential ~~or--assisted--living~~ care facility administrator or use in connection with his or her name any designation tending to imply that he or she is a residential ~~or-assisted living~~ care facility administrator unless duly licensed and registered to so practice under the provisions of this chapter; or

(d) Practice as a residential ~~or--assisted-living~~ care facility administrator during the time his or her license or ~~registration~~ permit issued under the provisions of this chapter shall be suspended or revoked; or

(e) Otherwise violate any of the provisions of this chapter.

(2) Such misdemeanor shall be punishable by a fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

SECTION 16. That Section 54-4213, Idaho Code, be, and the same is hereby amended to read as follows:

54-4213. ~~REVOCATION-OR-SUSPENSION-OF-LICENSE-OR-REGISTRATION,--REPRIMAND,--CENSURE,--OR--OTHER--DISCIPLINE~~ DISCIPLINARY ACTION. (1) The ~~license-or-registration-of-any-person-practicing-or-offering-to-practice residential-or-assisted-living-facility-administration,-or--the--license of--a-provisional-residential-or-assisted-living-facility-administrator, may-be-revoked-or-suspended,-or-such-licensee-may-be--reprimanded,--censured,--or--otherwise-disciplined~~ board may revoke or suspend, or refuse to renew, or refuse to issue, any license or permit issued under the provisions of this chapter, or may reprimand, censure or otherwise discipline the holder of a license or permit in accordance with the provisions of this section upon decision and after due hearing in any of the following cases:

(a) Upon proof that such licensee is reasonably unfit to operate a residential ~~or-assisted-living~~ care facility;

(b) Upon proof ~~that-such-licensee-has-willfully-or-repeatedly-violated~~ of the willful or repeated violation of any of the provisions of this chapter or the rules enacted in accordance with, or ~~willfully~~ of willful or ~~repeatedly-acted~~ repeated actions in a manner inconsistent with the health and safety of ~~the~~ patients; ~~of-the-home in-which-he-is-the-administrator;~~

(c) Upon proof that such licensee ~~is~~ has been convicted or found guilty of fraud or deceit in the practice of residential ~~or-assisted living~~ care facility administration or related activities~~,-or-in-his or-her-admission-to-such-practice~~.

(2) The board, or a hearing officer designated by it, shall have jurisdiction to hear all charges brought under the provisions of this section against ~~persons--licensed--and--registered--as~~ residential ~~or~~

~~assisted-living~~ care facility administrators, or ~~licensed-as~~ provisional residential ~~or--assisted--living~~ care facility administrators, and upon such hearings shall determine such charges upon their merits. ~~If--the board--determines--that--such-person-is-guilty-of-the-charges,-the-board may-revoke-his-or-her-license-and-registration,-suspend-him-or-her--from practice-or-reprimand,-censure,-or-otherwise-discipline-such-licensee.~~

(3) Proceedings under this section shall be initiated by filing with the board, charges in writing and under oath. The board on its own motion may conduct an investigation and initiate charges. The procedures for notification and the hearing on such charges, unless dismissed by the board as unfounded or trivial, shall be conducted pursuant to the provisions of chapter 52, title 67, Idaho Code.

SECTION 17. That Section 54-4214, Idaho Code, be, and the same is hereby amended to read as follows:

54-4214. REISSUANCE OF REVOKED LICENSE OR ~~REGISTRATION~~ PERMIT. (1) The board may, in its discretion, reissue a license or ~~registration~~ permit to any person whose license or ~~registration~~ permit has been revoked.

(2) Application for the reissuance of a license or ~~registration~~ permit shall be made in such manner as the board may direct in accordance with its rules.

SECTION 18. 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 coun-

selor 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; 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~~ care facility administrators, as provided by chapter 42, title 54, Idaho Code.

(c) The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) The division of building safety, to be headed by a division administrator and comprised of five (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 administra-

tor any of the authority or powers now vested in the industrial commission.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 19. 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, 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~~ care facility administrators, board of social work examiners, and such other professional and occupational licensing boards or commodity commissions as may request such services. The bureau may charge a reasonable fee for such services provided any agency not otherwise provided for by law and shall maintain proper accounting methods for all funds under its jurisdiction.

(2) Notwithstanding the statutes governing specific boards, for any board that contracts with the bureau of occupational licenses, each board member shall hold office until a successor has been duly appointed and qualified.

(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, Idaho Code.

Approved April 2, 2003.

## CHAPTER 202
## (H.B. No. 123)

### AN ACT
RELATING TO THE CRIME OF INCEST; AMENDING SECTION 18-6602, IDAHO CODE, TO INCREASE THE MAXIMUM PRISON TERM FOR THE CRIME OF INCEST.

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

SECTION 1. That Section 18-6602, Idaho Code, be, and the same is hereby amended to read as follows:

18-6602. INCEST. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison not exceeding ~~ten (10)~~ twenty-five (25) years.

Approved April 2, 2003.

## CHAPTER 203
## (H.B. No. 140)

### AN ACT
RELATING TO CONSOLIDATION OF LIBRARIES; AMENDING SECTION 33-2710, IDAHO CODE, TO CLARIFY THE BUDGETS TO BE USED TO DETERMINE A CONSOLIDATED DISTRICT'S FIRST BUDGET.

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

SECTION 1. That Section 33-2710, Idaho Code, be, and the same is hereby amended to read as follows:

33-2710. DETERMINATION OF THE PROPERTY PORTION OF THE BUDGET FOR CONSOLIDATED LIBRARIES -- DISTRICT AND DISTRICT -- DISTRICT AND CITY. (1) When two (2) district libraries have agreed to consolidate, the property tax portion of the new consolidated district's first budget will be determined in the following manner.

The property tax portion of each district's most recent annual certified budget will be added together. The resulting figure will be considered the dollar amount of property taxes on which to base the first annual budget for the new consolidated district. The provisions of section 63-802, Idaho Code, shall be applied to this dollar amount.

(2) When a tax supported city library has voted to consolidate with a district library, the property tax portion of the new consolidated district's first annual budget will be determined in the following manner.

The city library budget figure will be defined as the budget for library services, whether from the general fund and/or the library fund, in the city's ~~most recent~~ annual certified budget in effect on the date the election was held, less fines, fees, and any other identifiable rev-

enues from nontax sources, and any grants made directly to the city library board. The city library budget figure ~~and~~ will be added to the property tax portion of the public library district's ~~most recent~~ annual certified budget ~~will be added together~~ in effect on the date the election was held. The resulting figure will be considered the dollar amount of property taxes on which to base the first annual budget for the new consolidated district. The provisions of section 63-802, Idaho Code, shall be applied to this dollar amount.

If the city has established a dedicated library fund ~~in the year in which consolidation was approved~~ in effect on the date the election was held, those dollars will be removed from the city budget in the fiscal year in which the newly consolidated district begins to levy to provide library services.

(3) In any consolidation, the dollar amount of property taxes for the new consolidated district's budget shall not exceed six hundredths percent (.06%) of the market value for assessment purposes of all taxable property within the district.

(4) In any consolidation, the existing bonded debt of any district or districts shall not become the obligation of the proposed consolidated library district. The debt shall remain an obligation of the property which incurred the indebtedness.

Approved April 2, 2003.

## CHAPTER 204
(H.B. No. 232, As Amended)

AN ACT

RELATING TO BUSINESS IMPROVEMENT DISTRICTS; AMENDING SECTION 50-2617, IDAHO CODE, TO REVISE THE SPECIAL ASSESSMENT EXEMPTION PERIOD FOR NEW BUSINESSES; AMENDING CHAPTER 26, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2623, IDAHO CODE, TO REQUIRE PROPERTY OWNERS TO PROVIDE CERTAIN DISCLOSURES TO PROSPECTIVE LESSEES OR PURCHASERS OF PROPERTY LOCATED WITHIN A BUSINESS IMPROVEMENT DISTRICT, TO CLARIFY THE NATURE OF SUCH DISCLOSURES AND TO PROVIDE A RESTRICTION; AND AMENDING CHAPTER 26, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-2624, IDAHO CODE, TO REQUIRE PROPERTY LESSORS OR SELLERS TO PROVIDE CERTAIN NOTIFICATION TO THE LEGISLATIVE AUTHORITY IN THE EVENT OF LEASE OR SALE OF PROPERTY LOCATED WITHIN A BUSINESS IMPROVEMENT DISTRICT AND TO PROVIDE FOR DISCLOSURE FORMS.

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

SECTION 1. That Section 50-2617, Idaho Code, be, and the same is hereby amended to read as follows:

50-2617. EXEMPTION PERIOD FOR NEW BUSINESSES. Businesses established after the creation of a district within the district shall be exempted from the special assessments imposed pursuant to this chapter ~~for a period of one (1) year~~ from the date ~~they commenced business in the district~~ of first occupancy until the next billing date prescribed by the legislative authority.

SECTION 2. That Chapter 26, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 50-2623, Idaho Code, and to read as follows:

50-2623. DISCLOSURE REQUIREMENT PRIOR TO LEASE OR SALE OF PROPERTY. Prior to leasing or selling property located within a business improvement district, property owners are required to provide written disclosure to prospective lessees or purchasers that the subject property is located within a business improvement district and that the lessee or purchaser may be responsible for the payment of special assessments to the legislative authority. The written disclosure shall be a statement by the property owner and shall not be construed to be a statement made by any agent representing the property owner. No agent of the property owner shall be authorized to make such a disclosure as provided in this chapter or to verify the same.

SECTION 3. That Chapter 26, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 50-2624, Idaho Code, and to read as follows:

50-2624. NOTIFICATION IN THE EVENT OF LEASE OR SALE. (1) Within thirty (30) days of the lease or sale of property located within a business improvement district, the lessor of the subject property in the case of a lease, or the seller of the subject property in the case of a sale, is required to submit a written copy of the notification of the lease or sale and the identity of the lessee or purchaser, to the legislative authority.

(2) The disclosures required by the provisions of this chapter shall be set forth in the following disclosure form. An alternative form may be utilized provided that the terms of such form shall be substantially similar to the terms set forth herein:

Business Improvement District Disclosure

Purchaser or lessee has received notification that the property purchased or leased is located within a business improvement district. Purchaser or lessee understands that they may be responsible to pay special assessments to the legislative authority responsible for the business improvement district.

I/we acknowledge receipt of a copy of this disclosure statement.

| Seller/Lessor: | Buyer/Lessee: |
|---|---|
| ..... | ..... |
| Date: ..... | Date: ..... |
| ..... | ..... |
| Date: ..... | Date: ..... |

Approved April 2, 2003.

CHAPTER 205
(H.B. No. 295)

AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2107, IDAHO CODE, TO AUTHORIZE THE BOARD TO OBTAIN INJUNCTIVE RELIEF FOR VIOLATIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 36-2113, IDAHO CODE, TO PROVIDE REGULATORY JURISDICTION OVER FORMER LICENSEES FOR VIOLATIONS WHICH OCCURRED DURING THE PERIOD OF LICENSURE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 36-2117A, IDAHO CODE, TO PROVIDE FOR INJUNCTIVE RELIEF AGAINST VIOLATORS, TO REVISE THE LIMITATION OF ACTIONS, TO REVISE PENALTIES AND TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. 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 to carry into effect the provisions of this ~~act~~ chapter including, but not limited to, rules prescribing all requisite qualifications of training, experience, knowledge of rules 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 including obtaining injunctive relief and to 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 director 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.

(j) The board shall by rule designate the number of deer or elk tags allocated pursuant to section 36-408(4), Idaho Code, among the authorized operating areas within the game management area, unit or zone.

SECTION 2. That Section 36-2113, Idaho Code, be, and the same is hereby amended to read as follows:

36-2113. REVOCATION OR SUSPENSION OF LICENSE -- GROUNDS. (a) Every license shall, by virtue of this chapter, be subject to suspension, revocation, probation or other restriction by the board for the commission of any of the following acts:

1. For supplying false information or for failure to provide infor-

mation required to be furnished by the license application form for a license currently valid or for other fraud or deception in procuring a license under the provisions of this chapter.

2. For fraudulent, untruthful or misleading advertising.

3. For conviction of a felony.

4. For two (2) or more forfeitures of any deposits of money or collateral with a court or administrative agency or for a conviction for violation of regulations of the United States forest service or the bureau of land management.

5. For unethical or unprofessional conduct as defined by rules of the board.

6. For conviction of any violation of any state or federal fish and game or outfitting and guiding laws.

7. For a substantial breach of any contract with any person utilizing his services.

8. For willfully (i) operating in any area for which the licensee is not licensed, or (ii) engaging in any activity for which the licensee is not licensed.

9. For the employment of an unlicensed guide by an outfitter.

10. For inhumane treatment of any animal used by the licensed outfitter or guide in the conduct of his business which endangers the health or safety of any guest or patron or which interferes with the conduct of his business.

11. For failure by any firm, partnership, corporation or other organization or any combination thereof licensed as an outfitter to have at least one (1) licensed outfitter as designated agent conducting its outfitting business who meets all of the qualifications and requirements of a licensed outfitter.

12. For the failure to provide any animal used by the licensed outfitter or guide in the conduct of his business with proper food, drink and shelter, or for the subjection of any such animal to needless abuse or cruel and inhumane treatment.

13. For failure of an outfitter to serve the public in any of the following ways: (i) by nonuse of license privileges as defined by rules of the board, (ii) by limiting services to any individual, group, corporation or club that limits its services to a membership, or (iii) by not offering services to the general public.

14. For violation of or noncompliance with any applicable provision of this ~~act~~ chapter, or for violation of any lawful rule or order of the outfitters and guides board.

(b) For the purposes of this section, the term "conviction" shall mean a finding of guilt, an entry of a guilty plea by a defendant and its acceptance by the court, or a forfeiture of bail bond or collateral deposited to secure a defendant's appearance, suspended sentence, probation or withheld judgment.

(c) In addition to the penalties imposed in this section, the board may impose an administrative fine not to exceed five thousand dollars ($5,000), or the administrative costs of bringing the action before the board including, but not limited to, attorney's fees and costs of hearing transcripts, for each violation of the provisions of this chapter.

(d) The jurisdiction and authority of the board pursuant to this section and section 36-2114, Idaho Code, extend to any former licensee for a violation of this section which occurred during the period of licensure.

SECTION 3. That Section 36-2117A, Idaho Code, be, and the same is hereby amended to read as follows:

36-2117A. CIVIL PENALTY FOR VIOLATIONS. (a) The board or its designated agent may commence and prosecute in district court a civil enforcement action, including obtaining injunctive relief, against any person who is alleged to have violated this chapter or any ~~regulation~~ rule promulgated pursuant to this chapter. The board shall not be required to initiate or prosecute an administrative action before commencing and prosecuting a civil action.

(b) No civil proceeding may be brought to recover for a violation of this chapter or any ~~regulation~~ rule promulgated pursuant to this chapter more than two (2) years ~~after the board had knowledge of the violation~~ from the later of: the date the violation occurred or the date of the criminal conviction pursuant to section 36-2113, Idaho Code.

(c) The civil penalty for violation of the provisions of this chapter or any ~~regulation~~ rule promulgated pursuant to this chapter shall not ~~be less than one hundred dollars ($100) nor more than~~ exceed five thousand dollars ($5,000) for each separate violation.

(d) Any person who is found to have violated any provision of this chapter or any ~~regulation~~ rule promulgated pursuant to this chapter shall be assessed the board's costs, including the reasonable value of attorneys' services, for preparing and litigating the case.

(e) Fifty percent (50%) of all moneys collected under this section shall be deposited with the state treasurer, and the state treasurer shall credit the same to the Idaho outfitters and guides board ~~account~~ fund, and fifty percent (50%) of the moneys shall go to the general ~~account~~ fund in the state operating fund.

Approved April 2, 2003.

## CHAPTER 206
## (H.B. No. 312)

### AN ACT

RELATING TO DUTIES OF THE SECRETARY OF STATE PURSUANT TO THE UNIFORM COMMERCIAL CODE; AMENDING PART 5, CHAPTER 9, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-9-516A, IDAHO CODE, TO PERMIT THE SECRETARY OF STATE TO REFUSE TO FILE CERTAIN INVALID FINANCING STATEMENTS, TO MAKE SPECIFIED INFORMATION UNREADABLE AND DELETE INVALID FILINGS IF NOW ON FILE.

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

SECTION 1. That Part 5, Chapter 9, 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 28-9-516A, Idaho Code, and to read as follows:

28-9-516A. FILING OFFICER DUTIES. (1) The filing officer shall not file an initial financing statement or financing statement amendment:

(a) Which contains an assumed business name for either an individ-

ual or a business entity other than a general partnership.

(b) When an individual debtor and an individual secured party would, as a result of the filing, appear to be the same individual on the financing statement.

(2) The filing officer may require, prior to filing, reasonable proof from the secured party that an individual debtor is in fact a "transmitting utility" as defined in section 28-9-102, Idaho Code, if a filing indicates that the debtor is a transmitting utility.

(3) The filing officer may, prior to filing, cause to be unreadable any signatures, social security account numbers, taxpayer identification numbers, and employer identification numbers that appear on financing statements or financing statement amendments.

(4) The secretary of state may petition the district court in Ada county for an order to show cause why filings not in compliance with subsections (1) and (2) of this section should not be deleted from the files and records of the secretary of state.

Approved April 2, 2003.

## CHAPTER 207
## (H.B. No. 314)

AN ACT

RELATING TO THE ELECTRONIC FILING OF ANNUAL REPORTS WITH THE SECRETARY OF STATE; AMENDING SECTION 30-1-1622, IDAHO CODE, TO AUTHORIZE THE SECRETARY OF STATE TO DEVELOP AND IMPLEMENT A METHOD OF FILING CORPORATE ANNUAL REPORTS ELECTRONICALLY AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 30-3-136, IDAHO CODE, TO AUTHORIZE THE SECRETARY OF STATE TO DEVELOP AND IMPLEMENT A METHOD OF FILING CORPORATE ANNUAL REPORTS ELECTRONICALLY AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 53-613, IDAHO CODE, TO AUTHORIZE THE SECRETARY OF STATE TO DEVELOP AND IMPLEMENT A METHOD OF FILING CORPORATE ANNUAL REPORTS ELECTRONICALLY; AMENDING SECTION 53-3-1003, IDAHO CODE, TO AUTHORIZE THE SECRETARY OF STATE TO DEVELOP AND IMPLEMENT A METHOD OF FILING CORPORATE ANNUAL REPORTS ELECTRONICALLY; AND AMENDING SECTION 53-3-1003A, IDAHO CODE, TO DELETE A REQUIREMENT FOR REINSTATING A LIMITED LIABILITY PARTNERSHIP.

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

SECTION 1. That Section 30-1-1622, Idaho Code, be, and the same is hereby amended to read as follows:

30-1-1622. ANNUAL REPORT FOR SECRETARY OF STATE. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report <u>on</u> a form provided by the secretary of state that sets forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The address of its registered office and the name of its registered agent at that office in this state;

(c) The address to which correspondence to the corporation's officers may be mailed; and

(d) The names and business addresses of its directors and its president and secretary.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The annual report shall be executed by one (1) of the persons identified in section 30-1-120, Idaho Code, or by another person who is authorized by the board of directors to execute the report. Execution of the annual report constitutes a representation that the person is authorized by the board of directors to execute the report.

(4) No annual report need be filed during the first year after a corporation is incorporated or authorized to transact business in this state. The first, and all subsequent annual reports shall be delivered to the secretary of state each year before the end of the month during which a domestic corporation was initially incorporated or a foreign corporation was initially authorized to transact business.

(5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

(6) The secretary of state may, in his discretion, develop an alternative electronic method for distributing annual report forms and accepting complete and correct annual reports online. Such electronic forms shall require the same information provided in subsection (1) of this section. In the absence of execution, authentication of the annual reports shall be accomplished in a manner within the discretion of the secretary of state.

SECTION 2. That Section 30-3-136, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-136. ANNUAL REPORT FOR SECRETARY OF STATE. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state an annual report on a form prescribed and furnished by the secretary of state.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The annual report shall be executed by one (1) of the persons identified in section 30-3-2, Idaho Code, or by another person who is authorized by the board of directors to execute the report. Execution of the annual report constitutes a representation that the person is authorized by the board of directors.

(4) No annual report need be filed during the first year after a corporation is incorporated or authorized to transact business in this state. The first, and all subsequent annual reports shall be delivered to the secretary of state each year before the end of the month during which a domestic corporation was initially incorporated or a foreign corporation was initially authorized to transact business.

(5) If an annual report does not contain the information required in this section, the secretary of state shall promptly notify the

reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required in this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

(6) The secretary of state may, in his discretion, develop an alternative electronic method for distributing annual report forms and accepting complete and correct annual reports online. Such electronic forms shall require the same information provided in subsection (1) of this section. In the absence of execution, authentication of the annual reports shall be accomplished in a manner within the discretion of the secretary of state.

SECTION 3. That Section 53-613, Idaho Code, be, and the same is hereby amended to read as follows:

53-613. ANNUAL REPORT OF DOMESTIC AND FOREIGN LIMITED LIABILITY COMPANIES. (1) Each domestic limited liability company, and each foreign limited liability company authorized to do business in this state, shall file an annual report setting forth:

(a) The name of the limited liability company and the state or country under the laws of which it is organized;

(b) The address of the registered office of the limited liability company in this state, and the name of its registered agent in this state at such address, and the address of its principal office;

(c) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the current members of the limited liability company;

(d) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the current managers of the limited liability company.

(2) Such annual report shall be made on a form prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed for the limited liability company by a person authorized by the members if management is vested in the members, or by a person authorized by the managers if management is vested in the managers. Execution by such a person constitutes a representation that the authority was granted. If the limited liability company is in the hands of a receiver or trustee, it shall be executed on behalf of the limited liability company by such receiver or trustee.

(3) The annual report of a domestic or foreign limited liability company shall be delivered to the secretary of state each year before the end of the month during which a domestic limited liability company was initially organized, or a foreign limited liability company was initially authorized to transact business. Beginning one (1) year after a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business, and each year thereafter, the annual report of the limited liability company must be received in the office of the secretary of state not later than the close of business on the final day of the applicable month. If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the limited liability com-

pany for any necessary corrections.

(4) The secretary of state may, in his discretion, develop an alternative electronic method for distributing annual report forms and accepting complete and correct annual reports online. Such electronic forms shall require the same information provided in subsection (1) of this section. In the absence of execution, authentication of the annual reports shall be accomplished in a manner within the discretion of the secretary of state.

SECTION 4. That Section 53-3-1003, Idaho Code, be, and the same is hereby amended to read as follows:

53-3-1003. ANNUAL REPORT. (a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the secretary of state which contains:

(1) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) The street address of the partnership's chief executive office and, if different, the mailing address of an office of the partnership to which mail may be sent; and

(3) The name and street address of the partnership's current agent for service of process.

(b) An annual report must be filed between January 1 and November 30 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(c) The secretary of state may, in his discretion, develop an alternative electronic method for distributing annual report forms and accepting complete and correct annual reports online. Such electronic forms shall require the same information provided in subsection (a) of this section. In the absence of execution, authentication of the annual reports shall be accomplished in a manner within the discretion of the secretary of state.

SECTION 5. That Section 53-3-1003A, Idaho Code, be, and the same is hereby amended to read as follows:

53-3-1003A. REVOCATION OF STATEMENT OF QUALIFICATION. (a) The secretary of state may revoke the statement of qualification of a partnership that fails to file an annual report when due or to maintain a registered agent for service of process in this state. To do so, the secretary of state shall provide the partnership at least sixty (60) days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed or that the registered agent has resigned or cannot be found, and the prospective effective date of the revocation. The revocation is not effective if the annual report or an appointment of registered agent, as appropriate, is filed before the effective date of the revocation.

(b) A revocation under subsection (a) of this section only affects a partnership's status as a limited liability partnership and is not an

event of dissolution of the partnership.

(c) A partnership whose statement of qualification has been revoked may apply to the secretary of state for reinstatement within two (2) years after the effective date of the revocation. The application must:

(1) State the name of the partnership and the effective date of the revocation; and

(2) ~~State that the ground for revocation either did not exist or has been corrected; and~~

~~(3)~~ Be accompanied by a current annual report or appointment of registered agent, as appropriate.

(d) A reinstatement under subsection (c) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Approved April 2, 2003.

## CHAPTER 208
## (H.B. No. 347)

### AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Human Rights Commission the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| FROM: | | | | |
| General Fund | $476,600 | $ 90,900 | | $567,500 |
| Federal Grant Fund | 105,700 | 67,000 | $23,500 | 196,200 |
| Miscellaneous Revenue Fund | | 6,700 | | 6,700 |
| TOTAL | $582,300 | $164,600 | $23,500 | $770,400 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Human Rights Commission is authorized no more than eleven (11) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 2, 2003.

## CHAPTER 209
## (H.B. No. 350)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR FISCAL YEAR 2003; 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 3, Chapter 203, Laws of 2002, there is hereby appropriated to the Department of Self-Governing Agencies the following amount to be expended for the designated program according to the designated expense classes from the listed fund for the period July 1, 2002, through June 30, 2003:

ATHLETIC COMMISSION:

| | |
|---|---|
| FOR: | |
| Personnel Costs | $21,200 |
| Operating Expenditures | 16,700 |
| TOTAL | $37,900 |
| FROM: | |
| State Regulatory Fund | $37,900 |

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

Approved April 2, 2003.

## CHAPTER 210
## (S.B. No. 1123)

AN ACT

RELATING TO THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY ACT; AMENDING SECTION 40-2104, IDAHO CODE, TO CLARIFY THAT A REGIONAL PUBLIC TRANSPORTATION AUTHORITY IS A POLITICAL SUBDIVISION OF THE STATE; AND AMENDING SECTION 40-2112, IDAHO CODE, TO PROVIDE FOR POSTING NOTICE OF THE BUDGET HEARING IN AT LEAST ONE CONSPICUOUS PLACE IN EACH COUNTY WITHIN THE BOUNDARIES OF THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY AND AT THE ADMINISTRATIVE OFFICES OF THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY.

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

SECTION 1. That Section 40-2104, Idaho Code, be, and the same is hereby amended to read as follows:

40-2104. PURPOSE OF AUTHORITY. The purpose of an authority created pursuant to this chapter is to establish a single governmental agency oriented entirely toward public transportation needs within each county or region that deems such an agency necessary. This authority, a political subdivision of the state of Idaho, is under the supervision of and

directly responsible to local governments, and shall provide public transportation services, encourage private transportation programs and coordinate both public and private transportation programs, services and support functions.

SECTION 2. That Section 40-2112, Idaho Code, be, and the same is hereby amended to read as follows:

40-2112. BUDGET. (1) The board shall annually adopt a budget and cause a public hearing to be held upon the budget.

(2) Notice of the budget hearing shall be posted at least ten (10) days prior to the date of the meeting in at least one (1) conspicuous place in each county~~, city and highway district~~ within the ~~region~~ boundaries of the regional public transportation authority and at the administrative offices of the regional public transportation authority. A copy of the notice shall also be published in accordance with the provisions of section 40-206, Idaho Code. The place, hour and day of the hearing shall be specified in the notice, as well as the place where the budget may be examined prior to the hearing. A full and complete copy of the proposed budget shall be published with and as a part of the publication of the notice of hearing.

(3) The budget shall be available for public inspection from and after the date of the posting of notice of hearing at a place and during business hours as the board may direct.

(4) A quorum of the board shall attend the hearing and explain the proposed budget and hear any and all objections to it.

(5) The budget shall be completed and finalized not later than the Tuesday following the first Monday in September for the ensuing fiscal year.

(6) The fiscal year of the authority shall commence on the first day of October of each year.

Approved April 2, 2003.

## CHAPTER 211
## (S.B. No. 1157)

### AN ACT

APPROPRIATING MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND FOR FISCAL YEAR 2004; APPROPRIATING ADDITIONAL MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND FOR FISCAL YEAR 2003; AND DECLARING AN EMERGENCY FOR SECTION 2 OF THIS ACT.

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

SECTION 1. There is hereby appropriated $8,126,700 from the General Fund to be deposited in the Catastrophic Health Care Cost Fund for the period July 1, 2003, through June 30, 2004.

SECTION 2. In addition to the appropriation made in Section 1, Chapter 170, Laws of 2002, there is hereby appropriated $2,000,000 from the General Fund to be deposited in the Catastrophic Health Care Fund for the period July 1, 2002, through June 30, 2003.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after passage and approval.

Approved April 2, 2003.

## CHAPTER 212
## (S.B. No. 1161)

AN ACT
APPROPRIATING MONEYS TO THE DIVISION OF BUILDING SAFETY FOR FISCAL YEAR 2004; 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 Division of Building Safety in the Department of Self-Governing Agencies the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| I. ADMINISTRATION: | | | | |
| FROM: | | | | |
| Electrical Fund | $ 215,300 | $ 23,500 | | $ 238,800 |
| Building Fund | 53,300 | 5,700 | | 59,000 |
| Plumbing Fund | 138,500 | 15,200 | | 153,700 |
| Manufactured Housing Fund | 5,500 | 600 | | 6,100 |
| Public Works Contractors Licensing Fund | 21,600 | 2,800 | | 24,400 |
| Miscellaneous Revenue/ Industrial Safety Fund | 47,100 | 5,200 | | 52,300 |
| Miscellaneous Revenue/ Logging Fund | 19,100 | 2,100 | | 21,200 |
| Miscellaneous Revenue/ Building Bureau NCSBCS Fund | 1,400 | 100 | | 1,500 |
| Federal Grant Fund | 7,400 | 800 | | 8,200 |
| TOTAL | $ 509,200 | $ 56,000 | | $ 565,200 |
| II. BUILDING SAFETY: | | | | |
| FROM: | | | | |
| Electrical Fund | $2,625,600 | $ 653,600 | $ 47,500 | $3,326,700 |
| Building Fund | 642,000 | 223,100 | | 865,100 |
| Plumbing Fund | 1,652,300 | 564,500 | 47,400 | 2,264,200 |
| Manufactured Housing Fund | 47,400 | 23,800 | | 71,200 |

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | TOTAL |
|---|---|---|---|---|
| Public Works Contractors Licensing Fund | 195,800 | 147,200 | | 343,000 |
| Miscellaneous Revenue/ Industrial Safety Fund | 516,100 | 251,000 | | 767,100 |
| Miscellaneous Revenue/ Logging Fund | 256,500 | 84,100 | $ 28,000 | 368,600 |
| Miscellaneous Revenue/ Building Bureau NCSBCS Fund | 11,000 | 6,800 | | 17,800 |
| Miscellaneous Revenue Energy Program Fund | 106,600 | 16,000 | | 122,600 |
| Federal Grant Fund | 80,000 | 58,500 | 800 | 139,300 |
| TOTAL | $6,133,300 | $2,028,600 | $123,700 | $8,285,600 |
| GRAND TOTAL | $6,642,500 | $2,084,600 | $123,700 | $8,850,800 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Building Safety in the Department of Self-Governing Agencies is authorized no more than one hundred nineteen and one-tenth (119.1) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 2, 2003.

## CHAPTER 213
## (S.B. No. 1093)

### AN ACT

RELATING TO THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; AMENDING SECTION 39-6306A, IDAHO CODE, TO REMOVE LANGUAGE PROHIBITING TRIBUNALS OF THIS STATE FROM ENFORCING SUPPORT PROVISIONS OF FOREIGN PROTECTION ORDERS AND TO PROVIDE THAT THE VALIDITY OF AN EX PARTE FOREIGN PROTECTION ORDER DEPENDS UPON A RESPONDENT HAVING HAD OR HAVING IN THE FUTURE AN OPPORTUNITY TO BE HEARD IN A MANNER CONSISTENT WITH DUE PROCESS RIGHTS.

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

SECTION 1. That Section 39-6306A, Idaho Code, be, and the same is hereby amended to read as follows:

39-6306A. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT. (1) Short Title. This section may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

(2) Definitions. As used in this section:

(a) "Issuing state" means the state whose tribunal issues a protection order.

(b) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(c) "Protected individual" means an individual protected by a protection order.

(d) "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. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(e) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

(3) Judicial Enforcement of Order.

(a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) ~~A tribunal of this state may not enforce under this section a provision of a foreign protection order with respect to support.~~

~~(e)~~ A foreign protection order is valid if it:

(i) Identifies the protected individual and the respondent;

(ii) Is currently in effect;

(iii) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(iv) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was

issued, in a manner consistent with the rights of the respondent to due process.

(~~f~~e) A foreign protection order valid on its face is prima facie evidence of its validity.

(~~g~~f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(~~h~~g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(i) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(ii) The tribunal of the issuing state made specific findings in favor of the respondent.

(4) Nonjudicial Enforcement of Order.

(a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a foreign protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this subsection, the foreign protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a foreign protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this section.

(5) Registration of Order.

(a) Any individual may register a foreign protection order in this state pursuant to section 39-6311, Idaho Code. To register a foreign protection order, an individual shall present a copy of a protection order which has been certified by the issuing state to a court of this state in order to be entered in the Idaho law enforcement telecommunications system pursuant to section 39-6311, Idaho Code.

(b) An individual registering a foreign protection order shall file with the court an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(c) A fee may not be charged for the registration of a foreign protection order.

(d) A foreign protection order registered under this section may be

entered in any existing state or federal registry of protection orders, in accordance with applicable law.

(6) Immunity. This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this section.

(7) Uniformity of Application and Construction. In applying and construing this section, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(8) Transitional Provision. This section applies to foreign protection orders issued before July 1, 2002, and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2002. A request for enforcement of a foreign protection order made on or after July 1, 2002, for violations of a foreign protection order occurring before that date is governed by this section.

Approved April 3, 2003.

## CHAPTER 214
## (S.B. No. 1134)

### AN ACT

RELATING TO THE PROMISE SCHOLARSHIP PROGRAM; AMENDING SECTION 33-4303, IDAHO CODE, TO PROVIDE FOR APPLICATION AND TO PROVIDE FOR THE IDAHO ROBERT R. LEE PROMISE SCHOLARSHIP PROGRAM.

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

SECTION 1. That Section 33-4303, Idaho Code, be, and the same is hereby amended to read as follows:

33-4303. SHORT TITLE. ~~This act~~ The scholarship program provided for in sections 33-4303 through 33-4315, Idaho Code, shall be known and cited as the "Idaho Robert R. Lee Promise Scholarship Program."

Approved April 3, 2003.

## CHAPTER 215
## (S.B. No. 1158)

### AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 2004; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Division of Financial Management the following amounts to be expended for the following programs according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | TOTAL |
|---|---|---|---|
| I. DIVISION OF FINANCIAL MANAGEMENT: | | | |
| FROM: | | | |
| General Fund | $1,767,300 | $180,900 | $1,948,200 |
| Miscellaneous Revenue Fund | 23,300 | 7,500 | 30,800 |
| TOTAL | $1,790,600 | $188,400 | $1,979,000 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Financial Management is authorized no more than twenty-four (24) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved April 3, 2003.

## CHAPTER 216
## (S.B. No. 1155)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR FISCAL YEAR 2004; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS TO THE ENVIRONMENTAL REMEDIATION FUND; EXPRESSING LEGISLATIVE INTENT REGARDING THE ENVIRONMENTAL REMEDIATION FUND AND REQUIRING AN ANNUAL REPORT; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO STATE MATCH; EXPRESSING LEGISLATIVE INTENT REGARDING THE USE OF AIR QUALITY PERMITTING FUNDS; AND EXPRESSING LEGISLATIVE INTENT REGARDING THE KOOTENAI COUNTY AIR QUALITY ADVISORY COMMITTEE.

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

SECTION 1. There is hereby appropriated to the Department of Environmental Quality the following amounts to be expended for the designated programs according to the designated expense classes from the various funds listed for the period July 1, 2003, through June 30, 2004:

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|---|
| I. ADMINISTRATION AND SUPPORT SERVICES: | | | | | |
| FROM: | | | | | |
| General Fund | $ 1,439,500 | $ 1,143,100 | | | $ 2,582,600 |
| Air Quality Permitting Fund | 168,900 | 390,700 | | | 559,600 |
| Public Water System Supervision Fund | 277,500 | 54,000 | $ 2,000 | | 333,500 |
| Department of Environmental Quality Fund (Receipts) | 80,800 | 20,600 | 2,000 | | 103,400 |
| Department of Environmental Quality Fund (Federal) | 1,727,600 | 1,287,300 | 16,000 | | 3,030,900 |
| TOTAL | $ 3,694,300 | $ 2,895,700 | $ 20,000 | | $ 6,610,000 |
| II. AIR QUALITY: | | | | | |
| FROM: | | | | | |
| General Fund | $ 1,493,100 | $ 190,900 | | | $ 1,684,000 |
| Agriculture Smoke Management Fund | | 30,100 | | | 30,100 |
| Air Quality Permitting Fund | 1,553,500 | 488,300 | 14,000 | | 2,055,800 |
| Department of Environmental Quality Fund (Receipts) | 73,000 | 168,500 | | | 241,500 |
| Department of Environmental Quality Fund (Federal) | 1,020,700 | 276,400 | 26,000 | $ 40,600 | 1,363,700 |
| TOTAL | $ 4,140,300 | $ 1,154,200 | $ 40,000 | $ 40,600 | $ 5,375,100 |
| III. WATER QUALITY: | | | | | |
| FROM: | | | | | |
| General Fund | $ 4,555,100 | $ 1,837,300 | | $1,658,900 | $ 8,051,300 |
| Public Water System Supervision Fund | 816,700 | 158,400 | $ 6,000 | 330,200 | 1,311,300 |

| | FOR PERSONNEL COSTS | FOR OPERATING EXPENDITURES | FOR CAPITAL OUTLAY | FOR TRUSTEE AND BENEFIT PAYMENTS | TOTAL |
|---|---|---|---|---|---|
| Water Pollution Control Fund | | | | 190,800 | 190,800 |
| Department of Environmental Quality Fund (Receipts) | 242,500 | 75,600 | 2,000 | 50,600 | 370,700 |
| Department of Environmental Quality Fund (Federal) | 3,088,400 | 2,105,600 | 34,000 | 2,633,200 | 7,861,200 |
| TOTAL | $ 8,702,700 | $ 4,176,900 | $ 42,000 | $4,863,700 | $17,785,300 |
| IV. WASTE MANAGEMENT AND REMEDIATION: | | | | | |
| FROM: | | | | | |
| General Fund | $ 1,681,500 | $ 334,400 | | $ 32,100 | $ 2,048,000 |
| Water Pollution Control Fund | | 1,000,000 | | | 1,000,000 |
| Environmental Remediation Fund | 167,400 | 599,600 | | 60,200 | 827,200 |
| Department of Environmental Quality Fund (Receipts) | 363,500 | 430,600 | $ 4,000 | 50,800 | 848,900 |
| Bunker Hill Trust Fund | | 450,000 | | 300,000 | 750,000 |
| Department of Environmental Quality Fund (Federal) | 2,394,900 | 1,445,900 | 14,000 | 15,200 | 3,870,000 |
| TOTAL | $ 4,607,300 | $ 4,260,500 | $ 18,000 | $ 458,300 | $ 9,344,100 |
| V. INEEL OVERSIGHT: | | | | | |
| FROM: | | | | | |
| General Fund | $ 180,100 | $ 8,500 | | | $ 188,600 |
| Department of Environmental Quality Fund (Federal) | 946,200 | 374,900 | $ 43,000 | $ 585,800 | 1,949,900 |
| TOTAL | $ 1,126,300 | $ 383,400 | $ 43,000 | $ 585,800 | $ 2,138,500 |
| GRAND TOTAL | $22,270,900 | $12,870,700 | $163,000 | $5,948,400 | $41,253,000 |

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Environmental Quality is authorized no more than three hundred sixty-nine and fifty-five hundredths (369.55) full-time equivalent positions at any point during the period July 1, 2003, through June 30, 2004, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. Notwithstanding the provisions of Section 39-3630, Idaho Code, the State Controller is hereby directed to transfer $520,000 from the Water Pollution Control Fund to the Environmental Remediation Fund for the period July 1, 2003, through June 30, 2004.

SECTION 4. It is legislative intent that moneys deposited into the Environmental Remediation Fund are to be used solely for Bunker Hill remediation within the site and that in accordance with the Bunker Hill Remedial Action Management Plan, an annual report shall be filed no later than January 1 of each year with the Governor, the Legislature, and the Bunker Hill Superfund Task Force on the remediation progress and the expenditures involved.

SECTION 5. It is legislative intent that the appropriation of moneys from the Water Pollution Control Fund in Section 1 of this act specifically supersedes the provisions of Section 39-3630, Idaho Code. It is further provided that $1,000,000 of such moneys are to be used solely for projects in the Coeur d'Alene River Basin in such a manner so as to count toward the ten percent (10%) state match required for work done at the Bunker Hill superfund site. It is recognized that design is a necessary expense to these projects and that design costs are not eligible for match under the superfund law.

SECTION 6. The Joint Finance-Appropriations Committee was unable to shift $300,000 from the Air Quality Permitting Fund to the General Fund. It is legislative intent that the Department of Environmental Quality continue to fund allowable Title V air quality monitoring activities with Air Quality Permitting Funds.

SECTION 7. In the early 1990's a group of community members donated moneys to address air quality issues in Kootenai County. These moneys were deposited to the Department of Environmental Quality Receipts Fund and used for air quality projects approved by resolution of the Kootenai County Air Quality's Advisory Committee. It is legislative intent that the Department transfer all unexpended and unencumbered moneys remaining from those donations to the Kootenai County Air Quality Advisory Committee.

Approved April 3, 2003.

## CHAPTER 217
(S.B. No. 1122, As Amended in the House)

AN ACT

RELATING TO CRIMES; AMENDING SECTION 18-205, IDAHO CODE, TO DEFINE "ACCESSORIES" TO INCLUDE PERSONS WHO KNOW THAT A FELONY HAS BEEN COMMITTED AND HARBOR AND PROTECT A PERSON WHO COMMITTED SUCH FELONY OR WHO HAS BEEN CHARGED WITH OR CONVICTED THEREOF.

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 are accessories who, having knowledge that a felony has been committed:~~,~~

(1) W~~w~~illfully withhold or conceal it from a peace officer, judge, magistrate, grand jury or trial jury;~~,~~ or

(2) H~~h~~arbor and protect ~~the~~ a person who committed such felony or who has been charged with or convicted thereof~~, are accessories~~.

Approved April 4, 2003.

## CHAPTER 218
(H.B. No. 11)

AN ACT

RELATING TO CREMATORIUMS; REPEALING CHAPTER 3, TITLE 27, IDAHO CODE, RELATING TO DEFINITIONS, RIGHTS OF FUNERAL DIRECTORS OR MORTICIANS TO BE PRESENT AT CREMATIONS, INSPECTIONS OF CREMATORIES, REMOVAL OF HUMAN REMAINS FROM CASKETS WITHOUT CONSENT, PERMITS TO OPERATE CREMATORIES AND PERMIT OR LICENSE FEES AND RENEWALS, RECORDS OF CREMATORIES, REVOCATION AND REFUSAL TO REISSUE CREMATORIUM LICENSES, ENFORCEMENT PROVISIONS AND CONFLICTS WITH EXISTING LAWS.

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

SECTION 1. That Chapter 3, Title 27, Idaho Code, be, and the same is hereby repealed.

Approved April 4, 2003.

## CHAPTER 219
(H.B. No. 59, As Amended in the Senate)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-601, IDAHO CODE, TO CLARIFY THAT INTEREST DUE OR ACCRUED ON A LOAN IN DEFAULT SHALL NOT BE TREATED AS AN ASSET AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SEC-

TION 41-714, IDAHO CODE, TO PROVIDE THAT INSURERS MAY INVEST FUNDS IN FOREIGN CORPORATIONS WHOSE STOCK IS PUBLICLY TRADED ON UNITED STATES STOCK EXCHANGES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-716, IDAHO CODE, TO PROVIDE THAT INVESTMENT LIMITATIONS FOR INSURERS IN TRUST SECURITIES ARE TO BE DETERMINED BASED ON THE LOWER OF THE COST OF THE SECURITY OR THE MARKET VALUE OF THE SECURITY; AMENDING SECTION 41-723, IDAHO CODE, TO PROVIDE THAT THE FAIR MARKET VALUE FOR PROPERTY MUST BE DETERMINED BY AN INDEPENDENT APPRAISER AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING CHAPTER 183, LAWS OF 2000, BY THE ADDITION OF A NEW SECTION TO DECLARE AN EMERGENCY AND TO PROVIDE RETROACTIVE APPLICATION.

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

SECTION 1. That Section 41-601, Idaho Code, be, and the same is hereby amended to read as follows:

41-601. "ASSETS" DEFINED. In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

(1) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

(2) Investments, securities, properties and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one (1) year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the director a collectible asset.

(e) Interest due or accrued on a mortgage loan, <u>not in default of the contractual principal payments and the contractual interest payments, pursuant to the contractual terms of the loan,</u> in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of eighteen (18) months be allowed as an asset.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three (3) months, and rent more than three (3) months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

(g) The unaccrued portion of taxes paid prior to the due date on real property.

(3) Premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

(4) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

(5) Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the state of Idaho, any department, board, agency, or institution thereof, or any other political subdivision of the state of Idaho, including municipalities or specially chartered subdivisions, or by the United States government or by any of its instrumentalities.

(6) ~~Instalment~~ Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply.

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

(8) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under section 41-511, Idaho Code.

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the director available for the payment of losses and claims and at values to be determined by him.

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars ($25,000), which cost shall be amortized in full over a period not to exceed ten (10) calendar years.

(12) All office equipment, office furniture, private passenger automobiles, deemed necessary for conduct of insurance business, the aggregate amount of which shall not at any one time exceed one ~~per-cent~~ percent (1%) of the other assets of the insurer.

(13) All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the director for the kinds of insurance to be reported upon therein.

(14) Other assets, not inconsistent with the provisions of this section, deemed by the director to be available for the payment of losses and claims, at values to be determined by him.

SECTION 2. That Section 41-714, Idaho Code, be, and the same is hereby amended to read as follows:

41-714. COMMON STOCKS. After satisfying the requirements of section 41-706(3) and (4), Idaho Code, (investment of capital and life reserves), an insurer may invest funds in an aggregate amount not in excess of fifteen ~~per-cent~~ percent (15%) of its assets in common shares of stock of any solvent institution existing under the laws of the United States or of any state, district or territory thereof, or a foreign corporation publicly traded on United States stock exchanges, that qualify as a sound investment, in addition to the shares of a substantially owned or wholly owned subsidiary corporation.

For the purpose of determining the investment limitation imposed by this section, the insurer shall value securities subject to the provisions of this section at the cost of the security or at the market value of the security, whichever is lower. However, investments in the shares of subsidiaries or companion insurance companies shall be governed by sections 41-715 and 41-3801B, Idaho Code.

The limitations as to investment in common stocks as provided herein shall not apply to nor limit the right of investments in investment trust securities as provided for in section 41-716, Idaho Code.

SECTION 3. That Section 41-716, Idaho Code, be, and the same is hereby amended to read as follows:

41-716. INVESTMENT TRUST SECURITIES. (1) An insurer may invest in the securities of any open-end management type investment company or investment trust registered with the federal securities and exchange commission under the Investment Company Act of 1940 as from time to time amended, if such investment company or trust has been organized for not less than three (3) years and has assets of not less than twenty-five million dollars ($25,000,000) as at the date of investment by the insurer. The aggregate amount invested under this section shall not exceed twenty-five percent (25%) of the insurer's assets with limitations of five percent (5%) of the insurer's assets in any one (1) fund and ten percent (10%) of the insurer's assets in any one (1) fund family.

(2) For the purpose of determining the investment limitation imposed by this section 41-716, Idaho Code, the insurer shall value securities subject to the provisions of this section 41-716, Idaho Code, at the cost of the security or at the market value of the security, whichever is lower.

SECTION 4. That Section 41-723, Idaho Code, be, and the same is hereby amended to read as follows:

41-723. APPRAISAL -- LIMIT OF AMOUNT LOANED. (1) The fair value of property shall be determined by appraisal by a competent independent appraiser at the time of the making or acquisition of a mortgage loan or investing in a contract for the deed thereon; except, that as to bonds or notes secured by mortgage or trust deed guaranteed or insured by the federal housing administration, or guaranteed or insured as to principal in full or in part by the administrator of veterans' affairs, or guaranteed or insured by the farmers home administration, the valuation made by such administration or administrator shall be deemed to have been made by a competent appraiser for the purposes of this subsection.

(2) An insurer shall not make or acquire a loan or loans upon the security of any one (1) parcel of real property in aggregate amount in excess of ten thousand dollars ($10,000) or more than the amount permissible under section 41-706(1), Idaho Code, (investment in securities, etc., of any one person), whichever is the greater.

SECTION 5. That Chapter 183, Laws of 2000, be, and the same is hereby amended by the addition thereto of a NEW SECTION, 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, and retroactively to January 1, 1995.

Approved April 4, 2003.

## CHAPTER 220
## (H.B. No. 149)

AN ACT

RELATING TO THE BASIN ENVIRONMENTAL IMPROVEMENT PROJECT COMMISSION; AMENDING SECTION 39-8106, IDAHO CODE, TO REVISE THE DUTIES OF THE BOARD OF COMMISSIONERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-8106, Idaho Code, be, and the same is hereby amended to read as follows:

39-8106. BASIN PROJECT COMMISSION -- ESTABLISHMENT -- COMPOSITION -- POWERS -- DUTIES -- FUNDING. (1) The basin environmental improvement project commission is hereby created and shall become operational when the director of the department of environmental quality, by execution of an appropriate order, determines that:

(a) Significant funds from any source have been provided to the basin improvement fund and financing authority; or

(b) Any one (1) or more agreements or compacts have been entered into between the state of Idaho and the state of Washington, the Coeur d'Alene tribe or the United States of America providing for participation in the basin project commission and financing authority.

(2) Any agreement or compact providing for participation in the basin project commission and financing authority shall be consistent with the terms of this chapter.

(3) The board of commissioners of the basin project commission shall include one (1) representative of the state of Idaho and one (1) representative from each of the county commissions of Shoshone, Kootenai and Benewah counties of the state of Idaho as appointed by the governor of the state of Idaho. Upon participation of the state of Washington, the Coeur d'Alene tribe or the United States of America through agreement or compact, the board of commissioners shall also include, according to such participation: one (1) representative of the state of Washington appointed by the governor of Washington; one (1) tribal council member of the Coeur d'Alene tribe appointed by the council of the Coeur d'Alene tribe; and one (1) representative of the United States of America appointed by the president of the United States of America.

(4) The commission shall act by majority vote except that the vote of any commissioner representative of the state of Idaho, the Coeur d'Alene tribe or the United States of America, or the unanimous vote of all three (3) commissioners representing Shoshone, Kootenai and Benewah counties, may veto any majority vote, in which event the action is not

valid. The fiduciary duties of each commissioner shall be to their respective federal, tribal, state, or local governmental entity and such duties shall not disqualify any commissioner from full participation in any commission action. The commission may establish an advisory group to provide local citizen input to the commission in the performance of its duties. The commission shall distribute and publish a public involvement policy, to include procedures to assure adherence to the open meeting law and the public records act.

(5) The commission shall adopt as the basin project workplan a record of decisions approved pursuant to the federal comprehensive environmental responsibility compensation and liability act of 1980 (CERCLA), as amended, by the environmental protection agency of the United States of America, the department of environmental quality of the state of Idaho and, upon its participation, the Coeur d'Alene tribe, for environmental remediation and related measures pertaining to contamination by heavy metals in the basin. Amendment of the basin project workplan shall be made by the commission upon approval of the United States environmental protection agency, the Idaho department of environmental quality and the Coeur d'Alene tribe.

(6) The commission shall, to the extent that funds are available from the financing authority and any other source, implement the basin project workplan.

(7) The commission may select institutional control measures in implementation of the basin project workplan. The measures shall be adopted and implemented by appropriate local and tribal governments as a condition of remediation or restoration activities within those jurisdictions.

(8) The commission shall appoint an executive director to administer the basin project.

(9) The commissioner~~--representing--the state of Idaho and, in the event of participation through agreement or compact,--the--commissioners representing--the--United States of America and the Coeur d'Alene tribe,~~ shall annually fix and determine, consistent with the basin project workplan and its schedule, the priorities of the basin project, the amount of money required from the financing authority, federal grants and taxation for implementing the basin project priorities including costs of construction and other activities, costs of operation and maintenance of the work, equipment of the basin project, and costs of administration.

(10) The commission shall have, within the basin, the authority of a board of commissioners of a flood control district as provided in chapter 31, title 42, Idaho Code, and the authority of a board of commissioners of a drainage district as provided in chapters 29 and 30, title 42, Idaho Code.

(11) The commission shall have the following powers and duties which may be exercised through the executive director of the basin project commission:

(a) To employ personnel as may be necessary to carry out the purposes and objectives of the basin project commission;

(b) To sue and be sued in the name of the basin project commission and to make and execute contracts and other instruments necessary or convenient to the exercise of its power;

(c) To manage and conduct the business and affairs of the basin project commission, both within and without the basin;

(d) To design, construct, operate and maintain structural works and actions as provided by the basin project workplan or procure or contract for the performance of those works and actions or portions thereof by any local, state, tribal or federal governmental entity or any private entity or individual;
(e) To prescribe the duties of officers, agents and employees as may be required;
(f) To establish the fiscal year of the basin project commission, to keep records of all business transactions of the basin project commission and to provide an annual public accounting of all expenditures;
(g) To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any real or personal property, and improve any properties acquired; to receive income from properties and to expend the income in carrying out the purposes and provisions of the basin project commission; and to lease any of its property or interest therein in furtherance of the purposes and provisions of the basin project commission;
(h) To convey rights-of-way and easements for highways, public roads, public utilities, and for other purposes, over basin project property, as shall be determined by the commission to be in the best interests of the basin project;
(i) To convey by deed, bill of sale, or other appropriate instrument all of the estate and interest of the basin project commission, in any real or personal property;
(j) To enter into contracts or agreements with the United States of America or any of its agencies, the states of Idaho or Washington or any of their agencies or political subdivisions or the Coeur d'Alene tribe or any of its agencies or subdivisions or private entities or individuals and to cooperate with those governments, agencies, subdivisions, private entities or individuals in effectuating, promoting and accomplishing the purposes of the basin project;
(k) To bear its allocated share of the cost of any project resulting from any contract or agreement entered into as provided in this chapter;
(l) To assume, administer and maintain pursuant to any agreement or contract entered into in accordance with this chapter any environmental remediation or restoration measure within the basin undertaken by or in cooperation with the United States of America or any of its agencies, the states of Idaho or Washington or any of their agencies or subdivisions, or the Coeur d'Alene tribe or any of its agencies or subdivisions, or any combinations thereof;
(m) To accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States of America or any of its agencies, or the states of Idaho or Washington or any of their agencies or political subdivisions, or the Coeur d'Alene tribe or any of its agencies or subdivisions, or private entities or individuals, or any combinations thereof, and to expend such moneys, services, or materials in carrying on its operations;
(n) To exercise all other powers necessary or helpful in carrying out the purposes and provisions of the basin project commission as provided in this chapter and by agreements or compacts between the states of Idaho and Washington, the Coeur d'Alene tribe and the United States of America.

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

Approved April 4, 2003.

## CHAPTER 221
## (H.B. No. 248)

### AN ACT

RELATING TO THE RESIDENTIAL MORTGAGE PRACTICES ACT; AMENDING SECTION 26-3103, IDAHO CODE, TO REMOVE LANGUAGE EXEMPTING PERSONS LICENSED UNDER THE IDAHO REAL ESTATE LICENSE LAW FROM PROVISIONS RELATING TO RESIDENTIAL MORTGAGE PRACTICES.

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

SECTION 1. That Section 26-3103, Idaho Code, be, and the same is hereby amended to read as follows:

26-3103. EXEMPTIONS. The provisions of this chapter do not apply to:

(1) Agencies of the United States and agencies of this state and its political subdivisions;

(2) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(3) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs;

(4) Any person licensed or chartered under the laws of this state or the United States as a bank, regulated lender licensed under the Idaho credit code and regularly engaged in making regulated consumer loans other than those secured by a security interest in real property, savings and loan association, credit union, or trust company;

(5) Any person licensed or chartered under the laws of any other state as a bank, savings and loan association, or credit union;

(6) Attorneys, or persons licensed under ~~either~~ chapter 2, ~~or chapter 20,~~ title 54, Idaho Code, provided that the license held by such attorneys or persons is in an active status;

(7) Persons employed by licensees on a full-time basis or persons who are employed by no more than one (1) licensee on a part-time basis;

(8) Any person or entity not making more than five (5) loans primarily for personal, family, or household use and primarily secured by a security interest on residential real property, with his own funds for his own investment, in any period of twelve (12) consecutive months; nor

(9) Any person who funds a residential mortgage loan which has been originated and processed by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in this state for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For

the purpose of this subsection, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee or exempt person.

Approved April 4, 2003.

## CHAPTER 222
(H.B. No. 255, As Amended in the Senate)

AN ACT

RELATING TO EXEMPTIONS FROM PROPERTY TAXATION; AMENDING SECTION 63-602E, IDAHO CODE, TO PROVIDE THAT PROPERTY USED PRIMARILY FOR CHARTER SCHOOL PURPOSES IS EXEMPT FROM TAXATION AND TO PROVIDE FOR ASSESSMENT OF PROPERTY USED FOR CHARTER SCHOOL PURPOSES AND BUSINESS PURPOSES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-602E, Idaho Code, be, and the same is hereby amended to read as follows:

63-602E. PROPERTY EXEMPT FROM TAXATION -- PROPERTY USED FOR SCHOOL OR EDUCATIONAL PURPOSES. (1) The following property is exempt from taxation: all property used exclusively for nonprofit school or educational purposes, property used for charter school purposes, and all property from which no profit is derived and which is held or used exclusively for endowment, building or maintenance purposes of schools or educational institutions.

(2) If property is used primarily for charter school purposes and for business purposes from which a revenue is derived, which revenue is not related to the educational purpose for which the charter school exists, the assessor shall determine the value of the entire property, of the part used for charter school purposes, and of the part used for such unrelated business purposes. The portion of the building used for charter school purposes and for business and administration of the charter school shall be exempt from taxation.

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, 2003.

Approved April 4, 2003.