GENERAL LAWS

OF THE

STATE OF IDAHO

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

Convened January 12, 2004
Adjourned March 20, 2004

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. 503)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 2004; 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 324, Laws of 2003, there is hereby appropriated to the Department of Water Resources 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, 2003, through June 30, 2004:

ENERGY RESOURCES:	
FOR: Personnel Costs	$41,000
FROM:	
Miscellaneous Revenue Fund	$41,000

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

Approved February 5, 2004.

CHAPTER 2
(H.B. No. 504)

AN ACT
RELATING TO TRANSFERS OF FUNDS; PROVIDING A TRANSFER OF FUNDS TO THE PEST CONTROL DEFICIENCY FUND; PROVIDING A TRANSFER OF FUNDS TO THE FIRE SUPPRESSION DEFICIENCY FUND; PROVIDING TRANSFERS OF FUNDS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. The State Controller shall transfer $223,500 from the General Fund to the Pest Control Deficiency Fund. Such moneys shall be used to reimburse costs incurred by the Plant Industries Program in the Department of Agriculture pursuant to Section 22-2019, Idaho Code.

SECTION 2. The State Controller shall transfer $11,600,000 from the General Fund to the Fire Suppression Deficiency Fund. Such moneys shall be used to reimburse costs incurred by the Forest and Range Fire Protection Program in the Department of Lands pursuant to Sections 38-131 and 38-131A, Idaho Code.

SECTION 3. The State Controller shall transfer $97,100 from the General Fund to the Hazardous Substance Emergency Response Fund. Furthermore, notwithstanding the provisions of Section 39-3630, Idaho Code,

the State Controller shall transfer $200,000 from the Water Pollution Control Fund to the Hazardous Substance Emergency Response Fund. Such moneys shall be used to reimburse costs incurred by the Bureau of Hazardous Materials in the Military Division of the Office of the Governor pursuant to Section 39-7110, Idaho Code.

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

Approved February 6, 2004.

CHAPTER 3
(H.B. No. 514)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 2004; AUTHORIZING AN ADDITIONAL FULL-TIME EQUIVALENT POSITION; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 169, Laws of 2003, there is hereby appropriated to the Department of Insurance the following amount to be expended from the designated expense classes from the listed fund for the period July 1, 2003, through June 30, 2004:

FOR:	
Personnel Costs	$14,600
Capital Outlay	1,500
TOTAL	$16,100
FROM:	
Miscellaneous Revenue Fund	$16,100

SECTION 2. In addition to the authorization granted in Section 2, Chapter 169, Laws of 2003, the Department of Insurance is authorized one (1) full-time equivalent position for the period July 1, 2003, through June 30, 2004.

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 6, 2004.

CHAPTER 4
(S.B. No. 1213)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE MILITARY DIVISION FOR FISCAL YEAR 2004; PROVIDING ADDITIONAL FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 323, Laws of 2003, there is hereby appropriated to the Office of the Governor for the Military Division the following amount to be expended from the designated program according to the designated expense class from the listed fund for the period July 1, 2003, through June 30, 2004:

BUREAU OF HAZARDOUS MATERIALS:

FOR:	
Personnel Costs	$81,700
FROM:	
Federal Grant Fund	$81,700

SECTION 2. In addition to the authorization granted in Section 3, Chapter 323, Laws of 2003, the Military Division is authorized three (3) full-time equivalent positions for the period July 1, 2003, through June 30, 2004.

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

Approved February 12, 2004.

CHAPTER 5
(S.B. No. 1216)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2004; 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 355, Laws of 2003, there is hereby appropriated to the Department of Agriculture 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, 2003, through June 30, 2004:

ADMINISTRATION:

FOR:	
Trustee and Benefit Payments	$147,200
FROM:	
General Fund	$147,200

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

Approved February 12, 2004.

CHAPTER 6
(S.B. No. 1217)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR THE GENERAL BOARDS FOR FISCAL YEAR 2004; 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 347, Laws of 2003, there is hereby appropriated to the Department of Self-Governing Agencies for the general boards, 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, 2003, through June 30, 2004:

BOARD OF EXAMINERS:

FOR:	
Trustee and Benefit Payments	$8,500
FROM:	
General Fund	$8,500

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 12, 2004.

CHAPTER 7
(S.B. No. 1218)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND; FOR FISCAL YEAR 2004; 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 211, Laws of 2003, there is hereby appropriated $4,000,000 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. An emergency existing 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, 2004.

CHAPTER 8
(S.B. No. 1219)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR PHYSICAL HEALTH SERVICES FOR FISCAL YEAR 2004; 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 358, Laws of 2003, there is hereby appropriated to the Department of Health and Welfare for Physical Health Services the following amount to be expended from the designated expense class from the listed fund for the period July 1, 2003, through June 30, 2004:

FOR:	
Trustee and Benefit Payments	$100,000
FROM:	
Food Safety Fund	$100,000

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

Approved February 17, 2004.

CHAPTER 9
(S.B. No. 1231)

AN ACT

REDUCING THE APPROPRIATION TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2004; AND DECLARING AN EMERGENCY.

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

SECTION 1. The appropriation to the Department of Juvenile Corrections made in Section 1, Chapter 333, Laws of 2003, 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, 2003, through June 30, 2004:

III. INSTITUTIONS:	
FOR:	
Trustee and Benefit Payments	$1,000,000
FROM:	
General Fund	$1,000,000

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

Approved February 17, 2004.

CHAPTER 10
(H.B. No. 565)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO STATE POLICE FOR FISCAL YEAR 2004; AUTHORIZING TWO ADDITIONAL FULL-TIME POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 292, Laws of 2003, there is hereby appropriated to the Idaho State Police 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, 2003, through June 30, 2004:

II. DIVISION OF THE IDAHO STATE POLICE:

A. DIRECTOR'S OFFICE:

FOR:	
Personnel Costs	$42,500
Operating Expenditures	6,200
Capital Outlay	6,000
TOTAL	$54,700
FROM:	
Federal Grant Fund	$54,700

SECTION 2. In addition to the authorization granted in Section 2, Chapter 292, Laws of 2003, the Idaho State Police is authorized two (2) full-time equivalent positions for the period July 1, 2003, through June 30, 2004.

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, 2004.

CHAPTER 11
(H.B. No. 566)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2004; REPEALING SECTION 6, CHAPTER 352, LAWS OF 2003, THAT PROVIDED GENERAL FUND MONEYS FOR AN OFFENDER POPULATION CONTINGENCY TO THE BOARD OF CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 352, Laws of 2003, there is hereby appropriated to the Department of Correction the following amount to be expended from the designated program according to the designated expense class from the listed fund for the period July 1, 2003, through June 30, 2004:

III. PRIVATELY-OPERATED PRISON:
FOR:
Operating Costs $80,000
FROM:
Inmate Labor Fund $80,000

SECTION 2. That Section 6, Chapter 352, Laws of 2003, be, and the same is hereby repealed.

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

Approved February 18, 2004.

CHAPTER 12
(S.B. No. 1239)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 2003; AUTHORIZING TWO ADDITIONAL FULL-TIME EQUIVALENT POSITIONS; AUTHORIZING A TRANSFER OF FUNDS; 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 274, Laws of 2003, there is hereby appropriated to the Superintendent of Public Instruction/State Department of Education the following amounts to be expended for the designated program according to the designated expense classes from the listed funds for the period July 1, 2003, through June 30, 2004:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
STATE DEPARTMENT OF EDUCATION:			
FROM:			
Miscellaneous Revenue Fund	$120,000	$ 80,000	$ 200,000
Federal Grant Fund		1,000,000	1,000,000
TOTAL	$120,000	$1,080,000	$1,200,000

SECTION 2. In addition to the authorization granted in Section 2, Chapter 274, Laws of 2003, the Superintendent of Public Instruction/State Department of Education is authorized two (2) full-time equivalent positions for the period July 1, 2003, through June 30, 2004.

SECTION 3. The provisions of Section 67-3511, Idaho Code, notwithstanding, the Superintendent of Public Instruction/State Department of Education is hereby granted the authority to transfer up to $110,000 of the moneys appropriated from the Public Instruction Fund, from operating expenditures to personnel costs, for the period July 1, 2003, through June 30, 2004.

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

Approved February 18, 2004.

CHAPTER 13
(H.B. No. 510)

AN ACT

RELATING TO STATE LANDS; AMENDING SECTION 47-701, IDAHO CODE, TO PROVIDE AN EXCEPTION FOR RESERVING MINERAL LANDS FROM SALE WHEN THE SURFACE ESTATE IS IDENTIFIED BY THE STATE BOARD OF LAND COMMISSIONERS AS HAVING THE POTENTIAL HIGHEST AND BEST USE FOR DEVELOPMENT PURPOSES, SUCH AS RESIDENTIAL, COMMERCIAL OR INDUSTRIAL PURPOSES AND TO PROVIDE THAT A PURCHASER OF LANDS MAY ACQUIRE RIGHT, TITLE OR INTEREST IN THE MINERAL DEPOSITS; AMENDING SECTION 47-711, IDAHO CODE, TO PROVIDE FOR THE SALE OF LANDS AS A SINGLE ESTATE WHEN THE STATE LAND IS IDENTIFIED AS HAVING THE HIGHEST AND BEST USE FOR DEVELOPMENT PURPOSES SUCH AS RESIDENTIAL, COMMERCIAL OR INDUSTRIAL PURPOSES, TO PROVIDE FOR RESERVATION OF MINERAL DEPOSITS IN CERTAIN INSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 47-712, IDAHO CODE, TO PROVIDE THAT ALL APPLICATIONS TO PURCHASE THOSE STATE LANDS THAT HAVE NOT BEEN IDENTIFIED AS HAVING THE POTENTIAL HIGHEST AND BEST USE FOR DEVELOPMENT PURPOSES, SUCH AS RESIDENTIAL, COMMERCIAL OR INDUSTRIAL PURPOSES APPROVED SUBSEQUENT TO THE PASSAGE OF THIS CHAPTER SHALL BE SUBJECT TO A RESERVATION TO THE STATE OF ALL MINERAL DEPOSITS IN THE LAND.

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

SECTION 1. That Section 47-701, Idaho Code, be, and the same is hereby amended to read as follows:

47-701. RESERVATION OF MINERAL DEPOSITS TO STATE — TERMS DEFINED. (1) The terms "mineral lands," "mineral," "mineral deposits," "deposit," and "mineral right," as used in this chapter, and amendments thereto shall be construed to mean and include all coal, oil, oil shale, gas, phosphate, sodium, asbestos, gold, silver, lead, zinc, copper, antimony, geothermal resources, salable minerals, and all other mineral lands, minerals or deposits of minerals of whatsoever kind or character.

(2) Such deposits in lands belonging to the state are hereby reserved to the state and are reserved from sale except upon a rental and royalty basis ~~as herein provided,~~ and except when the surface estate is identified by the state board of land commissioners as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes. Except for the aforementioned purposes, the purchaser of ~~any~~ all other state land ~~belonging to the state~~ shall acquire no right, title or interest in or to such deposits, and the right of such purchaser shall be subject to the reservation of all mineral deposits and to the conditions and limitations prescribed by law providing for the state and persons authorized by it to prospect

for, mine, and remove such deposits and to occupy and use so much of the surface of said land as may be required for all purposes reasonably incident to the mining and removal of such deposits therefrom.

(3) An exchange of state land consummated by the board under authority of section 58-138, Idaho Code, shall not be considered a sale of state lands. The transfers of mineral deposits heretofore made in such exchanges are hereby approved.

SECTION 2. That Section 47-711, Idaho Code, be, and the same is hereby amended to read as follows:

47-711. SALE OF STATE LANDS CONTAINING MINERAL DEPOSITS. Lands in which minerals are contained and the surface of which has a value for other purposes may be sold as a single estate under the provisions of chapter 3, ~~of~~ title 58, ~~of the~~ Idaho Code, relating to the sale of state lands, ~~provided that in~~ when the state land is identified as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes. In the sale of ~~such~~ the surface estate of all other state land~~s~~, there shall be reserved to the state all ~~such~~ mineral deposits and ~~that~~ the right of the purchaser shall be subject to the conditions and limitations prescribed by law providing for the state or persons authorized by it to prospect for, mine and remove such deposits and to occupy and use so much of the surface of such land as may be required for all purposes reasonably incident to the mining and removal of such deposits therefrom.

SECTION 3. That Section 47-712, Idaho Code, be, and the same is hereby amended to read as follows:

47-712. APPLICATIONS TO PURCHASE -- CERTIFICATES OF PURCHASE. All applications to purchase those state lands that have not been identified as having the potential highest and best use for development purposes, such as residential, commercial or industrial purposes approved subsequent to the passage of this chapter shall be subject to a reservation to the state of all mineral deposits in said land. ~~and of the right of t~~The state or persons authorized by it to prospect for, mine and remove the same as provided by law; and ~~all~~ certificates of purchase issued by the state shall contain such reservation.

Approved February 19, 2004.

CHAPTER 14
(S.B. No. 1214)

AN ACT

RELATING TO THE APPLICATION OF CAMPAIGN EXPENDITURES REPORTING LAW TO CERTAIN CITY ELECTIONS; AMENDING SECTION 50-477, IDAHO CODE, TO LOWER THE POPULATION THRESHOLD FOR APPLICATION.

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

SECTION 1. That Section 50-477, Idaho Code, be, and the same is hereby amended to read as follows:

50-477. APPLICATION OF CAMPAIGN EXPENDITURES REPORTING LAW TO CERTAIN CITY ELECTIONS. The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-6628, Idaho Code, insofar as they relate to the reporting of campaign contributions, are hereby made applicable to all elections for mayor and councilman in cities of ~~sixteen~~ five thousand (~~16~~5,000) or more population, except that the city clerk shall stand in place of the secretary of state.

Approved February 26, 2004.

CHAPTER 15
(S.B. No. 1222)

AN ACT

RELATING TO ENERGY SAVINGS PERFORMANCE CONTRACTS; AMENDING SECTION 67-5711D, IDAHO CODE, TO DEFINE THE TERM "PUBLIC ENTITY" AND TO PROVIDE THAT A PUBLIC ENTITY MAY UTILIZE THE PROCEDURE FOR BIDDING PERFORMANCE CONTRACTS FOR THE INSTALLATION OR PURCHASE OF COST-SAVINGS ENERGY MEASURES IN BUILDINGS OCCUPIED BY AND FOR PUBLIC ENTITIES AND TO PROVIDE LIMITATION ON SUCH PERFORMANCE CONTRACTS ENTERED INTO BY THE STATE OR PUBLIC ENTITIES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 67-5711D, Idaho Code, be, and the same is hereby amended to read as follows:

67-5711D. ENERGY SAVINGS PERFORMANCE CONTRACTS. (1) Definitions. As used in this section:

(a) "Cost-savings measure" means any facility improvement, repair or alteration, or any equipment, fixture or furnishing to be added or used in any facility that is designed to reduce energy consumption and energy operating costs or increase the energy efficiency of facilities for their appointed functions that are cost effective. "Cost-savings measure" includes, but is not limited to, one (1) or more of the following:

(i) Procurement of low-cost energy supplies of all types, including electricity, natural gas and water;

(ii) Insulating the building structure or systems in the building;

(iii) Storm windows or doors, caulking or weather stripping, multiglazed windows or door systems, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(iv) Automated or computerized energy control systems;

(v) Heating, ventilation or air conditioning system modifications or replacements;

(vi) Replacing or modifying lighting fixtures to increase the energy efficiency of the lighting system;

(vii) Energy recovery systems;

(viii) Cogeneration systems that produce steam or forms of

energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(ix) Installing new or modifying existing day lighting systems;

(x) Installing or modifying renewable energy and alternate energy technologies;

(xi) Building operation programs that reduce energy costs including, but not limited to, computerized programs, training and other similar activities;

(xii) Steam trap improvement programs that reduce energy costs;

(xiii) Devices that reduce water consumption; and

(xiv) Any additional building infrastructure improvements that produce energy cost savings, significantly reduce energy consumption or increase the energy efficiency of the facilities for their appointed functions and are in compliance with all applicable state building codes.

(b) "Director" means the director of the department of administration or the director's designee.

(c) "Energy cost savings" means any expenses that are eliminated or avoided on a long-term basis as a result of equipment installed or modified, or services performed by a qualified energy service company or a qualified provider, but does not include merely shifting personnel costs or similar short-term cost savings.

(d) "Financial grade energy audit" means a comprehensive building energy systems audit performed by a professional engineer licensed in the state of Idaho for the purpose of identifying and documenting feasible energy and resource conservation measures and cost-savings factors.

(e) "Performance contract" means a contract between the director or the public entity and a qualified provider or a qualified energy service company for evaluation, recommendation and implementation of one (1) or more cost-savings measures. A performance contract may be structured as either:

(i) A guaranteed energy savings performance contract, which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented. Guaranteed annual savings must meet or exceed the total annual contract payments made by the director or the user agency or the public entity for such contract, including financing charges to be incurred over the life of the contract; or

(ii) A shared savings contract, which shall include provisions mutually agreed upon by the director and the qualified provider or qualified energy service company as to the rate of payments based upon energy cost savings and a stipulated maximum energy consumption level over the life of the contract~~;~~.

(f) "Person" means an individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entity as recognized by the state of Idaho.

(g) "Public entity" means the cities, counties and school districts or any political subdivision within the state of Idaho.

(h) "Qualified energy service company" means a person with a record of established projects or with demonstrated technical, operational,

financial and managerial capabilities to implement performance contracts and who currently holds an Idaho public works contractor license.

(~~h~~i) "Qualified provider" means a person who is experienced in the design, implementation and installation of energy efficiency and facility improvement measures, who has the ability to secure necessary financial measures to support energy savings guarantees and the technical capabilities to ensure such measures generate energy cost savings, and who currently holds an Idaho public works contractor license.

(2) Performance contracts. The director of the department of administration, subject to the approval of the permanent building fund advisory council, or any Idaho public entity may enter into a performance contract with a qualified provider or qualified energy service company to reduce energy consumption or energy operating costs. Cost-savings measures implemented under such contracts shall comply with all applicable state and local building codes.

(3) Requests for qualifications. The director of the department of administration or the public entity shall request qualifications from qualified providers and qualified energy service companies inviting them to submit information describing their capabilities in the areas of:

(a) Design, engineering, installation, maintenance and repairs associated with performance contracts;

(b) Experience in conversions to a different energy or fuel source, so long as it is associated with a comprehensive energy efficiency retrofit;

(c) Postinstallation project monitoring, data collection and reporting of savings;

(d) Overall project experience and qualifications;

(e) Management capability;

(f) Ability to assess the availability of long-term financing;

(g) Experience with projects of similar size and scope; and

(h) Other factors determined by the director or the public entity to be relevant and appropriate relating to the ability of the qualified provider or qualified energy service company to perform the project.

(4) Notice. Adequate public notice of the request for qualifications shall be given at least fourteen (14) days prior to the date set forth therein for the opening of the responses to the request for qualifications. Such notice may be provided electronically or by publication in a newspaper of general circulation in the area where the work is located.

(5) Public inspection. All records of the department or an agency or the public entity relating to the award of a performance contract shall be open to public inspection in accordance with the provisions of sections 9-337 through 9-347 and 67-5725, Idaho Code.

(6) Award of performance contract.

(a) The director or public entity shall select up to three (3) qualified providers or qualified energy service companies who have responded to the request for qualifications. Factors to be considered in selecting the successful qualified provider or qualified energy service company shall include, but not be limited to:

(i) Fee structure;
(ii) Contract terms;
(iii) Comprehensiveness of the proposal and cost-savings measures;
(iv) Experience of the qualified provider or qualified energy service company;
(v) Quality of the technical approach of the qualified provider or qualified energy service company; and
(vi) Overall benefits to the state or the public entity.

(b) Notwithstanding the provisions of section 67-5711C, Idaho Code, the director or the public entity may, following the request for qualifications and the expiration of the specified notice period, award the performance contract to the qualified provider or qualified energy service company which best meets the needs of the project and whose proposal may or may not represent the lowest cost among the proposals submitted pursuant to this section.

(c) Upon award of the performance contract, the successful qualified provider or qualified energy service company shall prepare a financial grade energy audit which, upon acceptance by the director or the public entity, shall become a part of the final performance contract.

(7) Installment payment and lease-purchase agreements. Pursuant to this section, the director or the public entity may enter into a performance contract, payments for which shall be made by the user agency or public entity. Such performance contracts may be financed as installment payment contracts or lease-purchase agreements for the purchase and installation of cost-savings measures. Financing implemented through another person other than the qualified provider or qualified energy service company is authorized.

(8) Terms of performance contract.

(a) Each performance contract shall provide that all payments between parties, except obligations upon termination of the contract before its expiration, shall be made over time and that the objective of such performance contract is the implementation of cost-savings measures and energy cost savings.

(b) A performance contract, and payments provided thereunder, may extend beyond the fiscal year in which the performance contract becomes effective, subject to appropriation by the legislature or by the public entity, for costs incurred in future fiscal years. The performance contract may extend for a term not to exceed twenty-five (25) years. The permissible length of the contract may also reflect the useful life of the cost-savings measures.

(c) Performance contracts may provide for payments over a period of time not to exceed deadlines specified in the performance contract from the date of the final installation of the cost-savings measures.

(d) Performance contracts entered pursuant to this section may be amended or modified, upon agreement by the director or the public entity and the qualified provider or qualified energy service company, on an annual basis.

(9) Monitoring and reports. During the term of each performance contract, the qualified provider or qualified energy service company shall monitor the reductions in energy consumption and cost savings attributable to the cost-savings measures installed pursuant to the per-

formance contract and shall annually prepare and provide a report to the director or the public entity documenting the performance of the cost-savings measures.

Approved February 26, 2004.

CHAPTER 16
(S.B. No. 1223)

AN ACT
RELATING TO TRANSFER OF DEVELOPMENT RIGHTS; REPEALING SECTION 2, CHAPTER 363, LAWS OF 1999, REQUIRING AN ANNUAL REPORT REGARDING TRANSFER OF DEVELOPMENT RIGHTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 2, Chapter 363, Laws of 1999, be, and the same is hereby repealed.

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 26, 2004.

CHAPTER 17
(S.B. No. 1229)

AN ACT
RELATING TO FISH AND GAME; AMENDING SECTION 36-104, IDAHO CODE, TO REVISE PROVISIONS RELATING TO REGULAR QUARTERLY MEETINGS OF THE FISH AND GAME COMMISSION.

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

SECTION 1. That Section 36-104, Idaho Code, be, and the same is hereby amended to read as follows:

36-104. GENERAL POWERS AND DUTIES OF COMMISSION. (a) Organization -- Meetings. The members of the commission shall annually meet at their offices and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings ~~in April, July and October of~~ each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the supply thereof, then it shall make a rule or proclamation embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or management of any wildlife of this state, by reason of any act of God or any other sudden or unexpected emergency, declare by temporary rule or proclamation the existence of such necessity, and the cause thereof, and prescribe and designate all affected areas or streams, and close the same to hunting, angling or trapping, or impose such restrictions and conditions upon hunting, angling or trapping as said commission shall find to be necessary. Every such temporary rule shall be made in accordance with the provisions of chapter 52, title 67, Idaho Code.

4. At any time it shall deem necessary for the proper management of wildlife on any game preserve in the state of Idaho, declare an open season in any game preserve as it deems appropriate.

5. (A) Upon notice to the public, hold a public drawing giving to license holders, under the wildlife laws of this state, the privilege of drawing by lot for a controlled hunt permit authorizing the person to whom issued to hunt, kill, or attempt to kill any species of wild animals or birds designated by the commission under such rules as it shall prescribe.

(B) The commission may, under rules or proclamations as it may prescribe, authorize the director to issue additional controlled hunt permits and collect fees therefor authorizing landowners of property valuable for habitat or propagation purposes of deer, elk or antelope, or the landowner's designated agent(s) to hunt deer, elk or antelope in controlled hunts containing the eligible property owned by those landowners in units where any permits for deer, elk or antelope are limited.

(C) A nonrefundable fee as specified in section 36-416, Idaho Code, shall be charged each applicant for a controlled hunt permit. Successful applicants for controlled hunt permits shall be charged the fee as specified in section 36-416, Idaho Code. Additionally, a fee may be charged for telephone and credit card orders in accordance with subsection (e)11. of section

36-106, Idaho Code. The department shall include a checkoff form to allow applicants to designate one dollar ($1.00) of such nonrefundable application fee for transmittal to the reward fund of citizens against poaching, inc., an Idaho nonprofit corporation. The net proceeds from the nonrefundable fee shall be deposited in the fish and game account and none of the net proceeds shall be used to purchase lands.

6. Adopt rules pertaining to the importation, exportation, release, sale, possession or transportation into, within or from the state of Idaho of any species of live, native or exotic wildlife or any eggs thereof.

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or waters suitable for the purposes hereinafter enumerated in this paragraph. Whenever the commission proposes to purchase a tract of land in excess of fifteen (15) acres, the commission shall notify the board of county commissioners of the county where this land is located of the intended action. The board of county commissioners shall have ten (10) days after official notification to notify the commission whether or not they desire the commission to hold a public hearing on the intended purchase in the county. The commission shall give serious consideration to all public input received at the public hearing before making a final decision on the proposed acquisition. Following any land purchase, the fish and game commission shall provide, upon request by the board of county commissioners, within one hundred twenty (120) days, a management plan for the area purchased that would address noxious weed control, fencing, water management and other important issues raised during the public hearing. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

(A) For fish hatcheries, nursery ponds, or game animal or game bird farms;

(B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;

(C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;

(D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.

8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.

9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife rearing, propagating, management, protection and demonstration projects.

10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10) residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat. Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

(A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.

(B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations.

(C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.

12. Adopt rules pertaining to the application for, issuance of and administration of a lifetime license certificate system.

13. Adopt rules governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state. The fee for each permit shall be as provided for in section 36-416, Idaho Code.

14. Adopt rules governing the application for and issuance of licenses by telephone and other electronic methods.

15. Enter into agreements with cities, counties, recreation districts or other political subdivisions for the lease of lands or waters, in accordance with all other applicable laws, including applicable provisions of titles 42 and 43, Idaho Code, to cost-effectively provide recreational opportunities for taxpayers or residents of those local governments or political subdivisions.

(c) Limitation on Powers. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees

or the authority conferred by licenses prescribed by law.

(d) Organization of Work. The commission shall organize the department, in accordance with the provisions of title 67, Idaho Code, into administrative units as may be necessary to efficiently administer said department. All employees of the department except the director shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

Approved March 4, 2004.

CHAPTER 18
(S.B. No. 1230)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-2204, IDAHO CODE, TO PROVIDE THAT THE IDAHO FISH AND GAME COMMISSION MAY SPECIFY SIGNAGE REQUIREMENTS FOR SHOOTING PRESERVE BOUNDARIES BY RULE; AND AMENDING SECTION 36-2205, IDAHO CODE, TO PROVIDE THAT THE COMMISSION MAY SPECIFY MARKING REQUIREMENTS FOR ARTIFICIALLY PROPAGATED UPLAND GAME BIRDS RELEASED ON SHOOTING PRESERVES BY RULE.

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

SECTION 1. That Section 36-2204, Idaho Code, be, and the same is hereby amended to read as follows:

36-2204. BOUNDARIES. The exterior boundaries of such shooting preserve shall be clearly defined and posted with appropriate signs erected around the perimeter at intervals of one hundred fifty (150) feet or less if unfenced <u>unless specified otherwise by commission rule.</u> If the boundary of the shooting preserve is fenced, such signs must be posted at intervals of not more than five hundred (500) feet <u>unless specified otherwise by commission rule.</u>

SECTION 2. That Section 36-2205, Idaho Code, be, and the same is hereby amended to read as follows:

36-2205. GAME BIRDS. (a) Game which may be hunted under this act shall be confined to artificially propagated upland game birds.

(b) A minimum release of two hundred (200) upland game birds of each species to be hunted on each shooting preserve must be made on the licensed area during the shooting preserve season.

(c) Artificially propagated upland game birds released on a shooting preserve must be:

(1) Marked by clipping the terminal joint of a single toe on either foot as evidenced by a healed scar; or

(2) Banded with a leg band of a type not removable without breaking or mutilating, such tag to be supplied by the fish and game department at cost. One (1) such band shall be securely affixed to one (1) leg of each bird released and shall remain affixed on the bird until the bird is prepared for consumption<u>; or</u>

<u>(3) Marked in a manner specified by commission rule.</u>

(d) Any wild upland game bird incidentally taken upon a shooting preserve, at any time other than the general open season therefor, must be marked then and there with a tag that has been issued to the shooting preserve licensee by the Idaho fish and game department. Said bird shall count as part of the permittee's shooting preserve limit. The fee for such tags shall be as specified in section 36-416, Idaho Code, per bird.

During the general hunting season for the taking of upland game birds, all wild birds harvested on shooting preserves will be subject to the laws applicable to such wild birds and related rules and proclamations of the Idaho fish and game commission.

Approved March 4, 2004.

CHAPTER 19
(S.B. No. 1253)

AN ACT

RELATING TO LIMITATIONS ON CONTRIBUTIONS TO CANDIDATES; AMENDING SECTION 67-6610A, IDAHO CODE, TO SPECIFY THE LIMIT ON CONTRIBUTIONS FROM A COUNTY CENTRAL COMMITTEE TO A CANDIDATE.

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

SECTION 1. That Section 67-6610A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6610A. LIMITATIONS ON CONTRIBUTIONS. (1) Except as provided in subsection (2) of this section, aggregate contributions for a primary election or a general election made by a corporation, political committee, other recognized legal entity or an individual, other than the candidate, to a candidate for the state legislature, and political committees organized on the candidate's behalf shall be limited to an amount not to exceed one thousand dollars ($1,000) for the primary election and an amount not to exceed one thousand dollars ($1,000) for the general election. Aggregate contributions for a primary election or a general election by a corporation, political committee, other recognized legal entity or an individual, other than the candidate, to a candidate for statewide office and political committees organized on the candidate's behalf shall be limited to an amount not to exceed five thousand dollars ($5,000) for the primary election and an amount not to exceed five thousand dollars ($5,000) for the general election.

(2) Aggregate contributions for a primary election or for a general election made by <u>a county central committee or by</u> the state central committee of the political parties qualified under section 34-501, Idaho Code, to a candidate for the state legislature, and political committees organized on the candidate's behalf shall be limited to an amount not to exceed two thousand dollars ($2,000) for the primary election and an amount not to exceed two thousand dollars ($2,000) for the general election. Aggregate contributions for the primary election or the general election by the state central committee of the political parties qualified under section 34-501, Idaho Code, to a candidate for statewide office and political committees organized on the candidate's behalf

shall be limited to an amount not to exceed ten thousand dollars ($10,000) for the primary election and an amount not to exceed ten thousand dollars ($10,000) for the general election.

(3) For purposes of this section "statewide office" shall mean an office in state government which shall appear on the primary or general election ballot throughout the state.

(4) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. A contribution of this kind shall be reported as an in-kind contribution at its fair market value and counts toward any applicable contribution limit of the contributor. Contributions shall not include the personal services of volunteers.

(5) The contribution limits for the state legislature shall apply to judicial district offices, city offices and county offices regulated by this chapter.

(6) The provisions of this section are hereby declared to be severable and if any provision of this section or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this section.

Approved March 4, 2004.

CHAPTER 20
(H.B. No. 720)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCES TO THE INTERNAL REVENUE CODE; AMENDING SECTION 63-3022O, IDAHO CODE, TO MAKE TECHNICAL CHANGES, TO PROVIDE THE ADJUSTED BASIS OF DEPRECIABLE PROPERTY, DEPRECIATION AND CAPITAL GAINS AND LOSSES SHALL BE COMPUTED WITHOUT REGARD TO SUBSECTION (k) OF SECTION 168 OF THE INTERNAL REVENUE CODE, TO PROVIDE THAT NO DEDUCTION SHALL BE ALLOWED RELATING TO EXPENSES OF ELEMENTARY AND SECONDARY TEACHERS OTHERWISE ALLOWABLE UNDER SECTION 62(a)(2)(D) OF THE INTERNAL REVENUE CODE AND TO EXTEND THE STATUTE OF LIMITATIONS ON ASSESSMENTS AND REFUNDS IN REGARD TO THE ADJUSTED BASIS OF CERTAIN PROPERTY SUBJECT TO SECTION 63-3022O, IDAHO CODE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2003~~4~~.

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

tion shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 2. That Section 63-3022O, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022O. ADJUSTMENT ~~FOR~~ -- PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001 -- EXPENSES OF ELEMENTARY AND SECONDARY TEACHERS -- SMALL BUSINESS EXPENSES -- LIMITATIONS ON ASSESSMENTS AND REFUNDS. For taxable years commencing on and after January 1, 2001, in computing Idaho taxable income:

(1) The adjusted basis of depreciable property, depreciation and capital gains and losses shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code~~, as amended by section 101 of the "Job Creation and Worker Assistance Act of 2002"~~; and

(2) No deduction shall be allowed relating to expenses of elementary and secondary teachers otherwise allowable under section 62(a)(2)(D) of the Internal Revenue Code~~, as amended by section 406 of the "Job Creation and Worker Assistance Act of 2002."~~; and

(3) When, in regard to property subject to this section, the adjusted basis of depreciable property, depreciation and capital gains and losses resulting from the provisions of this section (as previously reported by the taxpayer or as adjusted by the state tax commission) are subject to change or adjustment by the taxpayer or by the state tax commission, a claim for refund or notice of deficiency determination for amounts resulting from the changes shall be made within the greater of the time provided in sections 63-3068 and 63-3072, Idaho Code, or the useful life of the property to which the adjustment relates.

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, 2004.

Approved March 5, 2004.

CHAPTER 21
(S.B. No. 1207)

AN ACT
RELATING TO RESTITUTION PRIORITY; AMENDING SECTION 19-5302, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 19-5302, Idaho Code, be, and the same is hereby amended to read as follows:

19-5302. VICTIMS OF CRIME -- RESTITUTION PRIORITY. If a district court or a magistrate's division orders the defendant to pay restitution, the court shall order the defendant to pay such restitution to the

victim or victims injured by the defendant's action. There shall be a full restitution to such victim or victims before the court may order any payment be made by the defendant to any governmental entity; provided, however, the court may order the defendant to make the payments required in sections 20-225 and/or 20-614(4~~)~~7), Idaho Code, before any payment of restitution is made to the victim or victims.

Approved March 5, 2004.

CHAPTER 22
(S.B. No. 1208)

AN ACT

RELATING TO SENTENCING CRITERIA IN DRUG CASES; AMENDING SECTION 37-2738, IDAHO CODE, TO PROVIDE THAT CERTAIN FIRST-TIME OFFENSE NONNARCOTIC MISDEMEANORS QUALIFY FOR A DISCRETIONARY WAIVER OF THE SUBSTANCE ABUSE EVALUATION REQUIREMENT, TO MAKE A GRAMMATICAL CHANGE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 37-2738, Idaho Code, be, and the same is hereby amended to read as follows:

37-2738. SENTENCING CRITERIA IN DRUG CASES. (1) Any person who pleads guilty to, is found guilty of or has a judgment of conviction entered upon a violation of the provisions of subsection (a), (b), (c) or (e)~~,~~ of section 37-2732, Idaho Code, shall be sentenced according to the criteria set forth herein.

(2) Prior to sentencing for a violation enumerated in subsection (1) ~~above~~ of this section, the defendant shall undergo, at his own expense (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code), a substance abuse evaluation at a facility approved by the Idaho department of health and welfare. Provided however, ~~that~~ if the defendant has no prior or pending charges under the provisions of subsection (a), (b), (c) or (e)~~,~~ of section 37-2732, Idaho Code, and the court does not have any reason to believe that the defendant regularly abuses drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of subsection (b), (c)(3), or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of a substance abuse evaluation with respect to a defendant's violation of the provisions of subsection (a), (b), (c) or (e)~~,~~ of section 37-2732, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or similar assessment which has evaluated the defendant's need for substance abuse treatment conducted within twelve (12) months preceding the date of the defendant's sentencing.

(3) In the event a substance abuse evaluation indicates the need for substance abuse treatment, the evaluation shall recommend an appropriate treatment program, together with the estimated costs thereof, and

recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration to determine an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event it shall be presumed that substance abuse treatment is needed unless it is shown by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide or report an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, the person or facility performing the evaluation shall not be the person or facility that provides the treatment, unless this requirement is waived by the sentencing court, and with the exception of federally recognized Indian tribes or federal military installations where diagnoses and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court ordered substance abuse treatment for indigent defendants.

(4) When sentencing an individual for the crimes enumerated in section (1) of this section, the court shall not enter a withheld judgment unless it finds by a preponderance of the evidence that:

(a) The defendant has no prior finding of guilt for any felony, any violation of chapter 80, title 18, Idaho Code, or subsection (a), (b), (c) or (e), of section 37-2732, Idaho Code, whatsoever; and

(b) The sentencing court has an abiding conviction that the defendant will successfully complete the terms of probation; and

(c) The defendant has satisfactorily cooperated with law enforcement authorities in the prosecution of drug related crimes of which the defendant has previously had involvement.

(5) Any person who pleads guilty to or is found guilty of a violation of the provisions of the Idaho Code identified in subsection (1) of this section shall, when granted a probationary period of any sort whatsoever, be required by the court to complete a period of not less than one hundred (100) hours of community service work.

Approved March 5, 2004.

CHAPTER 23
(S.B. No. 1209)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 8-705, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 18-113B, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND CODE REFERENCES; AMENDING SECTIONS 18-216 AND 18-1502B, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 33-207, IDAHO CODE, TO PROVIDE THAT PARENTS OR GUARDIANS WHO HAVE FAILED, NEGLECTED OR REFUSED TO PLACE A CHILD IN SCHOOL AS REQUIRED SHALL BE SUBJECT TO PROCEEDINGS UNDER THE JUVENILE CORRECTIONS ACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-1404, IDAHO CODE, TO PROVIDE CORRECT

TERMINOLOGY; AMENDING SECTION 33-1406, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-270, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 66-318 AND 66-319, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-320, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 66-338, IDAHO CODE, TO DELETE AN OBSOLETE CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 67-2907, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 8-705, Idaho Code, be, and the same is hereby amended to read as follows:

8-705. WAGE ASSIGNMENT FOR SUPPORT AND CARE OF DELINQUENT CHILD. In any proceeding where the court has ordered a parent, legal guardian, or custodian to pay any amount for the care, support or maintenance of a child adjudged to be within the purview of chapter ~~18~~5, title ~~16~~20, Idaho Code, and through the adjudication has rendered a liability upon the parent, legal guardian or custodian to pay damages or to pay for the child's support and care, the following procedure may be utilized for collection. The court may order the parent, legal guardian or custodian to assign a sum as the court may determine to be equitable or as may otherwise be provided by statute or contract to the county clerk, probation officer or other office of the court or county officer designated by the court to receive such payment. The assignment shall be that portion of salary or wages of the parent, legal guardian or custodian the court deems would be due in the future to apply on the amount ordered by the court for the care, support or maintenance of the delinquent child or for breach of contract caused by the child's delinquency. The order shall be binding upon an employer and until further order of the court. Any such order may be modified or revoked at any time by the court. Any such assignment made pursuant to court order shall have priority as against any attachment, execution or other assignment, unless otherwise ordered by the court. All sums collected pursuant to the provisions of this section shall be remitted as may be provided by law.

SECTION 2. That Section 18-113B, Idaho Code, be, and the same is hereby amended to read as follows:

18-113B. INCARCERATION OF JUVENILES FOR MISDEMEANOR OR FELONY OFFENSES. (1) Juveniles committing offenses which lie outside the scope of the ~~youth-rehabilitation~~ juvenile corrections act, chapter ~~18~~5, title ~~16~~20, Idaho Code, and not charged under section ~~16-1806~~ 20-508 or ~~16-1806A~~ 20-509, Idaho Code, may, in the discretion of a court or arresting officer, be placed in a juvenile detention facility or juvenile shelter care facility rather than in a county jail pending arraignment or trial, if arrested or held on bond. The option of placing a juvenile in such a facility shall not affect the misdemeanor or felony status of the offense.

(2) Juveniles committing offenses which lie outside the scope of the ~~youth--rehabilitation~~ juvenile corrections act, chapter ~~18~~5, title

~~16~~20, Idaho Code, and not charged under section ~~16-1806~~ 20-508 or ~~16-1806A~~ 20-509, Idaho Code, may, in the discretion of the court, be sentenced:

(a) To serve time in a juvenile detention facility rather than in a county jail; or

(b) To serve time in a community sentencing alternative when a mandatory minimum period of incarceration is not required by statute.

The option of placing a juvenile in such a facility shall not affect the misdemeanor or felony status of the offense.

SECTION 3. That Section 18-216, Idaho Code, be, and the same is hereby amended to read as follows:

18-216. CRIMINAL TRIAL OF JUVENILES BARRED -- EXCEPTIONS -- JURISDICTIONAL HEARING -- TRANSFER OF DEFENDANT TO DISTRICT COURT. (1) A person shall not be tried for or convicted of an offense if:

(a) At the time of the conduct charged to constitute the offense he was less than fourteen (14) years of age; or

(b) At the time of the conduct charged to constitute the offense he was less than eighteen (18) but not less than fourteen (14) years of age, unless:

1. A court of this state has no jurisdiction over him pursuant to chapter ~~18~~5, title ~~16~~20, Idaho Code, or

2. The court having jurisdiction pursuant to chapter ~~18~~5, title ~~16~~20, Idaho Code, has entered an order waiving jurisdiction and consenting to the institution of criminal proceedings against him.

(2) No court shall have jurisdiction to try or convict a person of an offense if criminal proceedings against him are barred by subsection (1) of this section. When it appears that a person charged with the commission of an offense may be of such an age that criminal proceedings may be barred under subsection (1) of this section, the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the criminal proceeding is not barred upon such grounds. If the court determines that the proceeding is barred, custody of the person charged shall be surrendered to the court having jurisdiction pursuant to chapter ~~18~~5, title ~~16~~20, Idaho Code, and the case, including all papers and processes relating thereto, shall be transferred.

SECTION 4. That Section 18-1502B, Idaho Code, be, and the same is hereby amended to read as follows:

18-1502B. POSSESSION OF INHALANTS BY MINORS. Whenever a person under the age of eighteen (18) years is in possession and uses an aerosol spray product or other inhalant, that is not used pursuant to the instructions or prescription of a licensed health care provider or that is not used pursuant to the manufacturer's label instructions, for the purpose of becoming under the influence of such substance; such person shall be guilty of a misdemeanor, and upon conviction, may be punished by a fine not in excess of three hundred dollars ($300), or by thirty (30) days in a juvenile detention facility or by both or may be subject to the provisions of chapter ~~18~~5, title ~~16~~20, Idaho Code.

For the purposes of this section, the term "inhalant" means any

glue, cement or other substance containing one (1) or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate or their isomers, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol, methyl alcohol, methyl ethyl ketone, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene or xylene or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.

SECTION 5. That Section 33-207, Idaho Code, be, and the same is hereby amended to read as follows:

33-207. PROCEEDINGS AGAINST PARENTS OR GUARDIANS. Whenever ~~it has been determined by the probate court of any county that~~ the parents or guardians of any child between the ages of seven (7) years, as qualified in section 33-202, Idaho Code, and sixteen (16) years, ~~are failing, neglecting~~ have failed, neglected or ~~refusing~~ refused to place the child in school as provided in this chapter or to have the child comparably instructed, or knowingly have allowed a pupil to become an habitual truant, proceedings shall be brought against such parent or guardian under the provisions of the ~~youth rehabilitation law~~ juvenile corrections act.

SECTION 6. That Section 33-1404, Idaho Code, be, and the same is hereby amended to read as follows:

33-1404. DISTRICTS TO RECEIVE PUPILS. Every school district shall receive and admit pupils transferred thereto, where payment of their tuition is to be paid by the home district, or waived by the receiving district, except when any such transfer would work a hardship on the receiving district. Each receiving school district shall be governed by written policy guidelines, adopted by the board of trustees, which define hardship impact upon the district or upon an individual school within the district. The policy shall provide specific standards for acceptance and rejection of applications for accepting out of district pupils. Standards may include the capacity of a program, class, grade level or school building. Standards may not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, or proficiency in the English language.

Nonresident pupils who are placed by court order under provisions of the Idaho ~~youth rehabilitation~~ juvenile corrections or child protective acts and reside in licensed homes, agencies and institutions shall be received and admitted by the school district in which the facility is located without payment of tuition.

Homeless children and youth as defined by the Stewart B. McKinney homeless assistance act (P.L. 100-77), may attend any school district or school within a district without payment of tuition when it is determined to be in the best interest of that child.

SECTION 7. That Section 33-1406, Idaho Code, be, and the same is hereby amended to read as follows:

33-1406. BILLS OF TUITION. Bills of tuition for nonresident pupils shall be rendered by each creditor district and for nonresident pupils attending any school of the creditor district under the provisions of sections 33-1403 or 33-1404, Idaho Code, the bill of tuition shall be submitted to the home district of such pupils. In all other cases, the creditor district may submit to the parent or guardian of any nonresident pupil attending school in its district a bill of tuition of such pupil, and such parent or guardian shall be liable for the payment of said tuition, if so billed. Tuition reimbursement for nonresident pupils who are placed by court order under provisions of the Idaho ~~youth rehabilitation~~ juvenile corrections or child protective acts may be obtained by the creditor district through procedures established in section 33-1002, Idaho Code, for nonresident tuition-equivalency allowance.

Each bill of tuition submitted to a home district shall show the serial number of the tuition certificate last issued to the creditor district by the state department of education and shall show also the number of pupils for whom tuition is charged, which charge shall be as shown by the said tuition certificate.

Bills of tuition, if submitted other than annually, shall be apportioned according to the number of school months for which any such bill is applicable. A fraction of a school month shall be deemed a school month.

SECTION 8. That Section 39-270, Idaho Code, be, and the same is hereby amended to read as follows:

39-270. DISCLOSURE OF INFORMATION. (a) Certificates and records in the custody of the state registrar shall be open to inspection subject to the provisions of this chapter and the ~~regulations~~ rules of the board, the provisions of section 9-302, Idaho Code, to the contrary notwithstanding; and it shall be unlawful for any state or local official or employee under this chapter to disclose any data contained in the records, except as authorized by this chapter and the ~~regulations~~ rules of the board.

(b) A complete copy, or any part of a certificate, may be issued to any applicant who can show direct and tangible interest in the record for which he applies. A complete copy, or any part of a certificate, shall be issued upon request to a state, federal or local public agency for child support enforcement purposes pursuant to chapters 10, 11 and 12, title 7, Idaho Code, and sections 16-1622, ~~16-1815~~ 20-524, 32-710A, and 56-203, Idaho Code, or for the purpose of investigation of fraud related to benefit payments. Subject to such provisions as the board may prescribe, data contained on records may be used by federal, state or municipal agencies for the purpose of verification of data.

(c) As provided in chapter 3, title 9, Idaho Code, data contained on records may be used for research, public health or statistical purposes. No lists of registration shall be compiled for public use.

(d) The manner of keeping local records and the use thereof shall be prescribed by the board, in keeping with the provisions of this section.

(e) When one hundred (100) years have elapsed after the date of birth, or fifty (50) years have elapsed after the date of death, stillbirth, marriage or divorce, the records of these events in the custody of the state registrar shall become public records and information shall

be made available in accordance with chapter 3, title 9, Idaho Code.

SECTION 9. That Section 66-318, Idaho Code, be, and the same is hereby amended to read as follows:

66-318. AUTHORITY TO ADMIT VOLUNTARY PATIENTS -- DENIAL OF ADMISSION. (a) The director of any facility may admit as a voluntary patient:

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

(2) Any individual fourteen (14) to eighteen (18) years of age who may apply to be admitted for observation, diagnosis, evaluation and treatment and the facility director will notify the parent, parents or guardian of the individual of the admission; a parent or guardian may apply for the individual's release and the facility director will release the patient within three (3) days, excluding Saturdays, Sundays and legal holidays, of the application for discharge, unless the time period for diagnosis, evaluation, care or treatment is extended pursuant to section 66-320, Idaho Code;

(3) Any emancipated minor;

(4) Any individual under fourteen (14) years of age upon application of the individual's parent or guardian, provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner;

(5) Any individual who lacks capacity to make informed decisions about treatment upon application of the individual's guardian; provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner; or

(6) Any individual confined for examination pursuant to sections 18-211~~,16-1814~~ or 20-520, ~~or 16-1835,~~ Idaho Code.

(b) The director of any facility must refuse admission to any applicant under this section whenever:

(1) The applicant is not in need of observation, diagnosis, evaluation, care or treatment at the facility;

(2) The applicant lacks capacity to make informed decisions about treatment unless the application is made by a guardian with authority to consent to treatment; or

(3) The applicant's welfare or the welfare of society, or both, are better protected by the provisions of section 66-329, Idaho Code.

SECTION 10. That Section 66-319, Idaho Code, be, and the same is hereby amended to read as follows:

66-319. RELEASE OF VOLUNTARY INPATIENTS. The director of an inpatient facility shall release any person, admitted in accordance with the procedure outlined in section 66-318, Idaho Code, whose continued care or treatment is no longer appropriate. If upon evaluation at the facility, it is determined that the patient is mentally ill and is likely to injure himself or others or is gravely disabled, the director of the facility shall institute appropriate judicial proceedings for continued care and treatment. In the case of persons confined pursuant to sections ~~16-1814,~~ 20-520 ~~16-1835,~~ or 18-211, Idaho Code, upon completion of the examination, the sheriff of the county from which the defendant was committed shall be notified and the defendant shall continue to be confined at the facility for transportation back to the county. In those cases of persons admitted upon the application of a guardian, those persons shall

be released upon the termination of the guardian's authority to consent to treatment.

SECTION 11. That Section 66-320, Idaho Code, be, and the same is hereby amended to read as follows:

66-320. RIGHT TO RELEASE ON APPLICATION -- EXCEPTIONS. (a) A voluntary patient admitted in accordance with the procedure outlined in section 66-318, Idaho Code, who requests his release or whose release is requested, in writing, by his legal guardian, parent, spouse, or adult next of kin shall be released except that:

(1) if the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient thereto, and

(2) if the patient, by reason of his age, was admitted on the application of another person, his release prior to becoming sixteen (16) years of age may be conditioned upon the consent of his parent or guardian, or

(3) if the director of the facility determines that the patient should be hospitalized under the provisions of this chapter, the patient may be detained up to three (3) days, excluding Saturdays, Sundays and legal holidays, for the purpose of examination by a designated examiner and the filing of an application for continued care and treatment.

(b) Notwithstanding any other provision of this chapter, judicial proceedings authorized by this chapter shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by himself or the individual who applied for his admission.

(c) The date and time of any request for release under this section shall be entered in the patient's clinical record. If the request for release is denied, the reasons for denial also shall be entered in the patient's clinical record.

(d) A patient admitted for examination pursuant to section ~~16-1814,~~ 20-520 or 18-211, Idaho Code, may not be released except for purposes of transportation back to the court ordering, or party authorizing, the examination.

SECTION 12. That Section 66-338, Idaho Code, be, and the same is hereby amended to read as follows:

66-338. CONDITIONAL RELEASE. Except for patients confined pursuant to section ~~16-1835,~~ 18-211, 18-212, 18-214~~,~~ or 20-520, Idaho Code, upon determining that a patient may be released without imminent risk or harm due to mental illness, the department director or his designated representative may release a patient from an inpatient treatment facility on the condition that the patient receive outpatient treatment pursuant to a written treatment plan as specified by the department director or his designee or as amended pursuant to this chapter. For purposes of this chapter, "conditional release" shall refer to the situation in which a patient is discharged from an inpatient treatment facility and dispositioned to an outpatient facility, but shall not include absences, such as escape or other absences wherein the patient is expected to

return to the inpatient facility upon a certain date or occurrence of an event.

SECTION 13. That Section 67-2907, Idaho Code, be, and the same is hereby amended to read as follows:

67-2907. JAILORS TO RECEIVE PRISONERS FROM IDAHO STATE POLICE. Any person having charge of a jail, prison or reformatory or other place of detention shall receive any prisoner arrested by the Idaho state police within the jurisdiction served by such jail and shall detain that prisoner in custody until otherwise ordered by a court of competent jurisdiction, or by the superintendent. Such person in charge shall have the right to refuse to receive any juvenile not being charged with a felony and not in the process of being certified as an adult, in accordance with section ~~16-1806A~~ 20-509, Idaho Code.

Approved March 5, 2004.

CHAPTER 24
(S.B. No. 1226)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1316, IDAHO CODE, TO CLARIFY THE DEFINITION OF LOCALIZED SERVICE; AMENDING SECTION 72-1346, IDAHO CODE, TO CLARIFY REFERENCES TO THE FEDERAL UNEMPLOYMENT TRUST FUND, TO PROVIDE THAT REED ACT APPROPRIATIONS ARE SUBJECT TO CERTAIN STATUTORY CONDITIONS AND TO DELETE OBSOLETE LANGUAGE; AMENDING SECTION 72-1348, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 72-1351, IDAHO CODE, TO PROVIDE A LONGER PERIOD OF TIME TO REQUEST A TRANSFER OF AN EXPERIENCE RATING ACCOUNT, TO PROVIDE THAT WHENEVER AN INDIVIDUAL OR ORGANIZATION SUCCEEDS TO OR ACQUIRES ALL OR PART OF THE BUSINESS OF A COVERED EMPLOYER THE TRANSFER OF THE PREDECESSOR'S EXPERIENCE RATING ACCOUNT SHALL BE MANDATORY IF THE MANAGEMENT OR OWNERSHIP OR CONTROL OF THE BUSINESS IS SUBSTANTIALLY THE SAME FOR THE SUCCESSOR AS FOR THE PREDECESSOR AND THERE IS A CONTINUITY OF BUSINESS ACTIVITY BY THE SUCCESSOR AND TO DEFINE THE TERM "EXPERIENCE RATING ACCOUNT"; AND DECLARING AN EMERGENCY FOR SECTION 4 OF THIS ACT.

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

SECTION 1. That Section 72-1316, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316. COVERED EMPLOYMENT. (1) "Covered employment" means an individual's entire service performed by him for wages or under any contract of hire, written or oral, express or implied.

(2) Notwithstanding any other provision of state law, services shall be deemed to be in covered employment if a tax is required to be paid or was required to be paid the previous year on such services under the federal unemployment tax act or if the director determines that as a condition for full tax credit against the tax imposed by the federal

unemployment tax act such services are required to be covered under this chapter.

(3) Services covered by an election pursuant to section 72-1352, Idaho Code, and services covered by an election approved by the director pursuant to section 72-1344, Idaho Code, shall be deemed to be covered employment during the effective period of such election.

(4) Services performed by an individual for remuneration shall, for the purposes of the employment security law, be covered employment unless it is shown:

(a) That the worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact; and

(b) That the worker is engaged in an independently established trade, occupation, profession, or business.

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

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

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

(i) The individual's base of operations or the place from which such service is directed or controlled is in this state; or

(ii) The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(c) Service shall be deemed to be localized within a state if:

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

(ii) The service is performed both within and without such state, but the service performed without such state is incidental, temporary or transitory in nature or consists of isolated transactions, as compared to the individual's service within the state. ~~is temporary, transitory in nature, or consists of isolated transactions.~~

(d) "Covered employment" shall include an individual's service, wherever performed within the United States, or Canada, if:

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

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

(6) "Covered employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States, (except in Canada) in the employ of an American employer (other than service which is deemed "covered employment" under the provisions of subsection (5) of this section or the parallel provisions of another state's law), if:

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

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

(i) Is an individual who is a resident of this state; or

(ii) Is a corporation which is organized under the laws of this state; or

(iii) Is a partnership or a trust and the number of the part-

ners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(c) None of the criteria of provision (a) or (b) of this subsection is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service, under the law of this state;

(d) An "American employer" for purposes of this subparagraph means a person who is:

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

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

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

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

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

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

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

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

depository bank. Such moneys shall be secured by the depository bank in the same manner as required by the general public depository law of this state and collateral pledged for this purpose shall be kept separate and distinct from collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security fund.

(3) Withdrawals. Moneys requisitioned by the director through the treasurer from this state's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section 72-1357, Idaho Code, except that Reed act moneys credited to this state's account pursuant to section 903 of the social security act (42 U.S.C. 1103), shall be used exclusively as provided in subsection (4) of this section. The director through the treasurer shall requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of benefits and refunds for a reasonable period. Upon receipt, such moneys shall be deposited in the benefit account. Expenditures of moneys in the benefit and clearing accounts shall not require the approval of the board of examiners or be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. The residual daily balance in the benefit account may be invested in accordance with the cash management improvement act of 1990, and earnings on those investments may be used to pay the related banking costs of maintaining the benefit account. Any earnings in excess of the related banking costs shall be returned to the state's account in the federal unemployment trust fund annually. All warrants issued for the payment of benefits and refunds shall bear the signature of the director. Upon agreement between the director and state controller, amounts in the benefit account may be transferred to a revolving account established and maintained in a depository bank from which the director may issue checks for the payment of benefits and refunds. Moneys so transferred shall be deposited subject to the same requirements as provided with respect to moneys in the clearing and benefit accounts in subsection (2) of this section. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving account after the expiration of the period for which such sums were requisitioned, may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the director, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the federal unemployment trust fund.

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

subject to the following conditions:

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

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

(~~c~~5) Reed act moneys requisitioned for the payment of benefits shall be deposited in the benefit account established in this section. Reed act moneys requisitioned for the payment of administrative expenses pursuant to a specific appropriation shall be deposited in the employment security administration fund, section 72-1347, Idaho Code, except that moneys appropriated for the purchase of lands and buildings shall be deposited in the state employment security administrative and reimbursement fund in accordance with section 72-1348, Idaho Code. Money so deposited shall, until expended, remain part of the employment security fund and, if not expended, shall be promptly returned to this state's account in the federal unemployment trust fund.

~~(5)--Special--Reed-Act-Distributions.-Notwithstanding-subsection-(4) of-this-section,-Reed-act-moneys-credited-with-respect-to-federal-fiscal years-2000,-2001-and-2002-shall-be-used-solely-for-the-administration-of the-unemployment-insurance-program-and-are-not-subject-to--appropriation by-the-legislature.~~

SECTION 3. That Section 72-1348, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

(b) Reed act moneys appropriated for the purchase of land and buildings pursuant to section 72-1346(~~4~~5), Idaho Code.

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

(a) As a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to

reimbursement upon receipt of the federal funds;

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

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

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

(3) Moneys referred to in subsection (1)(b) of this section may be used by the department to acquire for and in the name of the state by term purchase agreement lands and buildings for office space for the department at such places as the director finds necessary. An agreement made for the purchase of premises pursuant to this subsection shall be subject to the approval of the attorney general as to form and title.

Premises purchased pursuant to this section shall be used for the department, or if it is desirable to move the department, similar space will be furnished by the state to the department without further payment therefor by the United States.

SECTION 4. That Section 72-1351, Idaho Code, be, and the same is hereby amended to read as follows:

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

(a) (i) Each eligible employer shall be given an "experience factor" which shall be the ratio of excess of contributions over benefits paid on the employer's account since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for the four (4) fiscal years immediately preceding the computation date, except that when an employer first becomes eligible, his "experience factor" will be computed on his average annual taxable payroll for the two (2) fiscal years or more, but not to exceed four (4) fiscal years, immediately preceding the computation date. The computation of such "experience factor" shall be to six (6) decimal places.

(ii) Each deficit employer shall be given a "deficit experience factor" which shall be the ratio of excess of benefits paid on the employer's account over contributions since December 31, 1939, to his average annual taxable payroll rounded to the next lower dollar amount for one (1) or more fiscal years, but not to exceed four (4) fiscal years, for which he had covered employment ending on the computation date; provided, however, that any employer who on any computation date has a "deficit experience factor" for the period immediately preceding such computation date but who has filed all reports, paid all contributions and penalties due on or before the cut-off date, and has during the last four (4) fiscal years paid contributions at a rate of not less than the standard rate applicable for each such year and in excess of benefits charged to his experience rating account during such years, shall have any balance of benefits charged to his account which on the computation date immediately preceding such four (4) fiscal years were in excess of contributions paid, deleted from his account,

and the excess benefits so deleted shall not be considered in the computation of his taxable wage rate for the rate years following such four (4) fiscal years. For the rate year following such computation date, he shall be given the standard rate for that year.

(iii) In the event an employer's coverage has been terminated because he has ceased to do business or because he has not had covered employment for a period of four (4) years, and if said employer thereafter becomes a covered employer, he will be considered as though he were a new employer, and he shall not be credited with his previous experience under this chapter for the purpose of computing any future "experience factor."

(b) Schedules shall be prepared listing all eligible employers in inverse numerical order of their experience factors, and all deficit employers in numerical order of their deficit experience factors. There shall be listed on such schedules for each such employer in addition to the experience factor (i) the amount of his taxable payroll for the fiscal year ending on the computation date, and (ii) a cumulative total consisting of the sum of such employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on such schedules.

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

(d) (i) If the grouping of rate classes requires the inclusion of exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the lower of the two (2) rates designated for the two (2) classes in which the halves of his taxable payroll are so required.

(ii) If the group of rate classes requires the inclusion of a portion other than exactly one-half (1/2) of an employer's taxable payroll, the employer shall be assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(iii) If one (1) or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers shall be included in and assigned the taxable wage rate specified for such class, notwithstanding the provisions of paragraph (c) of this subsection.

(e) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer shall be placed in that position on the schedules which he would have occupied had his taxable payroll amount and/or experience factor as changed been used in determining his position in the first instance, but such change shall not affect the position or rate

classification of any other employer listed on the schedules and shall not affect the rate determination for previous years.

(2) For experience rating purposes, all previously accumulated benefit charges to covered employers' accounts, except cost reimbursement employers, shall not be changed except as provided by this chapter. Benefits paid prior to June 30 shall, as of June 30 of each year preceding the calendar year for which a covered employer's taxable wage rate is effective, be charged to the account of the covered employer, except cost reimbursement employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits, except that no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) If paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services;

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

(c) For that portion of benefits paid to multistate claimants pursuant to section 72-1344, Idaho Code, which exceeds the amount of benefits that would have been charged had only Idaho wages been used in paying the claim;

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

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

(3) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section 72-1323, Idaho Code. An experience rating record shall be maintained for each covered employer. The record shall be credited with all contributions which the covered employer has paid for covered employment prior to the cut-off date, pursuant to the provisions of this and preceding acts, and which covered employment occurred prior to the computation date. The record shall also be charged with the amount of benefits paid which are chargeable to the covered employer's account as provided by the appropriate provisions of the employment security law and regulations thereunder in effect at the time such benefits were paid. Nothing in this section shall be construed to grant any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by such covered employer into the employment security fund.

(4) (a) Whenever any individual or type of organization (whether or not a covered employer within the meaning of section 72-1315, Idaho Code) in any manner succeeds to, or acquires all or substantially all, of the business of an employer who at the time of acquisition was a covered employer, and in respect to whom the director finds that the business of the predecessor is continued solely by the successor, the separate experience rating account ~~and the actual contribution, benefit and taxable payroll experience~~ of the predecessor shall, upon the joint application of the predecessor and the successor within the ~~ninety (90)~~ one hundred eighty (180) days after

such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter.~~;--provided,--however,--that--such--ninety--(90)~~ Such one hundred eighty (180) day period may be extended at the discretion of the director.~~,--and--provided--further--that--whenever--a--predecessor--covered--employer--has--a--deficit~~ The transfer of the predecessor's experience rating account as of the last computation date ~~such--transfer,--as--herein--provided,~~ to the successor shall be mandatory ~~except--where--it--is--shown--by--substantial--evidence--that~~ if the management or ownership or ~~both--management--and--ownership--are--not~~ control is substantially the same for the successor as for the predecessor~~,--in--which--case--the--successor--shall--begin--with--the--rate--of--a--new--employer~~ and there is a continuity of business activity by the successor.

(b) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, in any manner succeeds to, or acquires, part of the business of an employer who at the time of acquisition was a covered employer, and such portion of the business is continued by the successor, so much of the separate experience rating account ~~and--the--actual--contribution,--benefit--and--taxable--payroll--experience~~ of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four (4) completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within ~~ninety--(90)~~ one hundred eighty (180) days after such acquisition and approval by the director, be transferred to the successor employer for the purpose of determining such successor's liability and taxable wage rate and any successor who was not an employer on the date of acquisition shall as of such date become a covered employer as defined in this chapter.~~;--provided,--however,--that--such--ninety--(90)~~ Such one hundred eighty (180) day period may be extended at the discretion of the director.~~,--and--provided--further--that--whenever--a--predecessor--covered--employer--has--a--deficit~~ The transfer of the predecessor's experience rating account as of the last computation date~~,--such--transfer,--as--herein--provided,~~ to the successor shall be mandatory ~~except--where--it--is--shown--by--substantial--evidence--that~~ if the management or ownership or ~~both--management--and--ownership--are--not~~ control is substantially the same for the successor as for the predecessor~~,--in--which--case--the--successor--shall--begin--with--the--rate--of--a--new--employer~~ and there is a continuity of business activity by the successor. Whenever such mandatory transfer involves only a portion of the experience rating record, and the predecessor or successor employers fail within ten (10) days after notice to supply the required payroll information, the transfer shall be based on estimates of the allocable payrolls.

(c) (i) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business his taxable wage rate, effective the first day of the calendar quarter immediately following the date of acquisition,

shall be a newly computed rate based on the combined experience of the predecessor and successor, the resulting rate remaining in effect the balance of the rate year.

(ii) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate shall be the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there were more than one (1) predecessor the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition, and shall remain in effect the balance of the rate year.

(d) For purposes of this section, an employer's experience rating account shall consist of the actual contribution, benefit and taxable payroll experience of the employer and any amounts due from the employer under this chapter.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 4 of this act shall be in full force and effect on and after passage and approval.

Approved March 5, 2004.

CHAPTER 25
(S.B. No. 1238)

AN ACT

RELATING TO CAPITOL ENDOWMENT FUNDS; AMENDING SECTION 67-1610, IDAHO CODE, TO PROVIDE FOR THE RETENTION OF EARNINGS OF THE CAPITOL PERMANENT ENDOWMENT FUND, TO PROVIDE FOR THE DEPOSIT OF PROCEEDS OF TIMBER SALES, CAPITOL BUILDINGS ENDOWMENT LAND LEASE REVENUES AND INTEREST CHARGED ON CAPITOL BUILDINGS DEFERRED PAYMENTS ON ENDOWMENT LANDS OR TIMBER ON THOSE LANDS INTO THE CAPITOL PERMANENT ENDOWMENT FUND AND TO PROVIDE FOR THE ANNUAL DISTRIBUTION OF AN AMOUNT DETERMINED BY THE ENDOWMENT FUND INVESTMENT BOARD TO THE CAPITOL ENDOWMENT INCOME FUND; AMENDING SECTION 67-1611, IDAHO CODE, TO PROVIDE FOR DISTRIBUTION FROM THE CAPITOL PERMANENT ENDOWMENT FUND TO THE CAPITOL ENDOWMENT INCOME FUND AND TO DELETE REFERENCE TO PROCEEDS OF THE SALE OF TIMBER GROWING UPON CAPITOL ENDOWMENT LANDS, LEASES OF CAPITOL BUILDINGS ENDOWMENT LANDS AND INTEREST CHARGED UPON DEFERRED PAYMENTS ON CAPITOL BUILDINGS ENDOWMENT LANDS OR TIMBER ON THOSE LANDS; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

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

SECTION 1. That Section 67-1610, Idaho Code, be, and the same is hereby amended to read as follows:

67-1610. CAPITOL PERMANENT ENDOWMENT FUND. (1) 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 Con-

gress (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) earnings of the capitol permanent endowment fund; (c) proceeds of the sale of timber growing upon capitol endowment lands; (d) proceeds of leases of capitol buildings endowment lands; (e) proceeds of interest charged upon deferred payments on capitol buildings endowment lands or timber on those lands; (f) all unappropriated and unencumbered moneys in the public building fund shown on the state controller's chart of accounts as the capitol permanent endowment fund; (~~c~~g) retained earnings to compensate for the effects of inflation; and (~~d~~h) legislative appropriations. The fund shall be managed by the endowment fund investment board in accordance with chapter 5, title 68, Idaho Code.

(2) ~~All realized earnings shall be credited to~~ On July 1 of each fiscal year, the endowment fund investment board shall distribute to the capitol endowment income fund created in section 67-1611, Idaho Code, an amount equal to a percentage approved by the board of the value of the capitol permanent endowment fund that is calculated to provide a stable source of moneys to allow for the maintenance, repair and restoration of the capitol, while still preserving and increasing over time the value of the capitol permanent endowment fund.

SECTION 2. That Section 67-1611, Idaho Code, be, and the same is hereby amended to read as follows:

67-1611. CAPITOL ENDOWMENT INCOME FUND. (1) There is hereby created in the state treasury the capitol endowment income fund. The fund shall be managed by the state treasurer and shall consist of the following:

(a) ~~Earnings of~~ Distributions from the capitol permanent endowment fund, as provided in section 67-1610, Idaho Code;

~~(b) Proceeds of the sale of timber growing upon capitol endowment lands;~~

~~(c) Proceeds of leases of capitol buildings endowment lands;~~

~~(d) Proceeds of interest charged upon deferred payments on capitol buildings endowment lands or timber on those lands;~~

~~(e)~~ All interests earned on the capitol endowment income fund;

(~~f~~c) All public and private moneys donated and obtained pursuant to the provisions of this chapter; and

(~~g~~d) All other proceeds received from the use of capitol building endowment lands and not otherwise designated for deposit in the capitol buildings permanent endowment fund.

(2) All moneys in the capitol endowment income fund shall be subject to annual appropriation by the legislature. All moneys shall be appropriated exclusively for the purposes of this chapter, retained for future appropriation, or transferred to the capitol endowment permanent fund by legislative appropriation.

SECTION 3. This act shall be in full force and effect on and after July 1, 2004, and all earnings and revenues realized or received after July 1, 2004, shall be distributed in accordance with this act, regardless of when those earnings and revenues were earned or accrued.

Approved March 5, 2004.

CHAPTER 26
(S.B. No. 1265)

AN ACT

RELATING TO ELECTION OF SCHOOL BOARD TRUSTEES; AMENDING SECTION 33-502B, IDAHO CODE, TO INCREASE THE TIME BEFORE AN ELECTION WHEN AN ELECTION MAY BE CANCELED DUE TO THE FILING OF A SINGLE CANDIDATE.

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

SECTION 1. That Section 33-502B, Idaho Code, be, and the same is hereby amended to read as follows:

33-502B. BOARD OF TRUSTEES -- ONE NOMINATION -- NO ELECTION. In any election for trustees, if, after the expiration of the date for filing written nominations for the office of trustee, it appears that only one (1) qualified candidate has been nominated for a position to be filled or if only one (1) candidate has filed a write-in declaration of intent as provided by section 33-502A, Idaho Code, no election shall be held for that position, and the board of trustees or the school district clerk with the written permission of the board, shall within ~~four~~ thirteen (~~4~~13) days before the scheduled date of the election declare such candidate elected as a trustee, and the school district clerk shall ~~immediately prep~~are and deliver to the person a certificate of election signed by him and bearing the seal of the district. The procedure set forth in this section shall not apply to any other school district election.

Approved March 5, 2004.

CHAPTER 27
(H.B. No. 477)

AN ACT

RELATING TO THE PROPERTY TAX; REPEALING SECTION 63-602DD, IDAHO CODE, RELATING TO TAXES ON CERTAIN PROPERTY DEFERRED FOR A TIME CERTAIN; AMENDING SECTION 63-303, IDAHO CODE, TO DELETE THE METHOD OF ASSESSMENT FOR CERTAIN MANUFACTURED HOMES UNDER A DEALER'S PLATE OR AS A SHEEP AND COW CAMP; AMENDING CHAPTER 6, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-602DD, IDAHO CODE, TO EXEMPT FROM TAXATION CERTAIN MANUFACTURED HOMES USED UNDER A DEALER'S PLATE OR AS A SHEEP AND COW CAMP; AND AMENDING SECTION 63-602K, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION SHALL PROMULGATE RULES SPECIFYING PROCEDURES BY WHICH IT SHALL ESTABLISH ECONOMIC RENT, AVERAGE CROP RENTAL AND CAPITALIZATION RATES, AND FOR THE PUBLICATION OF CROP PRICES AND THE DISCOUNT RATE TO BE USED TO DETERMINE THE CAPITALIZATION RATE TO BE USED IN CALCULATING THE EXEMPTION OF THE SPECULATIVE PORTION OF THE VALUE OF AGRICULTURAL LAND.

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

SECTION 1. That Section 63-602DD, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 63-303, Idaho Code, be, and the same is hereby amended to read as follows:

63-303. ASSESSMENT OF MANUFACTURED HOMES. Manufactured homes shall be assessed as other residential housing and such assessments shall be entered on the property roll. ~~except--that--the--following--manufactured homes-are-specifically-exempt-from-the-provisions-of-this-section:~~

~~(1)--Manufactured-homes-eligible-to-be-used-under-a-dealer's-license plate;~~

~~(2)--Manufactured-homes-designated-as-sheep-and-cow-camps.~~

SECTION 3. That Chapter 6, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-602DD, Idaho Code, and to read as follows:

63-602DD. MANUFACTURED HOMES USED UNDER A DEALER'S PLATE OR AS A SHEEP AND COW CAMP. The following property is exempt from taxation: Manufactured homes that are:

(1) Manufactured homes eligible to be used under a dealer's license plate; or

(2) Manufactured homes designated as sheep and cow camps.

SECTION 4. That Section 63-602K, Idaho Code, be, and the same is hereby amended to read as follows:

63-602K. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND. (1) The speculative portion of the value of land devoted to agriculture is exempt from taxation.

(2) "Land devoted to agriculture" shall mean that property defined by section 63-604, Idaho Code.

(3) "Speculative portion" shall mean that portion of the value of agricultural land which represents the excess over the actual use value of such land established by comparable sales data compared to value established by capitalization of economic rent or long-term average crop rental at a capitalization rate which shall be the rate of interest charged by the Spokane office of the farm credit system averaged over the immediate past five (5) years plus a component for the local tax rate.

(4) The state tax commission shall adopt rules implementing this section which shall provide the procedure by which it shall establish economic rent, average crop rental and capitalization rates and for the publication of crop prices and the discount rate to be used to determine the capitalization rate.

Approved March 10, 2004.

CHAPTER 28
(H.B. No. 478)

AN ACT

RELATING TO TAXATION; AMENDING SECTION 63-217, IDAHO CODE, TO PERMIT USE OF PRIVATE DELIVERY SERVICES APPROVED BY THE INTERNAL REVENUE SERVICE FOR FILING OF TAX RETURNS AND OTHER TAX RELATED DOCUMENTS WITH THE STATE TAX COMMISSION; AMENDING SECTION 63-3045, IDAHO CODE, TO CHANGE FROM OCTOBER 15 TO SEPTEMBER 15 AS THE DATE THE INTEREST RATE ACCRUING UPON ANY DEFICIENCY IS CALCULATED; AMENDING SECTION 63-3056, IDAHO CODE, TO PROVIDE THAT AN ACTION TO FORECLOSE A TAX LIEN MUST BE BROUGHT IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED, TO PROVIDE TECHNICAL CORRECTIONS AND TO CLARIFY THE LIMITATION OF TIME FOR BRINGING SUCH ACTIONS; AMENDING SECTION 63-3060, IDAHO CODE, TO PROVIDE TECHNICAL CORRECTIONS, TO DELETE REFERENCE TO CONSTABLES OR DEPUTIES AND TO UPDATE REFERENCE TO AGENT OF THE STATE TAX COMMISSION; AMENDING SECTION 63-3061, IDAHO CODE, TO DELETE REFERENCE TO CONSTABLES OR DEPUTIES AND TO UPDATE REFERENCE TO AGENT OF THE STATE TAX COMMISSION; AND AMENDING SECTION 63-3062, IDAHO CODE, TO DELETE REFERENCE TO CONSTABLES OR DEPUTIES AND TO UPDATE REFERENCE TO AGENT OF THE STATE TAX COMMISSION.

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

SECTION 1. That Section 63-217, Idaho Code, be, and the same is hereby amended to read as follows:

63-217. FILING OF MATERIAL BY MAIL <u>OR PRIVATE DELIVERY SERVICES.</u> (1) Any report, claim, return, statement or other document or payment dealing in any way or in any manner whatsoever with taxation which is required or authorized to be filed or made to the state of Idaho, or to any political subdivision thereof, which is:

(a) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. For purposes of this title, a postage meter cancellation shall not be deemed a post office cancellation mark.

(b) Mailed but not received by the state or political subdivision or where received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, claim, tax return, statement or other document or payment required by law to be filed or made, the sender files with the state or political subdivision a duplicate within fifteen (15) days after written notification is given to the sender by the state or political subdivision of its nonreceipt of such report, claim, tax return, statement, or other document or payment.

(2) If any such report, claim, tax return, statement or other document or payment is sent by United States mail and either registered or

certified, a record authenticated by the United States post office of such registration or certification shall be considered competent evidence that the report, claim, tax return, statement or other document or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

(3) Any reference in this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the United States department of treasury under section 7502 of the Internal Revenue Code. Any reference in this section to a postmark by the United States postal service shall be treated as including a reference to any date recorded or marked as described in section 7502 of the Internal Revenue Code by any designated delivery service.

(4) If the date for filing any such report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, Sunday or legal holiday, such acts shall be considered timely if performed on the next business day.

SECTION 2. That Section 63-3045, Idaho Code, be, and the same is hereby amended to read as follows:

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.

(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

(b) If the taxpayer files a protest with the tax commission within the period set forth in subsection (1)(a) of this section, and such protest does not comply with the rules of the tax commission and is therefore inadequate to perfect the taxpayer's right to a redetermination of the deficiency determination, then, the tax commission shall notify the taxpayer, in the same manner as set forth in subsection (1)(a) of this section, of such inadequacies, setting forth in said notice the corrective action to be taken by the taxpayer to perfect his protest. The taxpayer shall thereafter have twenty-eight (28) days from the date of said notice to perfect his protest.

(c) No assessment of a deficiency in respect to the tax imposed by this chapter, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

(2) Following a protest, the taxpayer has the right to a hearing. The purpose of the hearing is to discuss the deficiency determination and the taxpayer's protest with a commissioner or duly authorized repre-

sentative of the commission. The meeting shall be held informally and evidence shall be freely admitted regardless of the rules of evidence.

(3) Any hearing conducted under the provisions of this section may be conducted, in whole or in part, by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) A taxpayer has the right to be represented by, or be accompanied by, any person of his choice in any proceeding before the tax commission. If the taxpayer is not present at a proceeding, the representative of that taxpayer must be designated in writing by the taxpayer as shall be prescribed in administrative rules or in any manner acceptable to the tax commission.

(5) If the taxpayer does not file a protest with the state tax commission within the time prescribed in subsection (1)(a) of this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the state tax commission.

(6) (a) Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.

(b) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carryback of a net operating loss or a capital loss carryback, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss or capital loss arises.

(c) The rate of interest accruing during any calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the midterm federal rate as it applies on ~~October~~ September 15 of the immediately preceding calendar year rounded to the nearest whole number.

(7) When the time provisions contained in this section conflict with the provisions of section 63-4208, Idaho Code, relating to the assessment of taxes on illegal possession of controlled substances, the provisions of section 63-4208, Idaho Code, shall prevail.

SECTION 3. That Section 63-3056, Idaho Code, be, and the same is hereby amended to read as follows:

63-3056. ACTION TO ENFORCE LIEN. In any case where there has been a refusal or neglect to pay any tax, including interest, penalty, additional amount or addition to such tax, together with any costs that may accrue in addition thereto, the attorney general of the state, at the request of the state tax commission, may file an action in the district

court for Idaho in the county where ~~said--lien--is--filed~~ the property encumbered by the lien is located to enforce the lien of the state for such tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. Such action shall be commenced and pursued in like manner as is now provided by law for the foreclosure of mortgages and other liens in chapter 1, title 6, Idaho Code, which is hereby made applicable to the tax liens arising under this ~~act~~ chapter to the extent that such provisions are not inconsistent with other provisions of this ~~act~~ chapter, provided, however, that the redemption period may be fixed by the judge of the court wherein the proceeding was filed, but in no event shall the period of redemption exceed the time prescribed by sections 11-402 and 11-403, Idaho Code. Such action may be commenced at any time within five (5) years following the date such lien ~~arises~~ was filed, or ~~is~~ was last extended.

SECTION 4. That Section 63-3060, Idaho Code, be, and the same is hereby amended to read as follows:

63-3060. PROCEEDINGS ON LEVY OR DISTRAINT. When a warrant is issued by the state tax commission for the collection of any tax, interest, penalty, additional amount or addition to such tax, imposed by this ~~act~~ chapter or for the enforcement of any lien authorized by this ~~act~~ chapter, it shall be directed to any sheriff~~,-constable,-or-deputy~~ or agent of the state tax commission, and any such warrant shall have the same force and effect as a writ of execution. It may and shall be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The sheriff~~,-constable,-or-deputy~~ or agent of the state tax commission, shall receive upon the completion of his services pursuant to said warrant, and the state tax commission is authorized to pay to said sheriff~~,-constable,-or deputy~~ or agent of the state tax commission, the same fees, commissions and expenses pursuant to said warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publication in a newspaper shall be subject to approval by the state tax commission rather than by the court; said fees, commissions and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant issued by the state tax commission shall show the name and last known address of the taxpayer liable for the amount, and shall show the year for which such tax, interest, penalty, additional amount, or addition to such tax, is due and the amount thereof, and the fact that the state tax commission has complied with all provisions of this ~~act~~ chapter in the determination of the amount required to be paid, and that the tax, interest, penalty, additional amount, or addition to such tax, is due and payable according to law.

SECTION 5. That Section 63-3061, Idaho Code, be, and the same is hereby amended to read as follows:

63-3061. SUCCESSIVE SEIZURES. Whenever any property which is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the

sheriff~~, constable, or deputy~~ or agent of the state tax commission, may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists, until the amount due from such taxpayer, together with all expenses, is fully paid.

SECTION 6. That Section 63-3062, Idaho Code, be, and the same is hereby amended to read as follows:

63-3062. PRODUCTION OF BOOKS. All persons, and officers of companies or corporations, are required on demand of a sheriff~~, constable, or deputy~~ or agent of the state tax commission, about to distrain, or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due.

Approved March 10, 2004.

CHAPTER 29
(H.B. No. 479)

AN ACT

RELATING TO UNCLAIMED PROPERTY; AMENDING SECTION 14-517, IDAHO CODE, TO REQUIRE REPORTING OF THE FULL NAME AND LAST KNOWN ADDRESS OF THE INSURED OR ANNUITANT OR BENEFICIARY WHEN UNCLAIMED FUNDS OF MORE THAN FIFTY DOLLARS HELD OR OWING UNDER ANY LIFE OR ENDOWMENT INSURANCE POLICY OR ANNUITY CONTRACT ARE REPORTED AND TO REQUIRE THAT THE REPORT OF ABANDONED PROPERTY MUST BE FILED NO LATER THAN NOVEMBER FIRST OF EACH YEAR; AMENDING SECTION 14-518, IDAHO CODE, TO PROVIDE THAT PROPERTY ESCHEATS TO THE STATE OF IDAHO TEN YEARS AFTER IT IS RECEIVED BY THE ADMINISTRATOR OF UNCLAIMED PROPERTY; AMENDING SECTION 14-523, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION SHALL RECORD THE NAME AND LAST KNOWN ADDRESS OF THE PERSON ENTITLED TO THE PROPERTY WITHIN SIXTY DAYS OF TRANSFERRING EXCESS FUNDS FROM THE UNCLAIMED PROPERTY ACCOUNT; AND AMENDING SECTION 14-543, IDAHO CODE, TO PROVIDE THAT STATEMENTS TO PURCHASERS SHALL SET FORTH AMOUNTS DUE BY THE HOLDER AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 14-517, Idaho Code, be, and the same is hereby amended to read as follows:

14-517. REPORT OF ABANDONED PROPERTY. (1) A person holding property tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the administrator concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property

presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars ($50.00) ~~or more~~ held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the administrator prescribes by rule as necessary for the administration of the provisions of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(4) The report must be filed ~~before~~ no later than November 1 of each year as of June 30 next preceding. On written request by any person required to file a report, the administrator may postpone the reporting date.

(5) All holders of property presumed abandoned under this section that know the whereabouts of the owner of such property shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. Not more than one hundred twenty (120) days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this chapter if the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate.

(6) The written notice required under this section shall include the name and address of the apparent owner, the nature and amount of the property presumed abandoned in the holder's possession, the name and address of the holder of the property presumed abandoned, a request that the apparent owner identify whether the property presumed abandoned is or is not unclaimed property under this chapter, and the reasons therefor, and any other criteria the administrator deems appropriate.

(7) If the apparent owner completes and returns the written notice described in subsection (6) of this section to the holder, and the apparent owner indicates a claim to the property presumed abandoned or indicates that the property identified in the written notice is not abandoned property, the holder need not pay or deliver the property to the administrator, and the property shall not be considered abandoned.

(8) In the event a holder receives a written notice as described in subsection (7) of this section demonstrating that certain property is not abandoned, a new presumption of abandonment may arise for such prop-

erty due to the passage of time. The date the holder receives the written notice shall be deemed the date such property became payable or distributable for the purposes of calculating whether a presumption of abandonment has arisen.

(9) A report filed pursuant to this section shall be presumed accurate if the holder has maintained adequate records sufficient to establish by a preponderance of evidence that each item on the report is accurate and correct.

SECTION 2. That Section 14-518, Idaho Code, be, and the same is hereby amended to read as follows:

14-518. NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY. (1) The administrator shall cause a notice to be published annually each year, at least once a week for two (2) consecutive weeks in newspapers of general circulation, or in a published notice distributed, one (1) time only, concurrently with a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in a newspaper which has general circulation, or in a published notice distributed concurrently with a newspaper which has general circulation in the county in which the holder of the property has its principal place of business within this state. Provided however, the names and addresses located in a state which will receive the accounts because of reciprocal agreements as permitted by section 14-535, Idaho Code, need not be published. In the case of a notice which is distributed concurrently with a newspaper, the provisions of section 60-105, Idaho Code, relating to rates for official notices shall not apply.

(2) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(a) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice;

(b) A statement that information concerning the property may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator;

(c) A statement that the property is in the custody of the administrator and all claims must be directed to the administrator; and

(d) A statement that the property shall escheat to the state of Idaho and become the property of the state of Idaho if not claimed within ten (10) years after ~~notice is published pursuant to this section~~ it is received by the administrator.

(3) The administrator is not required to publish in the notice any items of less than one hundred dollars ($100) unless the administrator considers their publication to be in the public interest.

(4) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under section 14-504, Idaho Code.

SECTION 3. That Section 14-523, Idaho Code, be, and the same is hereby amended to read as follows:

14-523. DISPOSITION OF MONEY RECEIVED. (1) All money received under this chapter, including the proceeds from the sale of property under

section 14-522, Idaho Code, shall be deposited in the unclaimed property account.

(2) All money in the unclaimed property account is hereby continuously appropriated to the state tax commission, without regard to fiscal years, for expenditure in accordance with law in carrying out and enforcing the provisions of this chapter, including, but not limited to, the following purposes:

(a) For payment of claims allowed by the state tax commission under the provisions of this chapter.

(b) For refund, to the person making such deposit of amounts, including overpayments, deposited in error in such account.

(c) For payment of the cost of appraisals incurred by the state tax commission covering property held in the name of the account.

(d) For payment of the cost incurred by the state tax commission for the purchase of lost instrument indemnity bonds, or for payment to the person entitled thereto, for any unpaid lawful charges or costs which arose from holding any specific property or any specific funds which were delivered or paid to the state tax commission, or which arose from complying with this chapter with respect to such property or funds.

(e) For payment of amounts required to be paid by the state as trustee, bailee, or successor in interest to the preceding owner.

(f) For payment of costs of official advertising in connection with the sale of property held in the name of the account.

(g) For transfer to the general account as provided in subsection (3) of this section.

(h) For transfer to the inheritance tax account of the amount of any inheritance taxes determined to be due and payable to the state by any claimant with respect to any property claimed by him under the provisions of this chapter.

(3) At the end of each month, or more often, if it deems it advisable, the state tax commission shall transfer all money in the unclaimed property account in excess of two hundred fifty thousand dollars ($250,000) to the general account. ~~Before~~ Within sixty (60) days of making this transfer, it shall record the name and last known address, if available, of each person appearing from the holder's report to be entitled to the property. The record shall be available for public inspection at all reasonable business hours.

(4) All money received under this chapter, including the proceeds from the sale of property under section 14-522, Idaho Code, deposited in the general account shall be retained by the state of Idaho for the purposes of this section and administered pursuant to this section for a period of ten (10) years. At the end of such period, those moneys which have not been claimed and paid over or delivered as an allowed claim under this section and section 14-524, Idaho Code, shall become due and payable by escheat to the state of Idaho and become the property of the state of Idaho without further action on the part of the administrator.

SECTION 4. That Section 14-543, Idaho Code, be, and the same is hereby amended to read as follows:

14-543. SUCCESSORS' LIABILITY. (1) If any holder possessing unclaimed property under this act sells out its business or stock of goods, the purchaser of the business or stock of goods shall make

inquiry of the administrator and withhold from the purchase price any amount of unclaimed property that may be due under this ~~act~~ chapter until such time as the administrator provides written notification stating that no amount is due.

(2) If the purchaser of a business or stock of goods fails to withhold the amounts required by subsection (1) of this section from the purchase price, he becomes personally liable for the payment of the amount required to be withheld to the extent of the purchase price valued in money.

(3) The administrator shall, as soon as practicable after receiving written inquiry as to any amounts due, and no later than thirty (30) days after receipt of the inquiry or, if necessary, thirty (30) days from the date the holder's records are made available for review under section 14-530, Idaho Code, but in any event no later than sixty (60) days after receiving the inquiry, issue a statement to the purchaser setting forth the amount ~~of tax~~ due under this chapter by the holder, if any. The administrator's failure to issue such statement will release the purchaser from any obligation to withhold from the purchase price the amounts as above required, or responsibility for the reporting or delivery of any unclaimed property due and owing by the holder under section 14-517, Idaho Code, and section 14-519, Idaho Code.

Approved March 10, 2004.

CHAPTER 30
(H.B. No. 481)

AN ACT

RELATING TO THE IDAHO INCOME TAX ACT; AMENDING SECTION 41-3821, IDAHO CODE, TO CLARIFY THE EXCLUSION FOR CERTAIN DIVIDENDS PAYABLE TO A MUTUAL INSURANCE STOCK HOLDING COMPANY OR INTERMEDIATE HOLDING COMPANY; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE TO THE INTERNAL REVENUE CODE; AMENDING SECTION 63-3022A, IDAHO CODE, TO PROVIDE CHANGES IN RETIREMENT AGE UNDER THE SOCIAL SECURITY ACT AND TO PROVIDE A DEFINITION OF DISABLED; AMENDING SECTION 63-3022D, IDAHO CODE, TO CLARIFY THAT TO QUALIFY FOR THE DEDUCTION FOR CERTAIN EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE, SERVICES MUST BE PAID BY THE INDIVIDUAL MAINTAINING THE HOUSEHOLD; AMENDING SECTION 63-3022N, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 63-3035A, IDAHO CODE, TO UPDATE THE INCOME TAX WITHHOLDING RATE APPLICABLE TO LOTTERY WINNINGS; AND DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 41-3821, Idaho Code, be, and the same is hereby amended to read as follows:

41-3821. MUTUAL INSURANCE HOLDING COMPANIES.

(1) (a) A domestic mutual insurer, upon approval of the director, may reorganize by forming an insurance holding company system, "the mutual insurance holding company," based upon a mutual plan and con-

tinuing the corporate existence of the reorganizing insurer as a stock insurer. The director, after a public hearing as provided in section 41-3805, Idaho Code, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the director finds necessary for the protection of the policyholders' interests. The director may retain consultants as provided in section 41-3805(4), Idaho Code. A reorganization pursuant to this subsection is subject to sections 41-3802 and 41-3803, Idaho Code. The director shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(b) All of the initial shares of the capital stock of the reorganized insurer shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurer shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurer shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurer.

(2) (a) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection (1) of this section and continuing the corporate existence of the reorganizing insurer as a stock insurer subsidiary of the mutual insurance holding company. The director, after a public hearing as provided in section 41-3805, Idaho Code, if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the director finds necessary for the protection of the policyholders' interests. The director may retain consultants as provided in section 41-3805(4), Idaho Code. A merger pursuant to this subsection is subject to sections 41-3802 and 41-3803, Idaho Code. The director shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(b) All of the initial shares of the capital stock of the reorganized insurer shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurer shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurer. A merger of policyholders' membership interests in a mutual insurer into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to section 41-2857, Idaho Code, and section 41-2857,

Idaho Code, is also applicable.

(c) A foreign mutual insurer, which if a domestic corporation would be organized under chapter 3, title 41, Idaho Code, may reorganize upon the approval of the director and in compliance with the requirements of any law or rule which is applicable to the foreign mutual insurer by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection (1) of this section and continuing the corporate existence of the reorganizing foreign mutual insurer as a foreign stock insurer subsidiary of the mutual insurance holding company. The director, after a public hearing as provided in section 41-3805, Idaho Code, may approve the proposed merger. The director may retain consultants as provided in section 41-3805(4), Idaho Code. A merger pursuant to this paragraph is subject to sections 41-3802 and 41-3803, Idaho Code. The reorganizing foreign mutual insurer may remain a foreign company or foreign corporation after the merger, and may be admitted to do business in this state. A foreign mutual insurer which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of subsection (2)(b) shall apply to a merger authorized under this paragraph.

(3) A mutual insurance holding company resulting from the reorganization of a domestic mutual insurer organized under chapter 1, title 30, Idaho Code, shall be incorporated pursuant to chapter 1, title 30, Idaho Code. This requirement shall supersede any conflicting provisions of chapter 1, title 30, Idaho Code. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the director in the same manner as those of an insurance company.

(4) A mutual insurance holding company is deemed to be an insurer subject to chapter 33, title 41, Idaho Code, and shall automatically be a party to any proceeding under chapter 33, title 41, Idaho Code, involving an insurer which as a result of a reorganization pursuant to subsection (1) or (2) of this section is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 33, title 41, Idaho Code, involving the reorganized insurer, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurer for purposes of satisfying the claims of the reorganized insurer's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the director or as ordered by the district court pursuant to chapter 33, title 41, Idaho Code.

(5) (a) Section 41-2855, Idaho Code, is not applicable to a reorganization or merger pursuant to this section.

(b) Section 41-2855, Idaho Code, is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual insurer organized under chapter 3, title 41, Idaho Code, as if it were a mutual life insurer.

(6) A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in section 30-1402(12), Idaho Code.

(7) The majority of the voting shares of the capital stock of the reorganized insurer, which is required by this section to be at all times owned by a mutual insurance holding company, shall not be con-

veyed, transferred, assigned, pledged, subject to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in or on the majority of the voting shares of the reorganized insurer which is required by this section to be at all times owned by a mutual insurance holding company, is in violation of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to the shares necessary to constitute a majority of such voting shares. The majority of the voting shares of the capital stock of the reorganized insurer which is required by this section to be at all times owned by a mutual insurance holding company shall not be subject to execution and levy as provided in title 11, Idaho Code. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two (2) or more reorganized insurers or two (2) or more intermediate holding companies which were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations as provided in this section to which the shares of the merging or consolidating reorganized insurers or intermediate holding companies were subject by this section prior to the merger or consolidation.

As used in this section, "majority of the voting shares of the capital stock of the reorganized insurer" means shares of the capital stock of the reorganized insurer which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurer for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurer. The ownership of a majority of the voting shares of the capital stock of the reorganized insurer which are required by this section to be at all times owned by a parent mutual insurance holding company includes indirect ownership through one (1) or more intermediate holding companies in a corporate structure approved by the director. However, indirect ownership through one (1) or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurer. The director shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company.

As used in this section, "intermediate holding company" means a holding company which is a subsidiary of a mutual insurance holding company, and which either directly or through a subsidiary intermediate holding company has one (1) or more subsidiary reorganized insurers of which a majority of the voting shares of the capital stock would otherwise have been required by this section to be at all times owned by the mutual insurance holding company.

(8) It is the intent of the legislature that the formation of a mutual insurance holding company should not increase the Idaho tax burden of the mutual insurance holding company system and that a stock insurance subsidiary shall continue to be subject to Idaho insurance premium taxation in lieu of all other taxes except real property taxes as provided in section 41-405, Idaho Code. Subject to approval by the director as required under Idaho law, a stock insurance subsidiary may

issue dividends or distributions to the mutual insurance holding company or any intermediate holding company, and such dividends or distributions shall be excluded from the Idaho taxable income of the recipients; provided however, that such exclusion shall not apply ~~to the extent that~~ if, in the year preceding the year in which the dividends or distributions were made, the subsidiary insurer's liability for Idaho premium tax was less than the amount of Idaho income tax, computed after allowance for income tax credits, for which the insurer would have been liable in such year had the insurer been subject to Idaho income taxation rather than premium taxation.

SECTION 2. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022Q, 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 of the Internal Revenue Code.

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

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

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

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

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

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

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

(1) In the case of a taxpayer who files a joint return with his

spouse for the tax year, an amount equal to the maximum social security benefits payable for the tax year to a ~~man~~ person attaining full retirement age ~~sixty-five (65) years~~ in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits, and whose spouse has no social security benefits except those payable on his record of earnings.

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

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

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

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

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

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

(e) As used in this section, the word "disabled" shall mean an individual who is a disabled person described in section 63-701, Idaho Code.

SECTION 4. That Section 63-3022D, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022D. DEDUCTION OF EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE SERVICES. Allowance of Deduction. In the case of an individual who maintains a household which includes as a member one (1) or more qualifying individuals (as defined in section 21(b)(1), Internal Revenue Code), there shall be allowed as a deduction the employment-related expenses (as defined in section 21(b)(2), Internal Revenue Code, and as further specified and limited by section 21(c), (d), and (e), Internal Revenue Code) paid by such individual during the taxable year.

SECTION 5. That Section 63-3022N, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022N. MARRIAGE PENALTY ADJUSTMENT. (1) To eliminate from the calculation of Idaho taxable income any marriage penalty that may exist in the basic standard deductions provided in the Internal Revenue Code, basic federal standard deductions shall be adjusted as provided in this section.

(2) As used in this section, "the marriage penalty" means the difference obtained by subtracting:

(a) The basic standard deduction for joint returns, from

(b) Two (2) times the basic standard deduction for an individual who is not married and who is not a surviving spouse or head of household.

(3) For each taxable year beginning on and after January 1, 2000, the standard deduction in section 63-3022(~~k~~j)(1), Idaho Code, shall be: on a joint return, the basic federal joint standard deduction plus the marriage penalty, rounded to the nearest dollar, plus the amount of any additional standard deduction for the aged or blind for which a taxpayer may qualify under section 63 of the Internal Revenue Code.

(4) The basic federal standard deduction for an individual for whom a deduction under section 151 of the Internal Revenue Code is allowable to another taxpayer shall not be reduced below the minimum adjusted basic standard deduction provided by section 63 of the Internal Revenue Code.

SECTION 6. That Section 63-3035A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3035A. STATE INCOME TAX WITHHOLDING TAX ON LOTTERY WINNINGS. (1) Whenever the Idaho state lottery is required by the Internal Revenue Code to withhold, collect and pay over income tax on any prize, proceeds or winnings it shall, at the time of payment of such prize, proceeds or winnings to the recipient, withhold from the payment an amount equal to ~~eight and two tenths percent (8.2%)~~ the maximum percentage applicable to individuals under section 63-3024, Idaho Code, of the prize, proceeds or winnings to be applied to Idaho income taxes due from the recipient.

(2) The state tax commission shall accept amounts withheld according to this section as payment by the recipient of the amount so withheld of income taxes imposed on the recipient for the taxable year in which the prize, proceeds or winnings are includable in the recipient's Idaho taxable income.

(3) When the total amount withheld (along with other credits due, withholding or payments attributable to the taxpayer) exceeds the taxes due from the recipient, the state tax commission shall, after examining

the state income tax return filed by the recipient, refund the amount of the excess withheld in the manner provided for refunds of withholding under section 63-3035, Idaho Code.

(4) The Idaho state lottery shall remit the amounts withheld to the state tax commission on or before the date similar payments and reports are due to the internal revenue service.

(5) The Idaho state lottery shall furnish to the recipient, not later than thirty (30) days after the end of the calendar year, a record of the tax withheld during that year and shall, not later than the last day of the following February, file a copy of the record with the state tax commission.

(6) The Idaho state lottery and the state tax commission may agree to different times and procedures for making the remittances or reports required in this section.

(7) Nothing in this section relieves any taxpayer from an obligation to file a return or pay taxes at the time and in the manner required by this chapter.

SECTION 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, 2004.

Approved March 10, 2004.

CHAPTER 31
(H.B. No. 715)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE OFFICE OF SPECIES CONSERVATION FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	$439,500	$105,600		$ 545,100
Miscellaneous Revenue Fund	20,000	15,000		35,000
Federal Grant Fund	100,000	300,000	$1,100,000	1,500,000
TOTAL	$559,500	$420,600	$1,100,000	$2,080,100

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, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 32
(H.B. No. 718)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 2005; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN FUNDS FOR CAPITAL OUTLAY; AUTHORIZING THE CONTINUOUS APPROPRIATION OF CERTAIN FUNDS TO OPERATE THE DEPARTMENT'S ENTREPRENEURIAL BUDGET SYSTEM; REAPPROPRIATING CERTAIN FUNDS FOR THE BRUNEAU DUNES SCIENCE CENTER CHALLENGE GRANT PROGRAM; APPROPRIATING MONEYS TO THE LAVA HOT SPRINGS FOUNDATION FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT SERVICES DIVISION:					
FROM:					
General Fund	$ 1,571,200	$ 247,000			$ 1,818,200
Indirect Cost Recovery Fund	211,500	36,700			248,200
Parks and Recreation Fund	662,700	697,000	$ 4,000	$ 60,000	1,423,700
Recreational Fuels Fund	293,200	43,600	42,000	2,118,700	2,497,500
Parks and Recreation Registration Fund	88,800	133,300	1,600	6,846,600	7,070,300
Miscellaneous Revenue Fund	3,000	17,600			20,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Petroleum Price Violation Fund				100,000	100,000
Federal Grant Fund	81,200	5,200		1,692,400	1,778,800
TOTAL	$ 2,911,600	$1,180,400	$ 47,600	$10,817,700	$14,957,300
II. PARK OPERATIONS:					
FROM:					
General Fund	$ 4,273,300	$ 727,800			$ 5,001,100
Indirect Cost Recovery Fund	36,500	2,400			38,900
Parks and Recreation Fund	1,437,700	1,228,000	$ 316,000		2,981,700
Recreational Fuels Fund	244,100	105,100	1,191,200		1,540,400
Parks and Recreation Registration Fund	312,900	290,200	78,900	$ 65,000	747,000
Miscellaneous Revenue Fund	6,700	77,500			84,200
Public Recreation Enterprise Fund	310,400	643,800	62,200		1,016,400
Parks and Recreation Expendable Trust Fund	269,600	243,700	18,000		531,300
Federal Grant Fund	930,500	306,000	75,000		1,311,500
TOTAL	$ 7,821,700	$3,624,500	$1,741,300	$ 65,000	$13,252,500
III. CAPITAL DEVELOPMENT:					
FROM:					
Parks and Recreation Fund			$ 240,000		$ 240,000
Recreational Fuels Fund			916,000		916,000
Public Recreation Enterprise Fund			200,000		200,000
Parks and Recreation Expendable Trust Fund			2,782,500		2,782,500
Federal Grant Fund			1,382,500		1,382,500
TOTAL			$5,521,000		$ 5,521,000
GRAND TOTAL	$10,733,300	$4,804,900	$7,309,900	$10,882,700	$33,730,800

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, 2004, through June 30, 2005, 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 2004 are hereby reappropriated for capital outlay in that program for the period July 1, 2004, through June 30, 2005.

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. It is legislative intent that any unexpended, unencumbered balance of the $400,000 in General Fund moneys reappropriated in fiscal year 2004 for the Bruneau Dunes Science Center Challenge Grant Program is hereby reappropriated for the period July 1, 2004, through June 30, 2005.

SECTION 6. 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, 2004, through June 30, 2005:

LAVA HOT SPRINGS FOUNDATION:

FOR:	
Personnel Costs	$ 600,000
Operating Expenditures	509,300
Capital Outlay	553,800
TOTAL	$1,663,100
FROM:	
Public Recreation Enterprise - Lava Hot Springs Fund	$1,663,100

SECTION 7. 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, 2004, through June 30, 2005, for the program specified in Section 6 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 10, 2004.

CHAPTER 33
(H.B. No. 721)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Fish and Game 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
Fish and Game Fund (Licenses)	$ 2,687,200	$ 1,755,700	$2,934,300	$314,500	$ 7,691,700
Fish and Game Fund (Other)		12,900			12,900
Fish and Game Set-aside Fund (Licenses)	200	55,300			55,500
Fish and Game Set-aside Fund (Other)		100			100
Fish and Game Primary Depredation Fund		2,200			2,200
Fish and Game Secondary Depredation Fund		2,200			2,200
Fish and Game Expendable Trust Fund		12,600			12,600
Fish and Game Nonexpendable Trust Fund		5,400			5,400
Fish and Game Fund (Federal)	2,787,700	2,918,300	37,400		5,743,400
TOTAL	$ 5,475,100	$ 4,764,700	$2,971,700	$314,500	$13,526,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. ENFORCEMENT:					
FROM:					
Fish and Game Fund (Licenses)	$ 6,570,800	$ 1,776,600	$ 194,900		$ 8,542,300
Fish and Game Fund (Other)	86,800	18,600			105,400
Fish and Game Set-aside Fund (Other)		20,000			20,000
Fish and Game Expendable Trust Fund		20,800			20,800
TOTAL	$ 6,657,600	$ 1,836,000	$ 194,900		$ 8,688,500
III. FISHERIES:					
FROM:					
Fish and Game Fund (Licenses)	$ 2,985,600	$ 2,186,500	$ 256,300		$ 5,428,400
Fish and Game Fund (Other)	1,386,700	782,600	8,000		2,177,300
Fish and Game Set-aside Fund (Licenses)	168,100	251,700	281,100		700,900
Fish and Game Set-aside Fund (Other)	64,000	30,000			94,000
Fish and Game Expendable Trust Fund	222,300	50,400			272,700
Fish and Game Nonexpendable Trust Fund		32,700			32,700
Fish and Game Fund (Federal)	10,332,900	5,583,400	2,049,500		17,965,800
TOTAL	$15,159,600	$ 8,917,300	$2,594,900		$26,671,800
IV. WILDLIFE:					
FROM:					
Fish and Game Fund (Licenses)	$ 3,197,600	$ 3,534,400	$ 186,900		$ 6,918,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Fund (Other)	234,200	475,000			709,200
Fish and Game Set-aside Fund (Licenses)		7,200			7,200
Fish and Game Set-aside Fund (Other)	745,600	835,600			1,581,200
Fish and Game Expendable Trust Fund	344,000	451,800	8,000		803,800
Fish and Game Nonexpendable Trust Fund	9,900	2,300			12,200
Fish and Game Fund (Federal)	3,223,900	1,898,900	12,800		5,135,600
TOTAL	$ 7,755,200	$ 7,205,200	$ 207,700		$15,168,100
V. COMMUNICATIONS:					
FROM:					
Fish and Game Fund (Licenses)	$ 1,315,000	$ 457,100	$ 28,500		$ 1,800,600
Fish and Game Fund (Other)	83,000	34,900	60,000		177,900
Fish and Game Set-aside Fund (Other)	91,300	119,500			210,800
Fish and Game Expendable Trust Fund		25,000			25,000
Fish and Game Fund (Federal)	638,100	378,400	80,000		1,096,500
TOTAL	$ 2,127,400	$ 1,014,900	$ 168,500		$ 3,310,800
VI. ENGINEERING:					
FROM:					
Fish and Game Fund (Licenses)	$ 818,100	$ 67,200	$ 21,800		$ 907,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VII. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund (Licenses)	$ 564,700	$ 95,100	$ 34,900		$ 694,700
Fish and Game Fund (Other)	178,500	10,600			189,100
Fish and Game Set-aside Fund (Other)	97,500	33,200			130,700
Fish and Game Fund (Federal)	2,028,700	515,800			2,544,500
TOTAL	$ 2,869,400	$ 654,700	$ 34,900		$ 3,559,000
VIII. WINTER FEEDING AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund (Licenses)	$ 434,700	$ 630,900	$ 5,000		$ 1,070,600
Fish and Game Set-aside Fund (Licenses)	52,800	1,894,500	207,500		2,154,800
Fish and Game Primary Depredation Fund				$200,000	200,000
Fish and Game Secondary Depredation Fund				200,000	200,000
TOTAL	$ 487,500	$ 2,525,400	$ 212,500	$400,000	$ 3,625,400
GRAND TOTAL	$41,349,900	$26,985,400	$6,406,900	$714,500	$75,456,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Fish and Game is authorized no more than five hundred twenty-two (522) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 34
(H.B. No. 722)

AN ACT

APPROPRIATING MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND FOR FISCAL YEAR 2005.

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

SECTION 1. There is hereby appropriated $12,160,500 from the General Fund to be deposited in the Catastrophic Health Care Cost Fund for the period July 1, 2004, through June 30, 2005.

Approved March 10, 2004.

CHAPTER 35
(H.B. No. 723)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC HEALTH TRUST FUND FOR THE PUBLIC HEALTH DISTRICTS FOR FISCAL YEAR 2005.

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

SECTION 1. There is hereby appropriated $9,488,400 from the General Fund to be deposited in the Public Health Trust Fund for the period July 1, 2004, through June 30, 2005.

Approved March 10, 2004.

CHAPTER 36
(H.B. No. 732)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. RETIREMENT ADMINISTRATION:				
FROM:				
PERSI Administrative Fund	$2,909,900	$5,254,400	$173,700	$8,338,000
II. PORTFOLIO INVESTMENT:				
FROM:				
PERSI Special Fund	$ 428,700	$ 202,300	$ 15,500	$ 646,500
GRAND TOTAL	$3,338,600	$5,456,700	$189,200	$8,984,500

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, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 37
(H.B. No. 733)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF HUMAN RESOURCES FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
DIVISION OF HUMAN RESOURCES:				
FROM:				
Division of Human Resources Fund	$2,106,300	$606,000	$28,300	$2,740,600
Seminars and Publications Fund		130,000		130,000
TOTAL	$2,106,300	$736,000	$28,300	$2,870,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Human Resources is authorized no more than thirty-six (36) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 38
(H.B. No. 734)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INSURANCE REGULATION:					
FROM:					
Self-Governing Operating Fund	$3,277,900	$1,659,400	$127,300		$5,064,600
Miscellaneous Revenue Fund	76,900	8,000			84,900
Federal Grant Fund	116,600	48,400		$2,500	167,500
TOTAL	$3,471,400	$1,715,800	$127,300	$2,500	$5,317,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. STATE FIRE MARSHAL:					
FROM:					
Self-Governing State Fire Marshal Fund	$ 635,300	$ 276,700	$ 22,200		$ 934,200
GRAND TOTAL	$4,106,700	$1,992,500	$149,500	$2,500	$6,251,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Insurance is authorized no more than seventy and one-half (70.5) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 39
(H.B. No. 735)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

FOR:	
Personnel Costs	$2,779,800
Operating Expenditures	748,300
Capital Outlay	109,000
TOTAL	$3,637,100
FROM:	
State Regulatory Fund	$3,637,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than forty-four (44) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 40
(H.B. No. 736)

AN ACT
APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Public Utilities Commission Fund	$3,184,000	$1,303,900	$23,600	$4,511,500
Federal Grant Fund	44,500	25,900		70,400
TOTAL	$3,228,500	$1,329,800	$23,600	$4,581,900

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, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 41
(H.B. No. 737)

AN ACT
APPROPRIATING MONEYS TO THE IDAHO STATE POLICE FOR FISCAL YEAR 2005; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SALARIES.

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

SECTION 1. There is hereby appropriated to the Idaho State Police the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. BRAND INSPECTION:					
FROM:					
State Brand Board Fund	$ 2,066,000	$ 265,700	$ 85,500		$ 2,417,200
II. DIVISION OF THE IDAHO STATE POLICE:					
A. DIRECTOR'S OFFICE:					
FROM:					
General Fund	$ 1,789,000	$ 458,800			$ 2,247,800
Indirect Cost Recovery Fund	73,900				73,900
Idaho Law Enforcement Fund	81,500	7,900			89,400
Peace Officers Fund	700				700
Miscellaneous Revenue Fund		55,300			55,300
Federal Grant Fund	619,400	141,700		$3,534,300	4,295,400
TOTAL	$ 2,564,500	$ 663,700		$3,534,300	$ 6,762,500
B. EXECUTIVE PROTECTION:					
FROM:					
General Fund	$ 220,400	$ 80,400			$ 300,800
C. INVESTIGATIONS:					
FROM:					
General Fund	$ 4,583,400	$ 934,300			$ 5,517,700
Drug Donation Fund	100,000	302,800	$ 228,500		631,300
Federal Grant Fund	106,600	384,200			490,800
TOTAL	$ 4,790,000	$ 1,621,300	$ 228,500		$ 6,639,800
D. PATROL:					
FROM:					
General Fund	$ 1,895,200	$ 530,600			$ 2,425,800
Idaho Law Enforcement Fund	12,447,900	2,153,600	$ 789,800		15,391,300
Hazardous Materials/ Waste Enforcement Fund	131,400	42,800		$ 67,800	242,000
Miscellaneous Revenue Fund	65,200				65,200
Federal Grant Fund	1,184,800	1,082,600			2,267,400
TOTAL	$15,724,500	$ 3,809,600	$ 789,800	$ 67,800	$20,391,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
E. LAW ENFORCEMENT PROGRAMS:					
FROM:					
General Fund	$ 880,900	$ 329,300			$ 1,210,200
Miscellaneous Revenue Fund	70,400	18,400			88,800
TOTAL	$ 951,300	$ 347,700			$ 1,299,000
F. SUPPORT SERVICES:					
FROM:					
General Fund	$ 1,499,100	$ 850,900			$ 2,350,000
Idaho Law Enforcement Fund	1,187,900	149,900			1,337,800
Idaho Law Enforcement Telecommunications Fund	322,600	501,600	$ 4,000		828,200
Miscellaneous Revenue Fund	687,100	1,332,000	26,000		2,045,100
Federal Grant Fund	57,600	222,900			280,500
TOTAL	$ 3,754,300	$ 3,057,300	$ 30,000		$ 6,841,600
G. FORENSIC SERVICES:					
FROM:					
General Fund	$ 1,883,700	$ 483,000			$ 2,366,700
Miscellaneous Revenue Fund	72,600	179,700	$ 68,800		321,100
Drug Donation Fund		130,000			130,000
Federal Grant Fund		99,800			99,800
TOTAL	$ 1,956,300	$ 892,500	$ 68,800		$ 2,917,600
DIVISION TOTAL	$29,961,300	$10,472,500	$1,117,100	$3,602,100	$45,153,000
III. PEACE OFFICERS STANDARDS AND TRAINING ACADEMY:					
FROM:					
Peace Officers Fund	$ 1,015,700	$ 1,251,200	$ 133,200	$ 89,300	$ 2,489,400
Miscellaneous Revenue Fund	108,200	220,100	8,000		336,300
Federal Grant Fund	71,000	137,100		37,900	246,000
TOTAL	$ 1,194,900	$ 1,608,400	$ 141,200	$ 127,200	$ 3,071,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
IV. RACING COMMISSION:					
FROM:					
Idaho State Racing Commission Fund	$ 359,100	$ 309,600	$ 4,500		$ 673,200
Pari-mutuel Distributions Fund				$ 100,000	100,000
TOTAL	$ 359,100	$ 309,600	$ 4,500	$ 100,000	$ 773,200
GRAND TOTAL	$33,581,300	$12,656,200	$1,348,300	$3,829,300	$51,415,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho State Police is authorized no more than five hundred thirty-three and seven-hundredths (533.07) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that the Director of the Idaho State Police has the support of the Legislature to be flexible in using the Idaho State Police personnel appropriation to enhance salaries for recruitment and retention of quality employees. The source of funding for this purpose shall come from the base appropriation and the department shall not request restoration of the funds used for this purpose.

Approved March 10, 2004.

CHAPTER 42
(S.B. No. 1227)

AN ACT

RELATING TO THE UNIFORM COMMERCIAL CODE; REPEALING CHAPTER 7, TITLE 28, IDAHO CODE, RELATING TO DOCUMENTS OF TITLE; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 7, TITLE 28, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR RELATION OF THE CHAPTER TO TREATIES AND STATUTES, TO DEFINE NEGOTIABLE AND NONNEGOTIABLE DOCUMENTS OF TITLE, TO PROVIDE FOR REISSUANCE OF DOCUMENTS OF TITLE IN AN ALTERNATIVE MEDIUM, TO PROVIDE FOR THE CONTROL OF ELECTRONIC DOCUMENTS OF TITLE, TO SPECIFY WHICH PERSONS MAY ISSUE WAREHOUSE RECEIPTS, TO PROVIDE FOR STORAGE UNDER BOND, TO SET FORTH REQUIREMENTS FOR WAREHOUSE RECEIPTS, TO PROVIDE FOR LIABILITY FOR NONRECEIPT OR MISDESCRIPTION, TO SET FORTH A DUTY OF CARE, TO PROVIDE FOR CONTRACTUAL LIMITATION OF A WAREHOUSE'S LIABILITY, TO PROVIDE THAT TITLE UNDER A WAREHOUSE RECEIPT IS DEFEATED IN CERTAIN CASES, TO PROVIDE FOR TERMINATION OF STORAGE AT A WAREHOUSE'S

OPTION, TO PROVIDE FOR THE SEPARATION OF GOODS, TO SET FORTH PROVISIONS FOR THE COMMINGLING OF CERTAIN GOODS, TO PROVIDE FOR OVERISSUE OF FUNGIBLE GOODS, TO PROVIDE FOR THE ENFORCEABILITY OR NONENFORCEABILITY OF WAREHOUSE RECEIPTS BASED UPON UNAUTHORIZED INSERTIONS OR ALTERATIONS, TO PROVIDE FOR WAREHOUSE LIENS, TO PROVIDE FOR ENFORCEMENT OF WAREHOUSE LIENS, TO PROVIDE FOR LIABILITY FOR NONRECEIPT OR MISDESCRIPTION, TO SET FORTH PROVISIONS APPLICABLE TO GOODS LOADED BY ISSUERS OF BILLS OF LADING AND CERTAIN BULK GOODS LOADED BY SHIPPERS, TO REMOVE LIABILITY FOR ISSUERS UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR CERTAIN SHIPPER GUARANTEES, TO PROVIDE FOR LIMITED INDEMNIFICATION OF ISSUERS, TO SET FORTH PROVISIONS APPLICABLE TO THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE, TO PROVIDE FOR DIVERSION AND RECONSIGNMENT OF GOODS BASED UPON INSTRUCTIONS, TO SET FORTH PROVISIONS APPLICABLE TO TANGIBLE BILLS OF LADING, TO PROVIDE FOR DESTINATION BILLS, TO PROVIDE THAT BILLS OF LADING WITH UNAUTHORIZED ALTERATIONS OR INSERTS SHALL BE ENFORCEABLE ACCORDING TO THE ORIGINAL TENOR, TO PROVIDE FOR CARRIER LIENS, TO PROVIDE FOR THE ENFORCEMENT OF CARRIER LIENS, TO SET FORTH A DUTY OF CARE, TO PROVIDE FOR THE CONTRACTUAL LIMITATION OF A CARRIER'S LIABILITY, TO PROVIDE FOR THE IMPOSITION OF OBLIGATIONS APPLICABLE TO CERTAIN DOCUMENTS OF TITLE, TO SET FORTH PROVISIONS APPLICABLE TO DUPLICATE DOCUMENTS OF TITLE, TO PROVIDE FOR ISSUER LIABILITY, TO SET FORTH AN OBLIGATION OF A BAILEE TO DELIVER EXCEPT UNDER CERTAIN CONDITIONS, TO PROVIDE FOR THE SATISFACTION OF BAILEE LIENS, TO PROVIDE THAT CERTAIN PERSONS SHALL SURRENDER POSSESSION OR CONTROL OF OUTSTANDING NEGOTIABLE DOCUMENTS, TO PROVIDE THAT BAILEES SHALL CANCEL A DOCUMENT OR INDICATE PARTIAL DELIVERY, TO PROVIDE THAT THERE IS NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO A DOCUMENT OF TITLE, TO SET FORTH RULES APPLICABLE TO SPECIFIED DOCUMENTS OF TITLE, TO PROVIDE FOR RIGHTS ACQUIRED BY DUE NEGOTIATION, TO PROVIDE THAT A DOCUMENT OF TITLE TO GOODS IS DEFEATED IN CERTAIN CASES, TO PROVIDE THAT CERTAIN RIGHTS ARE ACQUIRED IN THE ABSENCE OF DUE NEGOTIATION, TO PROVIDE THAT CERTAIN RIGHTS MAY BE DEFEATED, TO PROVIDE THAT THE DELIVERY OF GOODS MAY BE STOPPED SUBJECT TO DUE NOTIFICATION, TO PROVIDE FOR BAILEE INDEMNIFICATION, TO STATE THAT THE INDORSER IS NOT A GUARANTOR FOR OTHER PARTIES, TO PROVIDE THAT A TRANSFEREE HAS A RIGHT TO AN INDORSEMENT, TO PROVIDE THAT A TRANSFER BECOMES A NEGOTIATION ONLY UPON THE SUPPLYING OF THE INDORSEMENT, TO PROVIDE FOR WARRANTIES ON NEGOTIATION OR DELIVERY OF DOCUMENTS OF TITLE, TO PROVIDE FOR WARRANTIES OF A COLLECTING BANK, TO CITE PROVISIONS APPLICABLE TO DETERMINE ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACTS, TO PROVIDE FOR LOST, STOLEN OR DESTROYED DOCUMENTS OF TITLE, TO PROVIDE FOR THE ATTACHMENT OF LIENS BY JUDICIAL PROCESS IN CERTAIN CASES, TO PROVIDE THAT A BAILEE IS COMPELLED TO DELIVER GOODS ONLY UNDER CERTAIN CONDITIONS, TO PROVIDE THAT A PURCHASER TAKES A DOCUMENT OF VALUE FREE OF A LIEN IF THE PURCHASER DOES NOT HAVE NOTICE OF THE PROCESS OR INJUNCTION, TO PROVIDE FOR CONFLICTING CLAIMS, TO PROVIDE THAT THE BAILEE MAY ASSERT AN INTERPLEADER, TO PROVIDE AN EFFECTIVE DATE, TO REPEAL SPECIFIED SECTIONS OF CODE, TO PROVIDE FOR APPLICABILITY AND TO SET FORTH A SAVINGS CLAUSE; AMENDING SECTION 28-1-201, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 28-2-103, IDAHO CODE, TO PROVIDE A CODE REFERENCE FOR "CONTROL"; AMENDING SECTION 28-2-104, IDAHO CODE, TO PROVIDE A REFERENCE TO DOCUMENTS OF TITLE ACCOMPANYING OR ASSOCIATED WITH A

DRAFT; AMENDING SECTION 28-2-310, IDAHO CODE, TO SPECIFY WHEN PAYMENT IS DUE FOR AUTHORIZED DELIVERIES; AMENDING SECTION 28-2-323, IDAHO CODE, TO PROVIDE A REFERENCE TO TANGIBLE BILLS OF LADING AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-2-401, IDAHO CODE, TO PROVIDE A REFERENCE TO TANGIBLE DOCUMENTS OF TITLE, TO STATE THAT TITLE PASSES WHEN THE SELLER DELIVERS THE DOCUMENT IF THE SELLER IS TO DELIVER AN ELECTRONIC DOCUMENT OF TITLE, TO PROVIDE CLARIFYING LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-2-503, IDAHO CODE, TO REVISE TERMINOLOGY, TO CITE AS AN EXCEPTION PROCEDURES SET FORTH IN CHAPTER 9, TITLE 28, IDAHO CODE, AND TO STATE THAT DISHONOR OF A DRAFT ACCOMPANYING OR ASSOCIATED WITH DOCUMENTS CONSTITUTES NONACCEPTANCE OR REJECTION; AMENDING SECTION 28-2-505, IDAHO CODE, TO REFERENCE A SELLER'S POSSESSION OR CONTROL OF A BILL OF LADING AND TO PROVIDE CLARIFYING LANGUAGE; AMENDING SECTION 28-2-506, IDAHO CODE, TO REMOVE TERMINOLOGY RELATING TO A DOCUMENT THAT APPEARS REGULAR ON ITS FACE; AMENDING SECTION 28-2-509, IDAHO CODE, TO REFERENCE A BUYER'S POSSESSION OR CONTROL OF DOCUMENTS OF TITLE AND TO REFERENCE DIRECTIONS TO DELIVER AS SET FORTH IN A RECORD; AMENDING SECTION 28-2-605, IDAHO CODE, TO MAKE A GRAMMATICAL CHANGE; AMENDING SECTION 28-2-705, IDAHO CODE, TO REVISE TERMINOLOGY AND TO REFERENCE THE SURRENDER OF POSSESSION OR CONTROL OF A NEGOTIABLE DOCUMENT; AMENDING SECTION 28-12-103, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-12-514, IDAHO CODE, TO MAKE A GRAMMATICAL CHANGE; AMENDING SECTION 28-12-526, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 28-4-104, IDAHO CODE, TO PROVIDE A CODE REFERENCE FOR "CONTROL" AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-4-210, IDAHO CODE, TO REFERENCE THE POSSESSION OR CONTROL OF ACCOMPANYING DOCUMENTS; AMENDING SECTION 28-8-103, IDAHO CODE, TO PROVIDE THAT A DOCUMENT OF TITLE IS A FINANCIAL ASSET ONLY IF CERTAIN CONDITIONS APPLY; AMENDING SECTION 28-9-102, IDAHO CODE, TO CORRECT A CODE CITATION AND TO PROVIDE CODE REFERENCES FOR "CONTROL" AND "ISSUER WITH RESPECT TO DOCUMENTS OF TITLE"; AMENDING SECTION 28-9-203, IDAHO CODE, TO PROVIDE A REFERENCE TO ELECTRONIC DOCUMENTS AND TO PROVIDE A CODE CITATION; AMENDING SECTION 28-9-207, IDAHO CODE, TO PROVIDE A CODE CITATION; AMENDING SECTION 28-9-208, IDAHO CODE, TO SET FORTH REQUIREMENTS APPLICABLE TO SECURED PARTIES HAVING CONTROL OF ELECTRONIC DOCUMENTS; AMENDING SECTION 28-9-301, IDAHO CODE, TO PROVIDE A REFERENCE TO TANGIBLE NEGOTIABLE DOCUMENTS; AMENDING SECTION 28-9-310, IDAHO CODE, TO PROVIDE REFERENCE TO CERTAIN SECURITY INTERESTS THAT ARE PERFECTED WITHOUT FILING, CONTROL OR POSSESSION AND TO PROVIDE A REFERENCE TO SECURITY INTERESTS IN ELECTRONIC DOCUMENTS; AMENDING SECTION 28-9-312, IDAHO CODE, TO PROVIDE FOR THE PERFECTION OF CERTAIN SECURITY INTERESTS WITHOUT THE TAKING OF POSSESSION OR CONTROL FOR A STATED PERIOD OF TIME; AMENDING SECTION 28-9-313, IDAHO CODE, TO PROVIDE A REFERENCE TO TANGIBLE NEGOTIABLE INSTRUMENTS; AMENDING SECTION 28-9-314, IDAHO CODE, TO PROVIDE FOR THE PERFECTION OF SECURITY INTERESTS IN ELECTRONIC DOCUMENTS AND TO PROVIDE A CODE CITATION; AMENDING SECTION 28-9-317, IDAHO CODE, TO PROVIDE REFERENCES TO TANGIBLE AND ELECTRONIC DOCUMENTS; AMENDING SECTION 28-9-338, IDAHO CODE, TO PROVIDE REFERENCES TO TANGIBLE CHATTEL PAPER AND TANGIBLE DOCUMENTS; AMENDING SECTION 28-9-601, IDAHO CODE, TO PROVIDE A CODE CITATION; REPEALING SECTION 28-10-104, IDAHO CODE; AMENDING SECTION 22-5111, IDAHO CODE, TO DELETE CODE

REFERENCES; AND AMENDING SECTION 28-50-116, IDAHO CODE, TO DELETE REFERENCE TO WAREHOUSE RECEIPTS AND BILLS OF LADING.

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

SECTION 1. That Chapter 7, Title 28, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 7, Title 28, Idaho Code, and to read as follows:

CHAPTER 7
DOCUMENTS OF TITLE

PART 1.
GENERAL

28-7-101. SHORT TITLE. This chapter shall be known and may be cited as "Uniform Commercial Code - Documents of Title."

28-7-102. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) "Contract for sale," section 28-2-106.

(2) "Lessee in ordinary course," section 28-12-103.

(3) "Receipt" of goods, section 28-2-103.

(c) In addition, chapter 1, title 28, Idaho Code, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

28-7-103. RELATION OF CHAPTER TO TREATY OR STATUTE. (a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)).

(d) To the extent there is a conflict between the uniform electronic transactions act, chapter 50, title 28, Idaho Code, and this chapter, this chapter governs.

28-7-104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE. (a) Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

28-7-105. REISSUANCE IN ALTERNATIVE MEDIUM. (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

28-7-106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subsections (b)(4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

PART 2.
WAREHOUSE RECEIPTS -- SPECIAL PROVISIONS

28-7-201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT -- STORAGE UNDER BOND. (a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

28-7-202. FORM OF WAREHOUSE RECEIPT -- EFFECT OF OMISSION. (a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the uniform commercial code and do not impair its obligation of delivery under section 28-7-403 or its duty of care under section 28-7-204. Any contrary provision is ineffective.

28-7-203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

28-7-204. DUTY OF CARE -- CONTRACTUAL LIMITATION OF WAREHOUSE'S LIABILITY. (a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

28-7-205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES. A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

28-7-206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION. (a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty (30) days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 28-7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) of this section and section 28-7-210, the warehouse may specify in the notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one (1) week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are

a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

28-7-207. GOODS MUST BE KEPT SEPARATE -- FUNGIBLE GOODS. (a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

28-7-208. ALTERED WAREHOUSE RECEIPTS. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

28-7-209. LIEN OF WAREHOUSE. (a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by chapter 9, title 28, Idaho Code.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under section 28-7-403; or

(C) Power of disposition under section 28-2-403, 28-12-304(2), 28-12-305(2), 28-9-320 or 28-9-321(c), or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

28-7-210. ENFORCEMENT OF WAREHOUSE'S LIEN. (a) Except as otherwise provided in subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten (10) days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two (2) weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not fewer than six (6) conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b) of this section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

PART 3.
BILLS OF LADING -- SPECIAL PROVISIONS

28-7-301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION -- "SAID TO CONTAIN" -- "SHIPPER'S WEIGHT, LOAD, AND COUNT" -- IMPROPER HANDLING. (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription

of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load, and count," or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

28-7-302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE. (a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

28-7-303. DIVERSION -- RECONSIGNMENT -- CHANGE OF INSTRUCTIONS. (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) of this section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

28-7-304. TANGIBLE BILLS OF LADING IN A SET. (a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one (1) bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with part 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

28-7-305. DESTINATION BILLS. (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request

of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 28-7-105, may procure a substitute bill to be issued at any place designated in the request.

28-7-306. ALTERED BILLS OF LADING. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

28-7-307. LIEN OF CARRIER. (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

28-7-308. ENFORCEMENT OF CARRIER'S LIEN. (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier,

subject to the terms of the bill of lading and this chapter.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) of this section or the procedure set forth in section 28-7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

28-7-309. DUTY OF CARE -- CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY. (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

PART 4.
WAREHOUSE RECEIPTS AND BILLS OF LADING -- GENERAL OBLIGATIONS

28-7-401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER. The obligations imposed by this chapter on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

28-7-402. DUPLICATE DOCUMENT OF TITLE -- OVERISSUE. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any

right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 28-7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

28-7-403. OBLIGATION OF BAILEE TO DELIVER — EXCUSE. (a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to section 28-2-705 or by a lessor of its right to stop delivery pursuant to section 28-12-526;

(5) A diversion, reconsignment, or other disposition pursuant to section 28-7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 28-7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

28-7-404. NO LIABILITY FOR GOOD-FAITH DELIVERY PURSUANT TO DOCUMENT OF TITLE. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods.

PART 5.
WAREHOUSE RECEIPTS AND BILLS OF LADING -- NEGOTIATION AND TRANSFER

28-7-501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE NEGOTIATION. (a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

28-7-502. RIGHTS ACQUIRED BY DUE NEGOTIATION. (a) Subject to sections 28-7-205 and 28-7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) Title to the document;

(2) Title to the goods;

(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 28-7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

28-7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. (a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under section 28-7-403; or

(C) Power of disposition under section 28-2-403, 28-12-304(2), 28-12-305(2), 28-9-320 or 28-9-321(c), or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 28-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

28-7-504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION -- EFFECT OF DIVERSION -- STOPPAGE OF DELIVERY. (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title,

until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor which could treat the transfer as void under section 28-2-402 or 28-12-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 28-2-705 or a lessor under section 28-12-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

28-7-505. INDORSER NOT GUARANTOR FOR OTHER PARTIES. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

28-7-506. DELIVERY WITHOUT INDORSEMENT -- RIGHT TO COMPEL INDORSEMENT. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

28-7-507. WARRANTIES ON NEGOTIATION OR DELIVERY OF DOCUMENT OF TITLE. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 28-7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

28-7-508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

28-7-509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT. Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by chapter 2, 5 or 12, title 28, Idaho Code.

PART 6.
WAREHOUSE RECEIPTS AND BILLS OF LADING -- MISCELLANEOUS PROVISIONS

28-7-601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE. (a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one (1) year after the delivery.

28-7-602. JUDICIAL PROCESS AGAINST GOODS COVERED BY NEGOTIABLE DOCUMENTS OF TITLE. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

28-7-603. CONFLICTING CLAIMS -- INTERPLEADER. If more than one (1) person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

PART 7.
MISCELLANEOUS PROVISIONS

28-7-701. EFFECTIVE DATE. This act takes effect on July 1, 2004.

28-7-702. REPEALS. Existing chapter 7, title 28, Idaho Code, and section 28-10-104, Idaho Code, are repealed.

28-7-703. APPLICABILITY. This act applies to a document of title that is issued or a bailment that arises on or after July 1, 2004. This act does not apply to a document of title that is issued or a bailment that arises before July 1, 2004, even if the document of title or bailment would be subject to this act if the document of title had been issued or bailment had arisen on or after July 1, 2004. This act does not apply to a right of action that has accrued before July 1, 2004.

28-7-704. SAVINGS CLAUSE. A document of title issued or a bailment that arises before July 1, 2004, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

SECTION 3. That Section 28-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters of this act which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 28-1-205 and 28-2-208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 28-1-103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking, including any insured bank, whether chartered by federal or state law, any insured savings and loan association, whether insured by federal or state law, and any insured credit union, whether chartered by federal or state law, offering deposit or other accounts on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others, including demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(5) "Bearer" means ~~the~~ a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods~~, and includes~~

~~an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.~~ The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2, title 28, Idaho Code, may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous~~.~~," with reference to a~~A~~ term, ~~or clause is conspicuous when it is~~ means so written, displayed, or presented that a reasonable person against ~~whom~~ which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A ~~printed~~ heading in capitals ~~(as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other~~ equal to or greater in size than the surrounding test, or in contrasting type, font, or color~~. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.~~ to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Contract" means the total legal obligation which results from the parties~~' agreement~~ as affected by this act and any other applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" ~~includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which~~ means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of ~~it~~ the record is entitled to receive, control, hold and dispose of the ~~document~~ record and the goods ~~it~~ the record covers~~. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass~~ and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16) "Fault" means wrongful act, omission or breach.

(17) "~~Fungible~~" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" ~~with respect to a negotiable instrument,~~ means:

(A) ~~T~~the person in possession ~~if the~~ of a negotiable instrument that is payable either to bearer or~~, in the case of an instrument payable to an identified person, if the~~ to an identified person that is the person in possession~~.~~;

(B) ~~"Holder" with respect to a document of title, means t~~The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a

domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.

(25) Subject to subsection (27) of this section, a~~A~~ person has "notice" of a fact ~~when~~ if the person:

(a) ~~He h~~Has actual knowledge of it; ~~or~~

(b) ~~He h~~Has received a notice or notification of it; or

(c) From all the facts and circumstances known to ~~him~~ the person at the time in question, ~~he~~ has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when ~~he~~ the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not ~~such~~ the other person actually comes to know of it. Subject to subsection (27) of this section, a~~A~~ person "receives" a notice or notification when:

(a) It comes to ~~his~~ that person's attention; or

(b) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at ~~any other place~~ another location held out by ~~him~~ that person as the place for receipt of such communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event, from the time when it would have been brought to ~~his~~ the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of ~~his~~ the individual's regular duties or ~~unless he~~ the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (See section 28-1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9, title 28, Idaho Code. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 28-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. Except as otherwise provided in section 28-2-205, the right of a seller or lessor of goods under chapter 2 or chapter 12, title 28, Idaho Code, to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28-2-401) is limited in effect to a reservation of a "security interest."

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods; or

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods; or

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into; or

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods; or

(c) The lessee has an option to renew the lease or to become the owner of the goods; or

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

"Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

"Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with ~~any~~ a writing, record, or notice means:

(A) T~~t~~o deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances~~.~~; or

(B) ~~The--receipt--of--any--writing~~ In any other way to cause to be received any record or notice within the time ~~at which~~ it would have arrived if properly sent. ~~has the effect of a proper sending.~~

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28-3-303, 28-4-208 and 28-4-209) a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a ~~receipt~~ document of title issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

SECTION 4. That Section 28-2-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-103. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Acceptance." Section 28-2-606.
"Banker's credit." Section 28-2-325.
"Between merchants." Section 28-2-104.
"Cancellation." Section 28-2-106.
"Commercial unit." Section 28-2-105.
"Confirmed credit." Section 28-2-325.
"Conforming to contract." Section 28-2-106.
"Contract for sale." Section 28-2-106.
"Cover." Section 28-2-712.
"Entrusting." Section 28-2-403.
"Financing agency." Section 28-2-104.
"Future goods." Section 28-2-105.
"Goods." Section 28-2-105.
"Identification." Section 28-2-501.
"Installment contract." Section 28-2-612.
"Letter of credit." Section 28-2-325.
"Lot." Section 28-2-105.
"Merchant." Section 28-2-104.
"Overseas." Section 28-2-323.
"Person in position of seller." Section 28-2-707.
"Present sale." Section 28-2-106.
"Sale." Section 28-2-106.
"Sale on approval." Section 28-2-326.
"Sale or return." Section 28-2-326.
"Termination." Section 28-2-106.

(3) "Control" as provided in section 28-7-106 and t~~T~~he following definitions in other chapters apply to this chapter:

"Check." Section 28-3-104.
"Consignee." Section 28-7-102.
"Consignor." Section 28-7-102.
"Consumer goods." Section 28-9-102.
"Dishonor." Section 28-3-502.

"Draft." Section 28-3-104.

(4) In addition, chapter 1, title 28, Idaho Code, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 5. That Section 28-2-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-104. DEFINITIONS -- "MERCHANT" -- "BETWEEN MERCHANTS" -- "FINANCING AGENCY." (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 28-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

SECTION 6. That Section 28-2-310, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT -- AUTHORITY TO SHIP UNDER RESERVATION. Unless otherwise agreed

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 28-2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents ~~regardless of where the goods are to be received~~ or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

SECTION 7. That Section 28-2-323, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-323. FORM OF BILL OF LADING REQUIRED IN OVERSEAS SHIPMENT -- "OVERSEAS." (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) of this section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one (1) part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of section 28-2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

SECTION 8. That Section 28-2-401, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-401. PASSING OF TITLE -- RESERVATION FOR SECURITY -- LIMITED APPLICATION OF THIS SECTION. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on Secured Transactions (chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the

goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale."

SECTION 9. That Section 28-2-503, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-503. MANNER OF SELLER'S TENDER OF DELIVERY. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction~~ record directing to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in chapter 9, title 28, Idaho Code, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to

obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of section 28-2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

SECTION 10. That Section 28-2-505, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-505. SELLER'S SHIPMENT UNDER RESERVATION. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 28-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

SECTION 11. That Section 28-2-506, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-506. RIGHTS OF FINANCING AGENCY. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular. ~~on its face.~~

SECTION 12. That Section 28-2-509, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-509. RISK OF LOSS IN THE ABSENCE OF BREACH. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are

duly delivered to the carrier even though the shipment is under reservation (section 28-2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of section 28-2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (section 28-2-327) and on effect of breach on risk of loss (section 28-2-510).

SECTION 13. That Section 28-2-605, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.

SECTION 14. That Section 28-2-705, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 28-2-702) and may stop delivery of carload, truckload, plane load or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or

as a warehouse~~man~~; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SECTION 15. That Section 28-12-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-103. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that ~~are~~ is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars ($25,000).

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

a. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

b. That the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

c. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 28-12-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing

or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or

leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions." Section 28-12-310(1).

"Construction mortgage." Section 28-12-309(1)(d).

"Encumbrance." Section 28-12-309(1)(e).

"Fixtures." Section 28-12-309(1)(a).

"Fixture filing." Section 28-12-309(1)(b).

"Purchase money lease." Section 28-12-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

"Account." Section 28-9-102(a)(2).

"Between merchants." Section 28-2-104(3).

"Buyer." Section 28-2-103(1)(a).

"Chattel paper." Section 28-9-102(a)(11).

"Consumer goods." Section 28-9-102(a)(23).

"Document." Section 28-9-102(a)(30).

"Entrusting." Section 28-2-403(3).

"General intangible." Section 28-9-102(a)(42).

"Good faith." Section 28-1-201(19).

"Instrument." Section 28-9-102(a)(47).

"Merchant." Section 28-2-104(1).

"Mortgage." Section 28-9-102(a)(55).

"Pursuant to commitment." Section 28-9-102(a)(68).

"Receipt." Section 28-2-103(1)(c).

"Sale." Section 28-2-106(1).

"Sale on approval." Section 28-2-326.

"Sale or return." Section 28-2-326.

"Seller." Section 28-2-103(1)(d).

(4) In addition, chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 16. That Section 28-12-514, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-514. WAIVER OF LESSEE'S OBJECTIONS. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (section 28-12-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ <u>in</u> the documents.

SECTION 17. That Section 28-12-526, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under the provisions of subsection (1) of this section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse~~man~~.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SECTION 18. That Section 28-4-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-104. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter, unless the context otherwise requires:

(a) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means an association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(f) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 28-8-102) or instructions for uncertificated securities (section 28-8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(g) "Draft" means a draft as defined in section 28-3-104 or an item, other than an instrument, that is an order;

(h) "Drawee" means a person ordered in a draft to make payment;

(i) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not

include a payment order governed by part 6 of chapter 4 or a credit or debit card slip;

(j) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(k) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(l) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Agreement for electronic presentment"	Section 28-4-110.
"Bank"	Section 28-4-105.
"Collecting bank"	Section 28-4-105.
"Depositary bank"	Section 28-4-105.
"Intermediary bank"	Section 28-4-105.
"Payor bank"	Section 28-4-105.
"Presenting bank"	Section 28-4-105.
"Presentment notice"	Section 28-4-110.

(3) "Control" as provided in section 28-7-106 and the following definitions in other chapters apply to this chapter:

"Acceptance"	Section 28-3-409.
"Alteration"	Section 28-3-407.
"Cashier's check"	Section 28-3-104.
"Certificate of deposit"	Section 28-3-104.
"Certified check"	Section 28-3-409.
"Check"	Section 28-3-104.
"Draft"	Section 28-3-104.
"Good faith"	Section 28-3-103.
"Holder in due course"	Section 28-3-302.
"Instrument"	Section 28-3-104.
"Notice of dishonor"	Section 28-3-503.
"Order"	Section 28-3-103.
"Ordinary care"	Section 28-3-103.
"Person entitled to enforce"	Section 28-3-301.
"Presentment"	Section 28-3-501.
"Promise"	Section 28-3-103.
"Prove"	Section 28-3-103.
"Teller's check"	Section 28-3-104.
"Unauthorized signature"	Section 28-3-403.

(4) In addition chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 19. That Section 28-4-210, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) If it makes an advance on or against the item.

(2) If credit given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to the provisions of chapter 9, title 28, Idaho Code, but:

(a) No security agreement is necessary to make the security interest enforceable (section 28-9-203(b)(3)(A));

(b) No filing is required to perfect the security interest; and

(c) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

SECTION 20. That Section 28-8-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, title 28, even though it also meets the requirements of chapter 3, title 28. However, a negotiable instrument governed by chapter 3, title 28, is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in section 28-9-102(a)(15), is

not a security or a financial asset.

(7) A document of title is not a financial asset unless section 28-8-102(1)(i)(iii) applies.

SECTION 21. That Section 28-9-102, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-102. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance: (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or a person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include: (i) rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter of credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a

debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include: (i) charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:
(i) arose in the course of the claimant's business or profession; and
(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:
(A) is registered as a futures commission merchant under federal commodities law; or
(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:
(A) to send a written or other tangible record;
(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
(A) the merchant:
(i) deals in goods of that kind under a name other than the name of the person making delivery;
(ii) is not an auctioneer; and
(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;
(C) the goods are not consumer goods immediately before delivery; and
(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.
(24) "Consumer goods transaction" means a consumer transaction in which:
(A) an individual incurs an obligation primarily for personal, family or household purposes; and
(B) a security interest in consumer goods secures the obligation.
(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.
(26) "Consumer transaction" means a transaction in which: (i) an individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer goods transactions.
(27) "Continuation statement" means an amendment of a financing statement which:
(A) identifies, by its file number, the initial financing statement to which it relates; and
(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
(28) "Debtor" means:
(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
(B) a seller of accounts, chattel paper, payment intangibles or promissory notes; or
(C) a consignee.
(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.
(30) "Document" means a document of title or a receipt of the type described in section 28-7-201(~~2~~b).
(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
(33) "Equipment" means goods other than inventory, farm products or consumer goods.
(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
(A) crops grown, growing, or to be grown, including:
(i) crops produced on trees, vines and bushes; and
(ii) aquatic goods produced in aquacultural operations;
(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to section 28-9-519(a).

(37) "Filing office" means an office designated in section 28-9-501 as the place to file a financing statement.

(38) "Filing office rule" means a rule adopted pursuant to section 28-9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 28-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter of credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes: (i) fixtures; (ii) standing timber that is to be cut and removed under a conveyance or contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if: (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter of credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include: (i) investment property; (ii) letters of credit; or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter of credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.

(54) "Manufactured home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manu-

factured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under section 28-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means: (i) money; (ii) money's worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in section 28-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 28-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;

(D) the spouse of an individual described in subparagraph (A), (B) or (C) of this paragraph; or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual.

(64) "Proceeds" means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 28-9-620, 28-9-621 and 28-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 28-2-401, 28-2-505, 28-2-711(3), 28-4-210, 28-5-120 or 28-12-508(5).

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas or water.

(b) "Control" as provided in section 28-7-106 and ~~t~~The following definitions in other chapters apply to this chapter:

"Applicant"	section 28-5-102.
"Beneficiary"	section 28-5-102.
"Broker"	section 28-8-102.
"Certificated security"	section 28-8-102.
"Check"	section 28-3-104.
"Clearing corporation"	section 28-8-102.

"Contract for sale"	section 28-2-106.
"Customer"	section 28-4-104.
"Entitlement holder"	section 28-8-102.
"Financial asset"	section 28-8-102.
"Holder in due course"	section 28-3-302.
"Issuer" (with respect to a letter of credit or letter of credit right)	section 28-5-102.
"Issuer" (with respect to a security)	section 28-8-201.
"Issuer" (with respect to documents of title)	section 28-7-102.
"Lease"	section 28-12-103.
"Lease agreement"	section 28-12-103.
"Lease contract"	section 28-12-103.
"Leasehold interest"	section 28-12-103.
"Lessee"	section 28-12-103.
"Lessee in ordinary course of business"	section 28-12-103.
"Lessor"	section 28-12-103.
"Lessor's residual interest"	section 28-12-103.
"Letter of credit"	section 28-5-102.
"Merchant"	section 28-2-104.
"Negotiable instrument"	section 28-3-104.
"Nominated person"	section 28-5-102.
"Note"	section 28-3-104.
"Proceeds of a letter of credit"	section 28-5-114.
"Prove"	section 28-3-103.
"Sale"	section 28-2-106.
"Securities account"	section 28-8-501.
"Securities intermediary"	section 28-8-102.
"Security"	section 28-8-102.
"Security certificate"	section 28-8-102.
"Security entitlement"	section 28-8-102.
"Uncertificated security"	section 28-8-102.

(c) Chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 22. That Section 28-9-203, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST -- PROCEEDS -- SUPPORTING OBLIGATIONS -- FORMAL REQUISITES. (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One (1) of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under section 28-9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 28-8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter of credit rights, or electronic documents, and the secured party has control under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) of this section is subject to section 28-4-210 on the security interest of a collecting bank, section 28-5-120 on the security interest of a letter of credit issuer or nominated person, section 28-9-110 on a security interest arising under chapter 2 or 12, title 28, and section 28-9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 28-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

SECTION 23. That Section 28-9-207, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. (a) Except as otherwise provided in subsection

(d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

SECTION 24. That Section 28-9-208, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 28-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under section 28-9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 28-9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 28-8-106(4)(b) or 28-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter of credit right under section 28-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 25. That Section 28-9-301, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. Except as otherwise provided in sections 28-9-303 through 28-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

SECTION 26. That Section 28-9-310, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN -- SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. (a) Except as otherwise provided in subsection (b) of this section and section 28-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 28-9-308(d), (e), (f) or (g);

(2) That is perfected under section 28-9-309 when it attaches;

(3) In property subject to a statute, regulation or treaty described in section 28-9-311(a);

(4) In goods in possession of a bailee which is perfected under section 28-9-312(d)(1) or (2);

(5) In certificated securities, documents, goods or instruments which is perfected without filing, control, or possession under section 28-9-312(e), (f) or (g);

(6) In collateral in the secured party's possession under section 28-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 28-9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter of credit rights which is per-

fected by control under section 28-9-314;

(9) In proceeds which is perfected under section 28-9-315; or

(10) That is perfected under section 28-9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

SECTION 27. That Section 28-9-312, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER OF CREDIT RIGHTS AND MONEY -- PERFECTION BY PERMISSIVE FILING -- TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (a) A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) Except as otherwise provided in section 28-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under section 28-9-314;

(2) And except as otherwise provided in section 28-9-308(d), a security interest in a letter of credit right may be perfected only by control under section 28-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under section 28-9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession <u>or control</u> for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal or registration of transfer.

(h) After the twenty (20) day period specified in subsection (e), (f) or (g) of this section expires, perfection depends upon compliance with this chapter.

SECTION 28. That Section 28-9-313, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. (a) Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 28-8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 28-9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 28-8-301, and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or section 28-8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees, or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to

another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees, or law other than this chapter otherwise provides.

SECTION 29. That Section 28-9-314, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-314. PERFECTION BY CONTROL. (a) A security interest in investment property, deposit accounts, letter of credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107.

(b) A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter of credit rights, or electronic documents is perfected by control under section 28-7-106, 28-9-104, 28-9-105 or 28-9-107, when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 28-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One (1) of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

SECTION 30. That Section 28-9-317, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. (a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 28-9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one (1) of the conditions specified in section 28-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 28-9-320 and 28-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

SECTION 31. That Section 28-9-338, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 28-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

SECTION 32. That Section 28-9-601, Idaho Code, be, and the same is hereby amended to read as follows:

28-9-601. RIGHTS AFTER DEFAULT — JUDICIAL ENFORCEMENT -- CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES OR PROMISSORY NOTES. (a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 28-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 28-7-106, 28-9-104, 28-9-105, 28-9-106 or 28-9-107 has the rights and duties provided in section 28-9-207.

(c) The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) of this section and section 28-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in section 28-9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

SECTION 33. That Section 28-10-104, Idaho Code, be, and the same is hereby repealed.

SECTION 34. That Section 22-5111, Idaho Code, be, and the same is hereby amended to read as follows:

22-5111. SUSPENSION OR REVOCATION OF LICENSE. Pursuant to chapter 52, title 67, Idaho Code, the department may suspend or revoke any license issued under the provisions of this chapter, for any violation of, or failure to comply with, any provision of this chapter or chapter 7, title 28, Idaho Code~~,--including,--but--not--limited--to,--sections 28-7-101--through--28-7-603,--Idaho--Code~~. Pending investigation, the department, whenever it deems necessary, may suspend a license temporarily without a hearing.

SECTION 35. That Section 28-50-116, Idaho Code, be, and the same is hereby amended to read as follows:

28-50-116. TRANSFERABLE RECORD. (a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under chapter 3, title 28, Idaho Code (uniform commercial code -- negotiable instruments) or a document under chapter 7, title 28, Idaho Code (uniform commercial code -- ~~warehouse~~

~~receipts, bills of lading and other~~ documents of title) if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5) and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 28-1-201(20), Idaho Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapters 1 through 12, title 28, Idaho Code (uniform commercial code), including, if the applicable statutory requirements under section 28-3-302(1), 28-7-501 or 28-9-330, Idaho Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapters 1 through 12, title 28, Idaho Code (uniform commercial code).

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Approved March 10, 2004.

CHAPTER 43
(S.B. No. 1228)

AN ACT

RELATING TO THE UNIFORM COMMERCIAL CODE; AMENDING THE HEADING FOR PART 1, CHAPTER 1, TITLE 28, IDAHO CODE; AMENDING SECTION 28-1-101, IDAHO CODE, TO REVISE TERMINOLOGY, TO REMOVE A REFERENCE TO CODIFICATION AND TO PROVIDE FOR A CHAPTER TITLE CITATION; AMENDING PART 1, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-102, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE CHAPTER; REPEALING SECTION 28-1-103, IDAHO CODE, RELATING TO SUPPLEMENTARY GENERAL PRINCIPLES OF LAW; AMENDING SECTION 28-1-102, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR CONSTRUCTION OF THE UNIFORM COMMERCIAL CODE, TO PROVIDE A REFERENCE TO THE UNIFORM COMMERCIAL CODE, TO REVISE PURPOSES AND POLICIES, TO MAKE PUNCTUATION CHANGES, TO REMOVE LANGUAGE PROVIDING FOR VARIATION BY AGREEMENT, TO REMOVE LANGUAGE PROVIDING FOR NUMERICAL AND GENDER INTERPRETATION, TO PROVIDE FOR THE APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-1-104, IDAHO CODE, TO MAKE A GRAMMATICAL CHANGE AND TO PROVIDE A REFERENCE TO THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 28-1-108, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE REFERENCES TO THE UNIFORM COMMERCIAL CODE AND TO MAKE GRAMMATICAL CHANGES; AMENDING PART 1, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-106, IDAHO CODE, TO PROVIDE FOR NUMERICAL AND GENDER INTERPRETATION; AMENDING PART 1, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-107, IDAHO CODE, TO PROVIDE THAT SECTION CAPTIONS ARE PART OF THE UNIFORM COMMERCIAL CODE; AMENDING PART 1, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-108, IDAHO CODE, TO SET FORTH THE RELATION OF THE UNIFORM COMMERCIAL CODE TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; AMENDING SECTION 28-1-201, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING PART 2, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-202, IDAHO CODE, TO PROVIDE FOR "NOTICE" AND "KNOWLEDGE"; AMENDING PART 2, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-203, IDAHO CODE, TO SET FORTH THE DISTINCTION BETWEEN A LEASE AND A SECURITY INTEREST; AMENDING PART 2, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-204, IDAHO CODE, TO DEFINE WHEN A PERSON GIVES "VALUE"; AMENDING SECTION 28-1-204, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REMOVE LANGUAGE PROVIDING FOR AGREEMENTS FIXING REASONABLE TIMES FOR ACTIONS, TO REVISE LANGUAGE RELATING TO WHETHER A TIME IS REASONABLE AND TO MAKE GRAMMATICAL CHANGES; REPEALING SECTION 28-1-206, IDAHO CODE, RELATING TO THE STATUTE OF FRAUDS; AMENDING PART 2, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-206, IDAHO CODE, TO PROVIDE FOR PRESUMPTIONS; AMENDING CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW HEADING FOR PART 3, CHAPTER 1, TITLE 28, IDAHO CODE, TO PROVIDE FOR TERRITORIAL APPLICABILITY AND GENERAL RULES; AMENDING SECTION 28-1-105, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE REFERENCES TO THE UNIFORM COMMERCIAL CODE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING PART 3, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-302, IDAHO CODE, TO PRO-

VIDE FOR VARIATION OF UNIFORM COMMERCIAL CODE PROVISIONS BY AGREEMENT; AMENDING SECTION 28-1-205, IDAHO CODE, TO REDESIGNATE THE SECTION, TO DEFINE "COURSE OF PERFORMANCE," TO REVISE PROVISIONS RELATING TO "COURSE OF DEALING" AND "USAGE OF TRADE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-1-203, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE A REFERENCE TO THE UNIFORM COMMERCIAL CODE AND TO PROVIDE FOR AN OBLIGATION OF GOOD FAITH IN PERFORMANCE AND ENFORCEMENT; AMENDING SECTION 28-1-106, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE REFERENCES TO THE UNIFORM COMMERCIAL CODE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-1-107, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO REVISE LANGUAGE RELATING TO A WAIVER OR RENUNCIATION OF A CLAIM OR RIGHT FOLLOWING AN ALLEGED BREACH; AMENDING SECTION 28-1-202, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A GRAMMATICAL CHANGE; AMENDING SECTION 28-1-207, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE GRAMMATICAL AND TECHNICAL CHANGES; AMENDING SECTION 28-1-208, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE GRAMMATICAL CHANGES; AMENDING PART 3, CHAPTER 1, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-1-310, IDAHO CODE, TO PROVIDE FOR SUBORDINATED OBLIGATIONS; AMENDING SECTION 28-2-202, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 28-2-208, IDAHO CODE, RELATING TO COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION; AMENDING SECTION 28-3-103, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 28-4-605, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO CORRECT A CODIFIER'S ERROR; AMENDING SECTION 28-4-606, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 28-4-612, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 28-5-103, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 28-12-103, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 28-12-207, IDAHO CODE, RELATING TO COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION; AMENDING SECTIONS 28-12-501, 28-12-518, 28-12-519, 28-12-527 AND 28-12-528, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS; AMENDING SECTION 28-50-103, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 28-50-116, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION.

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

SECTION 1. That the Heading for Part 1, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended to read as follows:

PART 1.
~~SHORT-TITLE,-CONSTRUCTION,-APPLICATION-AND-SUBJECT-MATTER-OF THE-ACT~~ GENERAL PROVISIONS

SECTION 2. That Section 28-1-101, Idaho Code, be, and the same is hereby amended to
read as follows:

28-1-101. SHORT TITLES. ~~AND-CODIFICATION.~~ (a) This ~~act~~ title shall be known and may be cited as the Uniform Commercial Code. ~~It-shall-be~~

~~codified as a single title, without change and in conformity with the official numbering herein.~~

(b) This chapter may be cited as "Uniform Commercial Code — General Provisions."

SECTION 3. That Part 1, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-102, Idaho Code, and to read as follows:

28-1-102. SCOPE OF CHAPTER. This chapter applies to a transaction to the extent that it is governed by another chapter of the uniform commercial code.

SECTION 4. That Section 28-1-103, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Section 28-1-102, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-10~~2~~3. CONSTRUCTION OF UNIFORM COMMERCIAL CODE TO PROMOTE ITS PURPOSES AND POLICIES -- ~~RULES OF CONSTRUCTION---VARIATION BY AGREEMENT~~ APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW. (~~1~~a) ~~This act~~ The uniform commercial code shall be liberally construed and applied to promote its underlying purposes and policies~~.~~, which are:

~~(2) Underlying purposes and policies of this act are~~

(~~a~~1) ~~t~~To simplify, clarify, and modernize the law governing commercial transactions;

(~~b~~2) ~~t~~To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(~~c~~3) ~~t~~To make uniform the law among the various jurisdictions.

~~(3) The effect of provisions of this act may be varied by agreement, except as otherwise provided in this act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.~~

~~(4) The presence in certain provisions of this act of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).~~

~~(5) In this act unless the context otherwise requires~~

~~(a) words in the singular number include the plural, and in the plural include the singular;~~

~~(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.~~

(b) Unless displaced by the particular provisions of the uniform commercial code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

SECTION 6. That Section 28-1-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-104. CONSTRUCTION AGAINST ~~IMPLICIT~~ IMPLIED REPEAL. ~~This act~~ The uniform commercial code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

SECTION 7. That Section 28-1-108, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-108~~5~~. SEVERABILITY. If any provision or clause of ~~this act~~ the uniform commercial code or its application ~~thereof~~ to any person or circumstance~~s~~ is held invalid, ~~such~~ the invalidity shall not affect other provisions or applications of the ~~act~~ uniform commercial code which can be given effect without the invalid provision or application, and to this end the provisions of ~~this act~~ the uniform commercial code are ~~declared to be~~ severable.

SECTION 8. That Part 1, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-106, Idaho Code, and to read as follows:

28-1-106. USE OF SINGULAR AND PLURAL -- GENDER. In the uniform commercial code, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

SECTION 9. That Part 1, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-107, Idaho Code, and to read as follows:

28-1-107. SECTION CAPTIONS. Section captions are part of the uniform commercial code.

SECTION 10. That Part 1, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-108, Idaho Code, and to read as follows:

28-1-108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., except that nothing in this chapter modifies, limits, or supersedes section 7001(c) of that act or authorizes electronic delivery of any of the notices described in section 7003(b) of that act.

SECTION 11. That Section 28-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-201. GENERAL DEFINITIONS. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of the uniform commercial code that apply to particular chapters or parts thereof, have the meanings stated.

(b) Subject to ~~additional~~ definitions contained in ~~the subsequent~~ other chapters of ~~this act which are applicable~~ the uniform commercial code that apply to ~~specific~~ particular chapters or parts thereof~~, and unless the context otherwise requires, in this act~~:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to ~~resort to~~ pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or ~~by implication~~ inferred from other circumstances, including course of performance, course of dealing or usage of trade ~~or course of performance as provided in this act (sections 28-1-205 and 28-2-208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 28-1-103). (Compare "contract.")~~ as provided in section 28-1-303, Idaho Code.

(4) "Bank" means ~~any~~ person engaged in the business of banking~~, including any insured bank, whether chartered by federal or state law, any insured savings and loan association, whether insured by federal or state law, and any insured credit union, whether chartered by federal or state law, offering deposit or other accounts on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others, including demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts~~ and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means ~~the~~ a person in possession of an negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods~~, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill~~.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling

goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2, title 28, Idaho Code, may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a~~A~~ person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt. ~~is not a buyer in ordinary course of business.~~

(10) "Conspicuous~~.~~," ~~A term or clause is conspicuous when it is~~ with reference to a term, means so written, displayed, or presented that a reasonable person against ~~whom~~ which it is to operate ought to have noticed it. ~~A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous."~~ Whether a term ~~or clause~~ is "conspicuous" or not is ~~for~~ a decision ~~by~~ for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation ~~which~~ that results from the parties' agreement as ~~affected~~ determined by ~~this act and~~ the uniform commercial code as supplemented by any other applicable ~~rules of~~ laws. ~~(Compare "agreement.")~~

(1~~2~~3) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(1~~3~~4) "Defendant" includes a person in the position of defendant in a ~~cross-action or~~ counterclaim, cross-claim, or third-party claim.

(1~~4~~5) "Delivery," with respect to an instrument~~s~~, document~~s~~ of title, or chattel paper, ~~or securities~~ means voluntary transfer of possession.

(1~~5~~6) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the

document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16~~7~~) "Fault" means a default, breach, or wrongful act~~,~~ or omission. ~~or breach.~~

(17~~8~~) "Fungible goods" ~~with respect to goods or securities~~ means:

(A) G~~g~~oods ~~or securities~~ of which any unit, ~~is,~~ by nature or usage of trade, is the equivalent of any other like unit~~. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units~~; or

(B) Goods that by agreement are treated as equivalents.

(18~~9~~) "Genuine" means free of forgery or counterfeiting.

(~~19~~20) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20~~1~~) "Holder" ~~with respect to a negotiable instrument,~~ means:

(A) T~~t~~he person in possession ~~if the~~ of a negotiable instrument that is payable either to bearer or~~, in the case of an instrument payable~~ to an identified person~~, if~~ that is the ~~identified~~ person ~~is~~ in ~~possession.~~; or

(B) ~~"Holder" with respect to a document of title, means t~~The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

~~(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.~~

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) ~~A person is "insolvent" who either has~~ "Insolvent" means:

(A) Having generally ceased to pay ~~his~~ debts in the ordinary course of business ~~or cannot~~ other than as a result of bona fide dispute;

(B) Being unable to pay ~~his~~ debts as they become due; or

(C) ~~is~~ Being insolvent within the meaning of ~~the~~ federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. ~~and~~ The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more ~~nations~~ countries.

(25) ~~A person has "notice" of a fact when:~~

~~(a) He has actual knowledge of it; or~~

~~(b) He has received a notice or notification of it; or~~

~~(c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists.~~

~~A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.~~

~~(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the~~

~~other--in--ordinary--course--whether-or-not-such-other-actually-comes-to know-of-it.-A-person-"receives"-a-notice-or-notification-when:~~

~~(a)--It-comes-to-his-attention;-or~~

~~(b)--It-is-duly-delivered-at-the-place-of-business-through-which-the contract-was-made-or-at-any-other-place-held-out-by-him-as-the-place for-receipt-of-such-communications.~~

~~(27)-Notice,-knowledge-or-a-notice-or-notification--received--by--an organization--is--effective--for--a-particular-transaction-from-the-time when-it-is-brought-to-the-attention-of-the--individual--conducting--that transaction,--and--in--any--event--from-the-time-when-it-would-have-been brought-to-his-attention-if-the-organization--had--exercised--due--diligence.--An--organization-exercises-due-diligence-if-it-maintains-reasonable-routines-for-communicating-significant-information--to--the--person conducting--the--transaction-and-there-is-reasonable-compliance-with-the routines.-Due-diligence-does-not-require-an-individual--acting--for--the organization--to--communicate--information--unless-such-communication-is part-of-his-regular-duties-or-unless-he-has-reason-to-know-of-the-transaction-and-that-the-transaction-would--be--materially--affected--by--the information.~~

~~(28)~~ "Organization" ~~includes-a-corporation,-government-or-governmental-subdivision-or-agency,-business-trust,-estate,-trust,-partnership-or association,--two-(2)-or-more-persons-having-a-joint-or-common-interest, or-any-other-legal-or-commercial-entity~~ means a person other than an individual.

(29~~6~~) "Party," as ~~distinct~~ distinguished from "third party," means a person ~~who~~ that has engaged in a transaction or made an agreement ~~within-this-act~~ subject to the uniform commercial code.

(30~~27~~) "Person" ~~includes-an-individual-or-an-organization-(See--section--28-1-102)~~ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(31~~28~~) ~~"Presumption"--or--"presumed"--means-that-the-trier-of-fact must-find-the-existence-of-the-fact-presumed-unless-and--until--evidence--is--introduced-which-would-support-a-finding-of-its-nonexistence~~ "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(32~~9~~) "Purchase" ~~includes~~ means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33~~0~~) "Purchaser" means a person ~~who~~ that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(34~~2~~) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35~~3~~) "Representative" ~~includes~~ means a person empowered to act for

another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate~~, or any other person empowered to act for another~~.

(3~~6~~4) "Rights" includes ~~remedies~~ remedy.

(3~~7~~5) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. ~~The term also~~ "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 9, title 28, Idaho Code. ~~The~~ "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 28-2-401, Idaho Code, ~~is not a "security interest,"~~ but a buyer may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. Except as otherwise provided in section 28-2-~~2~~505, Idaho Code, the right of a seller or lessor of goods under chapter 2 or chapter 12, title 28, Idaho Code, to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under ~~(~~section 28-2-401~~)~~, Idaho Code, is limited in effect to a reservation of a "security interest." Whether a transaction ~~creates in the form of~~ a lease ~~or security interest is determined by the facts of each case; however, a transaction~~ creates a "security interest" is determined pursuant to section 28-1-203, Idaho Code. ~~if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:~~

~~(a) The original term of the lease is equal to or greater than the remaining economic life of the goods; or~~

~~(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods; or~~

~~(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or~~

~~(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.~~

~~A transaction does not create a security interest merely because it provides that:~~

~~(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into; or~~

~~(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods; or~~

~~(c) The lessee has an option to renew the lease or to become the owner of the goods; or~~

~~(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair~~

~~market--rent-for-the-use-of-the-goods-for-the-term-of-the-renewal-at the-time-the-option-is-to-be-performed;-or~~

~~(e)--The-lessee-has-an-option-to-become-the-owner-of-the-goods-for-a fixed-price--that--is--equal--to--or--greater--than--the--reasonably predictable-fair-market-value-of-the-goods-at-the-time-the-option-is to-be-performed.~~

~~For-purposes-of-this-subsection-(37):~~

~~Additional--consideration--is--not-nominal-if-(i)-when-the-option-to renew-the-lease-is-granted-to-the-lessee-the-rent-is-stated--to--be--the fair--market--rent--for-the-use-of-the-goods-for-the-term-of-the-renewal determined-at-the-time-the-option-is-to-be-performed;-or--(ii)-when--the option--to--become--the--owner-of-the-goods-is-granted-to-the-lessee-the price-is-stated-to-be-the-fair-market-value-of-the-goods--determined--at the-time-the-option-is-to-be-performed.~~

~~Additional--consideration-is-nominal-if-it-is-less-than-the-lessee's reasonably-predictable-cost-of-performing-under-the-lease--agreement--if the-option-is-not-exercised.~~

~~"Reasonably--predictable"-and-"remaining-economic-life-of-the-goods" are-to-be-determined-with-reference-to-the-facts--and--circumstances--at the-time-the-transaction-is-entered-into.~~

~~"Present--value"-means-the-amount-as-of-a-date-certain-of-one-(1)-or more-sums-payable-in-the-future;-discounted-to--the--date--certain.--The discount--is-determined-by-the-interest-rate-specified-by-the-parties-if the-rate-is-not-manifestly-unreasonable-at-the-time-the--transaction--is entered--into;--otherwise,--the-discount-is-determined-by-a-commercially reasonable-rate-that-takes-into-account-the-facts-and--circumstances--of each-case-at-the-time-the-transaction-was-entered-into.~~

(38~~6~~) "Send" in connection with ~~any~~ writing, record, or notice means:

(A) ~~T~~to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of ~~transmission~~ provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances~~.~~; or

(B) ~~The-receipt-of-any-writing~~ In any other way to cause to be received any record or notice within the time ~~at-which~~ it would have arrived if properly sent. ~~has-the-effect-of-a-proper-sending.~~

(39~~7~~) "Signed" includes using any symbol executed or adopted ~~by-a party~~ with present intention to ~~authenticate~~ adopt or accept a writing.

(38) "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.

(~~40~~39) "Surety" includes a guarantor or other secondary obligor.

~~(41)-"Telegram"-includes-a-message-transmitted-by--radio,--teletype, cable,-any-mechanical-method-of-transmission,-or-the-like.~~

(42~~0~~) "Term" means ~~that~~ a portion of an agreement ~~which~~ that relates to a particular matter.

(43~~1~~) "Unauthorized~~"~~ signature~~"~~ means ~~one~~ a signature made without actual, implied, or apparent authority. ~~and~~ The term includes a forgery.

~~(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28-3-303, 28-4-208 and 28-4-209) a person gives "value" for rights if he acquires them:~~
~~(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or~~
~~(b) As security for or in total or partial satisfaction of a preexisting claim; or~~
~~(c) By accepting delivery pursuant to a preexisting contract for purchase; or~~
~~(d) Generally, in return for any consideration sufficient to support a simple contract.~~
(45~~2~~) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.
(46~~3~~) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

SECTION 12. That Part 2, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-202, Idaho Code, and to read as follows:

28-1-202. NOTICE -- KNOWLEDGE. (a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:
(1) Has actual knowledge of it;
(2) Has received a notice or notification of it; or
(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.
(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.
(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.
(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.
(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:
(1) It comes to that person's attention; or
(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the

individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

SECTION 13. That Part 2, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-203, Idaho Code, and to read as follows:

28-1-203. LEASE DISTINGUISHED FROM SECURITY INTEREST. (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the

goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

SECTION 14. That Part 2, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-204, Idaho Code, and to read as follows:

28-1-204. VALUE. Except as otherwise provided in chapters 3, 4, 5 and 6, title 28, Idaho Code, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

SECTION 15. That Section 28-1-204, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-204~~5~~. ~~TIME~~--- REASONABLE TIME -- ~~"SEASONABLY."~~ SEASONABLENESS. ~~(1)--Whenever--this act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.~~

(~~2~~a) ~~What is~~ Whether a ~~reasonable~~ time for taking any action required by the uniform commercial code is reasonable depends on the nature, purpose, and circumstances of ~~such~~ the action.

(~~3~~b) An action is taken "seasonably" ~~when~~ if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

SECTION 16. That Section 28-1-206, Idaho Code, be, and the same is hereby repealed.

SECTION 17. That Part 2, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-206, Idaho Code, and to read as follows:

28-1-206. PRESUMPTIONS. Whenever the uniform commercial code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless

and until evidence is introduced that supports a finding of its nonexistence.

SECTION 18. That Title 28, Chapter 1, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW PART HEADING, to be known and designated as the Heading for Part 3, Chapter 1, Title 28, Idaho Code, and to read as follows:

PART 3.
TERRITORIAL APPLICABILITY AND GENERAL RULES

SECTION 19. That Section 28-1-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~105~~301. TERRITORIAL APPLICATION OF THE ~~ACT~~ UNIFORM COMMERCIAL CODE -- PARTIES' POWER TO CHOOSE APPLICABLE LAW. (~~1~~a) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement ~~this act~~ the uniform commercial code applies to transactions bearing an appropriate relation to this state.

(~~2~~b) Where one (1) of the following provisions of ~~this act~~ the uniform commercial code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

Rights of creditors against sold goods. Section 28-2-402, Idaho Code.

Applicability of the chapter on leases. Sections 28-12-105 and 28-12-106, Idaho Code.

Applicability of the chapter on bank deposits and collections. Section 28-4-102, Idaho Code.

Governing law in the part on funds transfers. Section 28-4-638, Idaho Code.

Letters of credit. Section 28-5-116, Idaho Code.

Applicability of the chapter on investment securities. Section 28-8-110, Idaho Code.

Law governing perfection, the effect of perfection or nonperfection, the priority of security interests and agricultural liens. Sections 28-9-301 through 28-9-307, Idaho Code.

SECTION 20. That Part 3, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-302, Idaho Code, and to read as follows:

28-1-302. VARIATION BY AGREEMENT. (a) Except as otherwise provided in subsection (b) of this section or elsewhere in the uniform commercial code, the effect of provisions of the uniform commercial code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the uniform commercial code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by

which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the uniform commercial code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the uniform commercial code of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

SECTION 21. That Section 28-1-205, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~205~~303. COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE. (~~1~~a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of ~~previous~~ conduct concerning previous transactions between the parties to a particular transaction ~~which~~ that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(~~2~~c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage ~~are to~~ must be proved as facts. If it is established that such a usage is embodied in a ~~written~~ trade code or similar ~~writing~~ record, the interpret~~ation of~~ the ~~writing~~ record is ~~for the court~~ a question of law.

(~~3~~d) A course of performance or course of dealing between the parties ~~and any~~ or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of ~~an~~ the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(~~4~~e) ~~The~~ Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade shall be construed wherever reasonable as consistent with each other.~~; but when~~ If such a construction is unreasonable:

(1) E~~e~~xpress terms ~~control both~~ prevail over course of performance, course of dealing, and usage of trade; ~~and course of dealing controls usage of trade~~

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(~~5~~f) ~~An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of~~ Subject to section 28-2-209, Idaho Code, a course of

performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(~~6~~g) Evidence of a relevant usage of trade offered by one (1) party is not admissible unless ~~and until he~~ that party has given the other party ~~such~~ notice ~~as~~ that the court finds sufficient to prevent unfair surprise to the ~~latter~~ other party.

SECTION 22. That Section 28-1-203, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~203~~304. OBLIGATION OF GOOD FAITH. Every contract or duty within ~~this act~~ the uniform commercial code imposes an obligation of good faith in its performance ~~or~~ and enforcement.

SECTION 23. That Section 28-1-106, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~106~~305. REMEDIES TO BE LIBERALLY ADMINISTERED. (~~1~~a) The remedies provided by ~~this act~~ the uniform commercial code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in ~~this act~~ the uniform commercial code or by other rule of law.

(~~2~~b) Any right or obligation declared by ~~this act~~ the uniform commercial code is enforceable by action unless the provision declaring it specifies a different and limited effect.

SECTION 24. That Section 28-1-107, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~107~~306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH. ~~Any~~ claim or right arising out of an alleged breach ~~can~~ may be discharged in whole or in part without consideration by ~~a written waiver or renunciation signed and delivered by~~ agreement of the aggrieved party in an authenticated record.

SECTION 25. That Section 28-1-202, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~202~~307. PRIMA FACIE EVIDENCE BY THIRD PARTY DOCUMENTS. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party ~~shall be~~ is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

SECTION 26. That Section 28-1-207, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~207~~308. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS. (~~1~~a) A party ~~who,~~ that with explicit reservation of rights~~,~~ performs or promises performance or assents to performance in a manner demanded or

offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(~~2~~b) Subsection (~~1~~a) of this section does not apply to an accord and satisfaction.

SECTION 27. That Section 28-1-208, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-~~208~~309. OPTION TO ACCELERATE AT WILL. A term providing that one (1) party or ~~his~~ that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when ~~he~~ the party "deems ~~himself~~ itself insecure," or ~~in~~ words of similar import, ~~shall be construed to~~ means that ~~he shall have~~ the party has power to do so only if ~~he~~ that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against ~~whom~~ which the power has been exercised.

SECTION 28. That Part 3, Chapter 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-1-310, Idaho Code, and to read as follows:

28-1-310. SUBORDINATED OBLIGATIONS. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

SECTION 29. That Section 28-2-202, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-202. FINAL WRITTEN EXPRESSION -- PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) By course of performance, course of dealing, or usage of trade (section 28-1-~~205~~303); ~~or by course of performance (section 28-2-208);~~ and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

SECTION 30. That Section 28-2-208, Idaho Code, be, and the same is hereby repealed.

SECTION 31. That Section 28-3-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-3-103. DEFINITIONS. (1) In this chapter:

(a) "Acceptor" means a drawee who has accepted a draft.

(b) "Drawee" means a person ordered in a draft to make payment.

(c) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(d) "Good faith" means honesty in fact in the conduct or transaction concerned.

(e) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(f) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one (1) or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(g) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 4.

(h) "Party" means a party to an instrument.

(i) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(j) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 28-1-201(b)(8)).

(k) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance"	Section 28-3-409
"Accommodated party"	Section 28-3-419
"Accommodation party"	Section 28-3-419
"Alteration"	Section 28-3-407
"Anomalous indorsement"	Section 28-3-205
"Blank indorsement"	Section 28-3-205
"Cashier's check"	Section 28-3-104
"Certificate of deposit"	Section 28-3-104
"Certified check"	Section 28-3-409
"Check"	Section 28-3-104
"Consideration"	Section 28-3-303
"Demand draft"	Section 28-3-104
"Draft"	Section 28-3-104
"Holder in due course"	Section 28-3-302
"Incomplete instrument"	Section 28-3-115
"Indorsement"	Section 28-3-204
"Indorser"	Section 28-3-204

"Instrument"	Section 28-3-104
"Issue"	Section 28-3-105
"Issuer"	Section 28-3-105
"Negotiable instrument"	Section 28-3-104
"Negotiation"	Section 28-3-201
"Note"	Section 28-3-104
"Payable at a definite time"	Section 28-3-108
"Payable on demand"	Section 28-3-108
"Payable to bearer"	Section 28-3-109
"Payable to order"	Section 28-3-109
"Payment"	Section 28-3-602
"Person entitled to enforce"	Section 28-3-301
"Presentment"	Section 28-3-501
"Reacquisition"	Section 28-3-207
"Special indorsement"	Section 28-3-205
"Teller's check"	Section 28-3-104
"Transfer of instrument"	Section 28-3-203
"Traveler's check"	Section 28-3-104
"Value"	Section 28-3-303

(3) The following definitions in other chapters apply to this chapter:

"Bank"	Section 28-4-105
"Banking day"	Section 28-4-104
"Clearing house"	Section 28-4-104
"Collecting bank"	Section 28-4-105
"Depositary bank"	Section 28-4-105
"Documentary draft"	Section 28-4-104
"Intermediary bank"	Section 28-4-105
"Item"	Section 28-4-104
"Payor bank"	Section 28-4-105
"Suspends payments"	Section 28-4-104

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 32. That Section 28-4-605, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-605. OTHER DEFINITIONS. (1) In this part:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this part.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the

receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 28-1-201(b)(8)).

(2) Other definitions applying to this part and the sections in which they appear are:

"Acceptance" Section 28-4-617.
"Beneficiary" Section 28-4-603.
"Beneficiary's bank" Section 28-4-603.
"Executed" Section 28-4-621.
"Execution date" Section 28-4-621.
"Funds transfer" Section 28-4-604.
"Funds-transfer system rule" Section 28-4-632.
"Intermediary bank" Section 28-4-604.
"Originator" Section 28-4-604.
"Originator's bank" Section 28-4-604.
"Payment by beneficiary's bank to beneficiary" Section 28-4-630.
"Payment by originator to beneficiary" Section 28-4-631.
"Payment by sender to receiving bank" Section 28-4-628.
"Payment date" Section 28-4-626.
"Payment order" Section 28-4-603.
"Receiving bank" Section 28-4-603.
"Security procedure" Section 28-4-609.
"Sender" Section 28-4-603.

(3) The following definitions in article 4 apply to this part:

"Clearing house" Section 28-4-104.
"Item" Section 28-4-104.
"Suspends payments" Section 28-4-104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this part.

SECTION 33. That Section 28-4-606, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-606. TIME PAYMENT ORDER IS RECEIVED. (1) The time of receipt of a payment order or communication ~~cancelling~~ canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 28-1-~~201(27)~~202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications ~~cancelling~~ canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication ~~cancelling~~ canceling or amending a payment order is received

after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this part refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this part.

SECTION 34. That Section 28-4-612, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-612. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER. (~~1~~a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is:

(~~a~~1) ~~n~~Not authorized and not effective as the order of the customer under section 28-4-610, or

(~~b~~2) ~~n~~Not enforceable, in whole or in part, against the customer under section 28-4-611, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(~~2~~b) Reasonable time under subsection (~~1~~a) of this section may be fixed by agreement as stated in section 28-~~2-2041~~-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (~~1~~a) of this section may not otherwise be varied by agreement.

SECTION 35. That Section 28-5-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-5-103. SCOPE. (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(3) With the exception of this subsection, subsections (1) and (2), sections 28-5-102(1)(i) and (1)(j), 28-5-106(4) and 28-5-114(4), and except to the extent prohibited in sections 28-1-~~102(3)~~302 and 28-5-117(4), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or gen-

erally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

SECTION 36. That Section 28-12-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-103. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that ~~are~~ <u>is</u> in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars ($25,000).

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and

use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

a. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

b. That the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

c. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 28-12-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates other-

wise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions." Section 28-12-310(1).
"Construction mortgage." Section 28-12-309(1)(d).
"Encumbrance." Section 28-12-309(1)(e).
"Fixtures." Section 28-12-309(1)(a).
"Fixture filing." Section 28-12-309(1)(b).
"Purchase money lease." Section 28-12-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

"Account." Section 28-9-102(a)(2).
"Between merchants." Section 28-2-104(3).
"Buyer." Section 28-2-103(1)(a).
"Chattel paper." Section 28-9-102(a)(11).
"Consumer goods." Section 28-9-102(a)(23).
"Document." Section 28-9-102(a)(30).
"Entrusting." Section 28-2-403(3).
"General intangible." Section 28-9-102(a)(42).
"Good faith." Section 28-1-201(b)(~~19~~20).
"Instrument." Section 28-9-102(a)(~~4~~7).
"Merchant." Section 28-2-104(1).
"Mortgage." Section 28-9-102(a)(55).
"Pursuant to commitment." Section 28-9-102(a)(68).
"Receipt." Section 28-2-103(1)(c).
"Sale." Section 28-2-106(1).
"Sale on approval." Section 28-2-326.
"Sale or return." Section 28-2-326.
"Seller." Section 28-2-103(1)(d).

(4) In addition, chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 37. That Section 28-12-207, Idaho Code, be, and the same is hereby repealed.

SECTION 38. That Section 28-12-501, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-501. DEFAULT -- PROCEDURE. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with the provisions of this chapter.

(4) Except as otherwise provided in section 28-1-~~106(1)~~305(a) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods,

or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

SECTION 39. That Section 28-12-518, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-518. COVER -- SUBSTITUTE GOODS. (1) After a default by a lessor under the lease contract of the type described in section 28-12-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-~~102(3)~~302 and 28-12-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under the provisions of subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 28-12-519 governs.

SECTION 40. That Section 28-12-519, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-519. LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-~~102(3)~~302 and 28-12-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 28-12-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 28-12-516(3)), the measure of damages

for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

SECTION 41. That Section 28-12-527, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-527. LESSOR'S RIGHTS TO DISPOSE OF GOODS. (1) After a default by a lessee under the lease contract of the type described in section 28-12-523(1) or 28-12-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (section 28-12-525 or 28-12-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-~~102(3)~~302 and 28-12-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under the provisions of subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 28-12-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under the provisions of this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 28-12-508(5)).

SECTION 42. That Section 28-12-528, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 28-12-504) or otherwise determined pursuant to agreement of the parties (sections 28-1-~~102(3)~~302 and 28-12-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 28-12-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 28-12-523(1) or 28-12-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of this subsection, of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 28-12-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 28-12-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

SECTION 43. That Section 28-50-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-50-103. SCOPE. (a) Except as otherwise provided in subsection (b) of this section, this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils or testamentary trusts; and

(2) The uniform commercial code, other than section~~s 28-1-107 and 28-1-206~~ 28-1-306, Idaho Code, chapter 2, title 28, Idaho Code (uniform commercial code -- sales), and chapter 12, title 28, Idaho Code (uniform commercial code -- leases)~~;~~.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) of this section to the extent it is governed by a law other than those specified in subsection (b) of this section.

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

SECTION 44. That Section 28-50-116, Idaho Code, be, and the same is hereby amended to read as follows:

28-50-116. TRANSFERABLE RECORD. (a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under chapter 3, title 28, Idaho Code (uniform commercial code -- negotiable instruments) or a document under chapter 7, title 28, Idaho Code (uniform commercial code -- warehouse receipts, bills of lading and other documents of title) if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5) and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 28-1-201(b)(20~~0~~1), Idaho Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapters 1 through 12, title 28, Idaho Code (uniform commercial code), including, if the applicable statutory requirements under section 28-3-302(1), 28-7-501 or 28-9-330, Idaho Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapters 1 through 12, title 28, Idaho Code (uniform commercial code).

(f) If requested by a person against which enforcement is sought,

the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Approved March 10, 2004.

CHAPTER 44
(S.B. No. 1252)

AN ACT

RELATING TO LICENSES TO RETAIL LIQUOR; AMENDING SECTION 23-903, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF A LICENSE, SUBJECT TO APPROVAL OF THE MAYOR AND CITY COUNCIL, TO THE OWNER, OPERATOR OR LESSEE OF A FOOD, CONFERENCE AND LODGING FACILITY CONSTRUCTED AFTER JULY 1, 2004, CONTAINING A MINIMUM OF SIXTY THOUSAND SQUARE FEET AND SIXTY GUEST ROOMS WITH A MINIMUM TAXABLE VALUE OF FIFTEEN MILLION DOLLARS IN A CITY WITH A POPULATION OF LESS THAN FIVE THOUSAND ACCORDING TO THE MOST RECENT CENSUS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 23-903, Idaho Code, be, and the same is hereby amended to read as follows:

23-903. LICENSE TO RETAIL LIQUOR. The director of the Idaho state police is hereby empowered, authorized, and directed to issue licenses to qualified applicants, as herein provided, whereby the licensee shall be authorized and permitted to sell liquor by the drink at retail and, upon the issuance of such license, the licensee therein named shall be authorized to sell liquor at retail by the drink, but only in accordance with the rules promulgated by the director and the provisions of this chapter. No license shall be issued for the sale of liquor on any premises outside the incorporated limits of any city except as provided in this chapter and the number of licenses so issued for any city shall not exceed one (1) license for each one thousand five hundred (1,500) of population of said city or fraction thereof, as established in the last preceding census, or any subsequent special census conducted by the United States bureau of the census or by an estimate that is statistically valid including adding the number of new residential utility connections or including adding the population of areas annexed into the city after the last census or special census was conducted, except that upon proper application thereof not more than two (2) licenses may be issued for each incorporated city with a population of one thousand five hundred (1,500) or less, unless the retail licensing of liquor by the drink has been previously disapproved under the provisions of sections 23-917, 23-918, 23-919, 23-920 and 23-921, Idaho Code; provided, however, that any license heretofore issued may be renewed from year to year without regard to the population or status of the city for which such license is issued. Any license issued and which has remained in

effect at its location for a consecutive period of ten (10) years or more shall be deemed to have been validly issued and may be renewed from year to year provided, however, that the applicant for the renewal of such license is not otherwise disqualified for licensure pursuant to section 23-910, Idaho Code, and, if the premises required special characteristics for original licensure, other than being either within or without the incorporated limits of a city, that said premises continue to have such special characteristics at the time of the application for renewal.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator, or lessee of an actual, bona fide golf course whether located within or without the limits of any city, or located on premises also operated as a winery, or ski resort, or to the lessee of any premises situate thereon, no part of which ski resort or the premises thereon is situate within the incorporated limits of any city. For the purpose of this section a golf course shall comprise an actual, bona fide golf course, which is regularly used for the playing of the game of golf, and having not less than nine (9) tees, fairways and greens laid out and used in the usual and regular manner of a golf course. Nine (9) hole courses must have a total yardage of at least one thousand (1,000) yards, and eighteen (18) hole courses must have a total yardage of at least two thousand (2,000) yards as measured by totaling the tee-to-green distance of all holes. The course must be planted in grass except that it may provide artificial tee mats. Where any such golf course is owned or leased by an association of members and is used or enjoyed by such members, or their guests, none of the disqualifications contained in section 23-910, Idaho Code, shall apply to such association as a licensee where such disqualifications, or any of them, would apply only to a member of such association where such member has no interest therein except as a member thereof.

Also for the purpose of this section a ski resort shall comprise real property of not less than ten (10) acres in size, exclusive of the terrain used for skiing and upon which the owner, operator, or lessee of the ski resort has made available himself, or through others, including, but not limited to, the owners of condominiums, permanent bona fide overnight accommodations available to the general public for one hundred (100) persons or more, and which real property is contiguous to or located within the area in which skiing occurs, and which real property is regularly operated as a ski resort in the winter time, and where the owner, operator, or lessee of the ski resort is also the owner, operator, or lessee of the area served by a bona fide chair ski lift facility or facilities. Alternatively, for the purpose of this section a ski resort may also be defined as a downhill ski area, open to the public, comprising real property of not less than two hundred fifty (250) skiable acres, operating two (2) or more chair lifts with a vertical lift of one thousand (1,000) feet or more, and capable of transporting a minimum of one thousand eight hundred (1,800) skiers per hour. A ski resort qualifying under this definition shall also have on the premises a lodge facility providing shelter and food service to the public, the operator of which shall also be the valid owner or lessee of the grounds and facilities upon which the ski resort offers downhill skiing services to the public. The fees for licenses granted to ski resorts shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Not more than one (1) licensed premises shall be

permitted on any golf course or any ski resort or within the area comprising the same.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator or lessee of an actual, bona fide equestrian facility located on not less than forty (40) contiguous acres, with permanently erected seating of not less than six thousand (6,000) seats, no part of which equestrian facility or the premises thereon is situate within the incorporated limits of any city, and which facility shall have at least three (3) days per year of a professionally sanctioned rodeo. Not more than one (1) licensed premises shall be permitted at any equestrian facility or within an area comprising such a facility. The license shall be solely for the equestrian facility and shall not be transferred to any other location. The fees for licenses granted to equestrian facilities shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code.

Nothing herein contained shall prohibit the issuance of a license to the owner, operator, or lessee of a restaurant operated on an airport owned or operated by a county or municipal corporation or on an airport owned or operated jointly by a county and municipal corporation, and which said airport is served by a trunk or local service air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board of the United States of America. Not more than one (1) license shall be issued on any airport.

Nothing herein contained shall prohibit the issuance of one (1) club license to a club as defined in section 23-902, Idaho Code. The holder of a club license is authorized to sell and serve alcoholic beverages for consumption only within the licensed establishment owned, leased or occupied by the club, and only to bona fide members of the club, and to serve and to sell alcoholic beverages for consumption to bona fide members' guests. A club license issued pursuant to the provisions of this section is not transferable and may not be sold. Any club license issued pursuant to the provisions of this section will revert to the director when, in his judgment, the licensee ceases to operate as a bona fide club as defined in section 23-902, Idaho Code. No club may hold a liquor license and a club license simultaneously. A club which on July 1, 1983, holds a liquor license, may continue to possess that license. Any club which possesses a liquor license on January 1, 1983, or thereafter, and then sells that liquor license, may not obtain a club license, and the director shall not issue a club license to that club for a period of five (5) years following such sale. The fee for any license issued to a qualifying club within an incorporated municipality shall be as prescribed in subsections (a), (b) and (c) of section 23-904, Idaho Code. The fee for any license issued to a qualifying club not situate within an incorporated municipality shall be as specified for golf courses under section 23-904(f), Idaho Code. The provisions of section 23-916, Idaho Code, regarding county and city licenses, shall pertain to club licenses. The burden of producing sufficient documentation of qualifications for club licensure shall be with the club applicant.

Nothing in this chapter to the contrary shall prohibit the issuance of a license to the owner, operator, or lessee of an actual, bona fide convention center which is within the incorporated limits of a city having a population of three thousand (3,000) or greater, and which city does not have located therein a convention center with a valid convention center license to sell liquor by the drink. For the purpose of this

section, a convention center means a facility having at least thirty-five thousand (35,000) square feet of floor space or a facility having at least one hundred twenty (120) sleeping rooms and an adjoining meeting room which will accommodate not less than three hundred fifty (350) persons, whether or not such room may be partitioned into smaller rooms, and provided that such meeting room shall contain at least three thousand (3,000) square feet of floor space. Such license must be placed in actual use in said convention center within one (1) year from the date of its issuance. The fee for any license issued to a qualifying convention center shall be as prescribed in subsection (c) of section 23-904, Idaho Code. No license issued to a convention center hereunder shall be transferable to another location or facility, nor shall the holder of a convention center license be eligible for the issuance of a license in the same city pursuant to any other provision of this chapter. For purposes of this section, the term holder shall include an owner, operator or lessee and shall include a stockholder, director, or officer of a corporation, or a partner in a partnership, which corporation or partnership has been issued a convention center license pursuant to this chapter. Not more than one (1) licensed premises shall be permitted on any convention center or within the area comprising the same, including convention centers that also comprise golf courses or ski resorts as herein defined.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, beverage and/or lodging facility that has been in continuous operation in the same location for at least seventy-five (75) years, except for temporary closings for refurbishing or reconstruction, or a food, beverage and lodging facility serving the public by reservation only, having a minimum of five (5) rooms operating in a structure that has been in existence for at least seventy-five (75) years and has been on the historic register for a minimum of ten (10) years, is situated within five hundred (500) yards of a natural lake containing a minimum of thirty-six thousand (36,000) acre feet of water when full with a minimum of thirty-two (32) miles of shoreline, and is located in a county with a minimum population of sixty-five thousand (65,000). The provisions of section 23-910, Idaho Code, shall apply to licenses issued to continuous operation facilities. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued to continuous operation facilities are not transferable.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of the lodging, dining and entertainment facilities owned by a gondola resort complex and operated in conjunction with the other public services provided by a gondola resort complex located within the ownership/leasehold boundaries of a gondola resort complex.

A gondola resort complex means an actual, bona fide gondola capable of transporting people for recreational and/or entertainment purposes at least three (3) miles in length with a vertical rise of three thousand (3,000) feet, portions of which may be located within or over the limits of one (1) or more cities.

Nothing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a winery also operating a golf course on the premises.

Subject to approval of the mayor and city council, nothing in this

chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, conference and lodging facility constructed after July 1, 2004, containing a minimum of sixty thousand (60,000) square feet and sixty (60) guest rooms with a minimum taxable value of fifteen million dollars ($15,000,000) in a city with a population of less than five thousand (5,000) according to the most recent census.

The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this ~~subsection~~ section. The fees shall be the same as those prescribed for golf courses as set forth in section 23-904, Idaho Code. Licenses issued under the provisions of this ~~subsection~~ section are not transferable.

Approved March 10, 2004.

CHAPTER 45
(S.B. No. 1277)

AN ACT

RELATING TO THE UNIFORM SECURITIES ACT; REPEALING CHAPTER 14, TITLE 30, IDAHO CODE; AMENDING TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 14, TITLE 30, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE REFERENCES TO FEDERAL STATUTES AND FEDERAL AGENCIES, TO AUTHORIZE CERTAIN ELECTRONIC RECORDS AND SIGNATURES, TO EXEMPT CERTAIN SECURITIES FROM SPECIFIED REQUIREMENTS, TO EXEMPT CERTAIN TRANSACTIONS FROM SPECIFIED REQUIREMENTS, TO PROVIDE FOR FAIRNESS HEARINGS, TO PROVIDE FOR ADDITIONAL EXEMPTIONS AND WAIVERS BY RULE OR ORDER, TO PROVIDE FOR THE DENIAL, SUSPENSION, REVOCATION, CONDITION OR LIMITATION OF EXEMPTIONS, TO SET FORTH A SECURITIES REGISTRATION REQUIREMENT, TO PROVIDE FOR NOTICE FILING, TO PROVIDE FOR SECURITIES REGISTRATION BY COORDINATION, TO PROVIDE FOR SECURITIES REGISTRATION BY QUALIFICATION, TO PROVIDE FOR SECURITIES REGISTRATION FILINGS, TO PROVIDE FOR THE DENIAL, SUSPENSION AND REVOCATION OF SECURITIES REGISTRATION, TO PROVIDE FOR WAIVER AND MODIFICATION OF REQUIREMENTS, TO SET FORTH A BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS TO THE REQUIREMENT, TO SET FORTH AN AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS TO THE REQUIREMENT, TO SET FORTH AN INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS TO THE REQUIREMENT, TO SET FORTH AN INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS TO THE REQUIREMENT, TO SET FORTH A FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT, TO PROVIDE FOR REGISTRATION FOR BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES, TO PROVIDE FOR SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALERS OR INVESTMENT ADVISERS, TO PROVIDE FOR THE TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENTS AND INVESTMENT ADVISER REPRESENTATIVES AND TRANSFERS OF SUCH EMPLOYMENT OR ASSOCIATION, TO PROVIDE FOR THE WITHDRAWAL OF REGISTRATION OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES, TO SET FORTH FILING FEES, TO SET FORTH POSTREGISTRATION REQUIREMENTS, TO PROVIDE FOR THE DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF REGISTRATION, TO DEFINE GENERAL FRAUD, TO SET FORTH CONDUCT PROHIBITED IN PROVIDING INVESTMENT ADVICE, TO PROVIDE FOR AN

EVIDENTIARY BURDEN IN CIVIL AND CRIMINAL CASES, TO PROVIDE FOR THE FILING OF SALES AND ADVERTISING LITERATURE, TO PROHIBIT MISLEADING FILINGS, TO PROHIBIT MISREPRESENTATIONS REGARDING REGISTRATION OR EXEMPTION, TO PROVIDE FOR QUALIFIED IMMUNITY, TO SET FORTH CRIMINAL PENALTIES, TO PROVIDE FOR CIVIL LIABILITY, TO PROVIDE FOR RESCISSION OFFERS, TO PROVIDE FOR ADMINISTRATION OF THE CHAPTER, TO AUTHORIZE INVESTIGATIONS AND SUBPOENAS, TO PROVIDE FOR CIVIL AND ADMINISTRATIVE ENFORCEMENT, TO AUTHORIZE RULES, FORMS, ORDERS AND INTERPRETATIVE OPINIONS, TO CREATE A PRESUMPTION FOR PUBLIC HEARINGS, TO PROVIDE FOR THE MAINTENANCE OF ADMINISTRATIVE FILES AND OPINIONS, TO PROVIDE FOR A PRESUMPTION THAT CERTAIN RECORDS ARE PUBLIC RECORDS, TO PROVIDE FOR THE CONFIDENTIALITY OF CERTAIN RECORDS, TO PROVIDE FOR ADMINISTRATOR DISCRETION TO DISCLOSE CERTAIN RECORDS, TO PROVIDE FOR UNIFORMITY AND COOPERATION WITH OTHER AGENCIES, TO PROVIDE FOR JUDICIAL REVIEW OF FINAL ORDERS, TO SET FORTH JURISDICTION PROVISIONS, TO PROVIDE FOR SERVICE OF PROCESS, TO PROVIDE FOR SEVERABILITY, TO SET FORTH AN EFFECTIVE DATE, TO PROVIDE FOR REPEAL AND TO PROVIDE FOR APPLICATION TO EXISTING PROCEEDINGS AND EXISTING RIGHTS AND DUTIES; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340H, IDAHO CODE, TO PROVIDE THAT CERTAIN RECORDS RELATED TO THE UNIFORM SECURITIES ACT ARE EXEMPT FROM PUBLIC DISCLOSURE; AMENDING SECTION 18-7803, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS; AMENDING SECTION 39-1452, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1004, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 41-3821, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 14, Title 30, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 14, Title 30, Idaho Code, and to read as follows:

CHAPTER 14
UNIFORM SECURITIES ACT (2004)

PART 1.
GENERAL PROVISIONS

30-14-101. SHORT TITLE. This chapter shall be known and may be cited as the "Uniform Securities Act (2004)."

30-14-102. DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Administrator" means the director of the Idaho department of finance or his designee.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A

partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by a rule adopted or an order issued under this chapter.

(3) "Bank" means:

(a) A banking institution organized under the laws of the United States;

(b) A member bank of the federal reserve system;

(c) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of public law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(d) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (a), (b) or (c) of this subsection.

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(a) An agent;

(b) An issuer;

(c) A bank, a trust company organized or chartered under the laws of this state, or a savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(b)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securities exchange act of 1934 (15 U.S.C. 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. 78c(a)(4));

(d) An international banking institution; or

(e) A person excluded by a rule adopted or an order issued under this chapter.

(5) "Depository institution" means:

(a) A bank; or

(b) A savings institution, trust company, credit union or similar institution that is organized or chartered under the laws of a state or of the United States that is authorized to receive deposits, and that is supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) A morris plan bank; or

(iii) An industrial loan company.

(6) "Federal covered investment adviser" means a person registered under the investment advisers act of 1940, as cited in section 30-14-103, Idaho Code.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the securities act of 1933 (15 U.S.C. 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

(9) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(a) A depository institution, a trust company organized or chartered under the laws of this state, or an international banking institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company as defined in the investment company act of 1940, as cited in section 30-14-103, Idaho Code;

(e) A broker-dealer registered under the securities exchange act of 1934, as cited in section 30-14-103, Idaho Code;

(f) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(g) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars ($10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(h) A trust, if it has total assets in excess of ten million dollars ($10,000,000), its trustee is a depository institution, and its participants are exclusively plans of the types identified in paragraph (f) or (g) of this subsection, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(i) An organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), a corporation, a Massachusetts trust or similar business trust, a limited liability company, or a

partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars ($10,000,000);

(j) A small business investment company licensed by the small business administration under section 301(c) of the small business investment act of 1958 (15 U.S.C. 681(c)) with total assets in excess of ten million dollars ($10,000,000);

(k) A private business development company as defined in section 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of ten million dollars ($10,000,000);

(l) A federal covered investment adviser acting for its own account;

(m) A "qualified institutional buyer" as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933 (17 CFR 230.144A);

(n) A "major U.S. institutional investor" as defined in rule 15a-6(b)(4)(i) adopted under the securities exchange act of 1934 (17 CFR 240.15a-6);

(o) Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars ($10,000,000) not organized for the specific purpose of evading this chapter; or

(p) Any other person specified by a rule adopted or an order issued under this chapter.

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(a) An investment adviser representative;

(b) A lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(c) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(d) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
(e) A federal covered investment adviser;
(f) A bank, a trust company organized or chartered under the laws of this state, or a savings institution;
(g) Any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser;
(h) Any person who offers accountancy services to the public and who holds a valid, unrevoked and unsuspended license under the provisions of chapter 2, title 54, Idaho Code, designating said person as a certified public accountant or a licensed public accountant; or
(i) Any other person excluded by a rule adopted or an order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:
(a) Performs only clerical or ministerial acts;
(b) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
(c) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a) and is:
(i) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. 80b-3a); or
(ii) Not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940 (15 U.S.C. 80b-2(a)(25)); or
(d) Is excluded by a rule adopted or an order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:
(a) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.
(b) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.
(c) The issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production under a lease,

right or royalty is the owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the securities exchange act of 1934 (15 U.S.C. 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(a) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(b) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor act" means the act repealed by section 30-14-702, Idaho Code.

(23) "Price amendment" means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners or managers of the broker-dealer or investment adviser direct, control and coordinate the activities of the broker-dealer or investment adviser.

(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both "sale" and "offer to sell" include:

(a) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(b) A gift of assessable stock involving an offer and sale; and

(c) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) "Securities and exchange commission" means the United States securities and exchange commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; put, call, straddle, option or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security":

(a) Includes both a certificated and an uncertificated security;

(b) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or other specified period;

(c) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974;

(d) Includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. "Common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(e) Includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement, life settlement or senior settlement or similar agreement.

(29) "Self-regulatory organization" means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rulemaking board established under the securities exchange act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate with the record an electronic symbol, sound or process.

(31) "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.

30-14-103. REFERENCES TO FEDERAL STATUTES. "Securities act of 1933" (15 U.S.C. 77a et seq.), "securities exchange act of 1934" (15 U.S.C. 78a et seq.), "public utility holding company act of 1935" (15 U.S.C. 79 et seq.), "investment company act of 1940" (15 U.S.C. 80a-1 et seq.), "investment advisers act of 1940" (15 U.S.C. 80b-1 et seq.), "employee retirement income security act of 1974" (29 U.S.C. 1001 et seq.), "national housing act" (12 U.S.C. 1701 et seq.), "commodity exchange act" (7 U.S.C. 1 et seq.), "internal revenue code" (26 U.S.C. 1 et seq.), "securities investor protection act of 1970" (15 U.S.C. 78aaa et seq.), "securities litigation uniform standards act of 1998" (112 Stat. 3227), "small business investment act of 1958" (15 U.S.C. 661 et seq.), and "electronic signatures in global and national commerce act" (15 U.S.C. 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter.

30-14-104. REFERENCES TO FEDERAL AGENCIES. A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

30-14-105. ELECTRONIC RECORDS AND SIGNATURES. This chapter modifies, limits and supersedes the federal electronic signatures in global and national commerce act, but does not modify, limit or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or an order issued under this chapter, in a manner consistent with section 104(a) of that act (15 U.S.C. 7004(a)).

PART 2.
EXEMPTIONS FROM REGISTRATION OF SECURITIES

30-14-201. EXEMPT SECURITIES. The following securities are exempt from the requirements of sections 30-14-301 through 30-14-306, Idaho Code, and section 30-14-504, Idaho Code:

(1) A security, including a revenue obligation or a separate security as defined in rule 131 (17 CFR 230.131) adopted under the securities act of 1933, issued, insured or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one (1) or more states; by a political subdivision of one (1) or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by congress; or a certificate of deposit for any of the foregoing;

(2) A security issued, insured or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer or guarantor;

(3) A security issued by and representing, or that will represent, an interest in or a direct obligation of, or be guaranteed by:

(a) An international banking institution;

(b) A banking institution organized under the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law, or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to section 1 of public law 87-722 (12 U.S.C. 92a); or

(c) Any other depository institution, or any trust company organized or chartered under the laws of this state, unless by rule or order the administrator proceeds under section 30-14-204, Idaho Code;

(4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(a) Regulated in respect to its rates and charges by the United States or a state;

(b) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(c) A public utility holding company registered under the public utility holding company act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) A federal covered security specified in section 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)) or by a rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the securities exchange act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the securities exchange act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the securities exchange act of 1934 (15 U.S.C. 78i(b));

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(b) of the investment company act of

1940 (15 U.S.C. 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons and transactions, imposing different requirements for different classes, specifying with respect to paragraph (b) of this subsection the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(a) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule;

(b) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with section 30-14-611, Idaho Code, and grounds for denial or suspension of the exemption; or

(c) To register under section 30-14-304, Idaho Code;

(8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;

(9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)); and

(10) Any security issued by a domestic or foreign corporation, partnership, trust or association engaged in actual mining operations or the exploration and development of mining properties in this state, whether or not sold through a broker-dealer, provided the following conditions are met:

(a) The term "actual mining operations" within the meaning of this subsection does not include the development or production of gas or oil;

(b) The total amount of the securities to be offered and sold does not exceed five hundred thousand dollars ($500,000) in any twelve (12) month period;

(c) All sales brochures, pamphlets, advertisements and literature are filed with the director prior to being used;

(d) At least eighty percent (80%) of the gross amount paid by the purchasers of the securities is used in actual mining operations or for actual exploration and development expenses, including legal, accounting, engineering and geological expenses; and

(e) The issuer shall file a report in a form prescribed by the director and at such times that the director by rule may provide, not to exceed once every three (3) months, stating the number of shares or amount of other securities sold, the number of purchasers, the amount of money obtained by the issuer from the sales, and the manner in which the moneys have been expended.

30-14-202. EXEMPT TRANSACTIONS. The following transactions are exempt from the requirements of sections 30-14-301 through 30-14-306, Idaho Code, and section 30-14-504, Idaho Code:

(1) An isolated nonissuer transaction, whether or not effected by or through a broker-dealer;

(2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the investment company act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(a) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(b) The security is sold at a price reasonably related to its current market price;

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(d) A nationally recognized securities manual or its electronic equivalent designated by any rule adopted or an order issued under this chapter or a record filed with the securities and exchange commission that is publicly available contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) An audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(e) Any one (1) of the following requirements is met:

(i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the securities exchange act of 1934 or designated for trading on the national association of securities dealers automated quotation system;

(ii) The issuer of the security is a unit investment trust registered under the investment company act of 1940;

(iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or

(iv) The issuer of the security has total assets of at least

two million dollars ($2,000,000) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;

(4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934 (15 U.S.C. 78m or 78o(d));

(5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(a) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(b) Has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years of the issuer or any predecessor, in the payment of principal, interest, or dividends on the security; and

(ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others;

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing as provided in section 30-14-202A, Idaho Code, or otherwise;

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) A transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if:

(a) The note, bond, debenture or other evidence of indebtedness is

offered and sold with the mortgage or other security agreement as a unit;

(b) A general solicitation or general advertisement of the transaction is not made; and

(c) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;

(12) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

(13) A sale or offer to sell to:

(a) An institutional investor;

(b) A federal covered investment adviser; or

(c) Any other person exempted by a rule adopted or an order issued under this chapter;

(14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(a) Not more than ten (10) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in subsection (13) of this section;

(b) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(c) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and

(d) The issuer reasonably believes that all the purchasers in this state, other than those designated in subsection (13) of this section, are purchasing for investment;

(15) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(16) An offer to sell, but not a sale, of a security not exempt from registration under the securities act of 1933 if:

(a) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933 (17 CFR 230.165); and

(b) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) An offer to sell, but not a sale, of a security exempt from registration under the securities act of 1933 if:

(a) A registration statement has been filed under this chapter, but is not effective;

(b) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter; and

(c) A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection or

proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) A rescission offer, sale or purchase under section 30-14-510, Idaho Code;

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) Former employees, directors, general partners, trustees, officers, consultants and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations;

(22) A transaction involving:

(a) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock;

(b) An act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(c) The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the securities act of 1933 (17 CFR 230.162); or

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by a rule adopted or an order issued under this chapter; has been subject to continuous reporting

requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by a rule adopted or an order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with chapter 52, title 67, Idaho Code, the administrator, by rule adopted or an order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

30-14-202A. FAIRNESS HEARING. (a) The administrator is expressly authorized to hold a hearing and consider the fairness of the terms and conditions of a transaction described in section 30-14-202(9), Idaho Code. This section 30-14-202A, Idaho Code, is intended to provide for a fairness hearing before the administrator with respect to transactions which, if approved by the administrator, will be exempt from the registration requirements of the federal securities laws under section 3(a)(10) of the securities act of 1933, or any section comparable thereto which may subsequently be enacted.

(b) An application for approval shall describe the proposed transaction and shall be in such form, contain such information and be accompanied by such documents as the administrator shall reasonably require by rule or otherwise. The applicant shall pay to the administrator a filing fee of three hundred dollars ($300) and shall file with the administrator an undertaking to defray the costs of a hearing officer and a stenographer for the hearing.

(c) An application for approval shall be set for hearing within thirty (30) days after the filing of an application. The applicant shall give notice of the hearing to all persons to whom securities are to be issued in the proposed transaction, and all such persons shall have the right to appear at the hearing.

(d) Within ten (10) days after the hearing, the administrator shall issue an order either granting or denying approval of the terms of conditions of the proposed plan. The order shall grant approval if the proposed transaction is fair, equitable and free from fraud. The order shall deny approval if the proposed transaction is unfair, inequitable or not free from fraud.

30-14-203. ADDITIONAL EXEMPTIONS AND WAIVERS. (1) A rule adopted or an order issued under this chapter may exempt a security, transaction or offer.

(2) A rule adopted under this chapter may exempt a class of securities, transactions or offers from any or all of the requirements of sections 30-14-301 through 30-14-306, Idaho Code, and section 30-14-504, Idaho Code.

(3) An order issued under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 30-14-201 and 30-14-202, Idaho Code.

30-14-204. DENIAL, SUSPENSION, REVOCATION, CONDITION OR LIMITATION OF EXEMPTIONS. (a) Enforcement related powers. Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under section 30-14-201(3)(c), (7) or (8), Idaho Code, or section 30-14-202, Idaho Code, or an exemption or waiver created pursuant to section 30-14-203, Idaho Code, with respect to a specific security, transaction or offer. An order under this section may be issued only pursuant to the procedures set forth in section 30-14-306(d) or 30-14-604, Idaho Code, and only prospectively.

(b) Knowledge of order required. A person does not violate section 30-14-301, 30-14-303 through 30-14-306, 30-14-504 or 30-14-510, Idaho Code, by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

PART 3.
REGISTRATION OF SECURITIES AND NOTICE
FILING OF FEDERAL COVERED SECURITIES

30-14-301. SECURITIES REGISTRATION REQUIREMENT. It is unlawful for a person to offer or sell a security in this state unless:

(a) The security is a federal covered security;

(b) The security, transaction or offer is exempted from registration under sections 30-14-201 through 30-14-203, Idaho Code; or

(c) The security is registered under this chapter.

30-14-302. NOTICE FILING. (a) Required filing of records. With respect to a federal covered security, as defined in section 18(b)(2) of the securities act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under sections 30-14-201 through 30-14-203, Idaho Code, a rule adopted or an order issued under this chapter may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933 and a consent to service of process complying with section 30-14-611 signed by the issuer and the payment of a fee of three hundred dollars ($300) for mutual funds and one hundred dollars ($100) for unit investment trusts;

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933; and

(3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the securities and exchange commission; and

(4) Each series or portfolio of an investment company offering shall be required to make a separate notice filing. Separate notice filings for classes of an investment company are not required so

long as classes are used solely as a method of distinguishing payment plans within a series or portfolio.

(b) Notice filing effectiveness and renewal. A notice filing under subsection (a) of this section is effective for one (1) year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this chapter to be filed and by paying a renewal fee of three hundred dollars ($300) for mutual funds and one hundred dollars ($100) for unit investment trusts. A previously filed consent to service of process complying with section 30-14-611, Idaho Code, may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) Notice filings for federal covered securities under section 18(b)(4)(d). With respect to a security that is a federal covered security under section 18(b)(4)(d) of the securities act of 1933 (15 U.S.C. 77r(b)(4)(d)), a rule or order under this chapter may require a notice filing by or on behalf of an issuer to include a copy of form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with section 30-14-611, Idaho Code, signed by the issuer not later than fifteen (15) days after the first sale of the federal covered security in this state and the payment of a fee of fifty dollars ($50.00); and the payment of a fee of fifty dollars ($50.00) for any late filing.

(d) Stop orders. Except with respect to a federal security under section 18(b)(1) of the securities act of 1933 (15 U.S.C. 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

30-14-303. SECURITIES REGISTRATION BY COORDINATION. (a) Registration permitted. A security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) Required records. A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 30-14-305, Idaho Code, and a consent to service of process complying with section 30-14-611, Idaho Code:

(1) A copy of the latest form of prospectus filed under the securities act of 1933;

(2) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy or description of the security that is required by any rule adopted or an order issued under this chapter;

(3) Copies of any other information or any other records filed by the issuer under the securities act of 1933 requested by the administrator; and

(4) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) A stop order issued pursuant to subsection (d) of this section or section 30-14-306, Idaho Code, or issued by the securities and exchange commission, is not in effect and a proceeding is not pending against the issuer under section 30-14-306, Idaho Code, and the administrator has not given written notice of deficiencies that are unresolved and that would constitute grounds for a stop order under section 30-14-306, Idaho Code; and

(2) The registration statement has been on file for at least twenty (20) days or a shorter period provided by a rule adopted or an order issued under this chapter.

(d) Notice of federal registration statement effectiveness. The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone or electronic means and shall promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) Effectiveness of registration statement. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone or electronic means and shall promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 30-14-306, Idaho Code. The notice by the administrator does not preclude the institution of such a proceeding.

30-14-304. SECURITIES REGISTRATION BY QUALIFICATION. (a) Registration permitted. A security may be registered by qualification under this section.

(b) Required records. A registration statement under this section must contain the information or records specified in section 30-14-305, Idaho Code, a consent to service of process complying with section

30-14-611, Idaho Code, and, if required by rule adopted under this chapter, the following information or records unless waived by the administrator for good cause shown:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected;

(3) With respect to persons covered by paragraph (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries and affiliates of the issuer;

(4) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) of this subsection other than the person's occupation;

(5) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in paragraph (2) of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering;

(7) The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities;

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any

variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6) or (8) of this subsection and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options;

(11) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract;

(12) A description of any pending litigation, action or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action or proceeding known to be contemplated by governmental authorities;

(13) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 30-14-202(17)(b), Idaho Code;

(14) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in

effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) A signed or conformed copy of a consent of any accountant, engineer, appraiser or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) Any additional information or records required by a rule adopted or an order issued under this chapter.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective thirty (30) days, or any shorter period provided by a rule adopted or an order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) A stop order is not in effect and a proceeding is not pending under section 30-14-306, Idaho Code;

(2) The administrator has not issued an order under section 30-14-306, Idaho Code, delaying effectiveness; and

(3) The applicant or registrant has not requested that effectiveness be delayed.

(d) Delay of effectiveness of registration statement. The administrator may delay effectiveness once for not more than ninety (90) days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than thirty (30) days if the administrator determines that the delay is necessary or appropriate.

(e) Prospectus distribution may be required. A rule adopted or an order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an

unsold allotment or subscription taken by the person as a participant in the distribution;

(2) The confirmation of a sale made by or for the account of the person;

(3) Payment pursuant to such a sale; or

(4) Delivery of the security pursuant to such a sale.

30-14-305. SECURITIES REGISTRATION FILINGS. (a) Who may file. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) Filing fee. A person filing a registration statement shall pay a filing fee of three hundred dollars ($300). If a registration statement is withdrawn before the effective date or a pre-effective stop order is issued under section 30-14-306, Idaho Code, the administrator shall retain the fee.

(c) Status of offering. A registration statement filed under section 30-14-303 or 30-14-304, Idaho Code, must specify:

(1) The amount of securities to be offered in this state;

(2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

(d) Incorporation by reference. A record filed under this chapter or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record may not be required under subsection (i) of this section or section 30-14-304, Idaho Code, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) Escrow and impoundment. A rule adopted or an order issued under this chapter may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by a rule adopted or an order issued under this chapter, provided however that the administrator may not reject a depository institution solely because of its location in another state.

(g) Form of subscription. A rule adopted or an order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

(h) Effective period. Except while a stop order is in effect under section 30-14-306, Idaho Code, a registration statement is effective for

one (1) year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. A registration statement remains effective for each additional year by filing a renewal as prescribed by a rule adopted or an order issued under this chapter. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(i) Periodic reports. While a registration statement is effective, a rule adopted or an order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) Posteffective amendments. A registration statement shall be amended after its effective date if there are material changes in information or documents in the registration statement. The posteffective amendment becomes effective when the administrator so orders.

30-14-306. DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION. (a) Stop orders. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) Any of the following is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact:

(A) The registration statement as of its effective date, or before the effective date in the case of an order denying effectiveness;

(B) A posteffective amendment under section 30-14-305(j), Idaho Code, as of its effective date; or

(C) A periodic report under section 30-14-305(i), Idaho Code;

(2) This chapter or a rule adopted or an order issued under this chapter, or a condition imposed under this chapter, has been willfully violated in connection with the offering, by: the person filing the registration statement; the issuer, a partner, officer or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent

jurisdiction or an administrative stop order or similar order issued under any federal, foreign or state law other than this chapter applicable to the offering, provided however the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) With respect to a security sought to be registered under section 30-14-303, Idaho Code, there has been a failure to comply with the undertaking required by section 30-14-303(b)(4), Idaho Code;

(6) The applicant or registrant has not paid the filing fee, provided however the administrator shall void the order if the deficiency is corrected; or

(7) The offering:

(A) Will work or tend to work a fraud upon purchasers or would so operate;

(B) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) Is being made on terms that are unfair, unjust or inequitable.

(b) Enforcement. To the extent practicable, the administrator by a rule adopted or an order issued under this chapter shall publish standards that provide notice of conduct that violates subsection (a)(7) of this section.

(c) Institution of stop order. The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

(d) Summary process. The administrator may summarily revoke, deny, postpone or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (e) of this section that the order has been issued, the reasons for the revocation, denial, postponement or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and an opportunity for a hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) Procedural requirements for stop order. A stop order may not be issued under this section without:

(1) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
(2) An opportunity for a hearing; and
(3) Findings of fact and conclusions of law in a record in accordance with chapter 52, title 67, Idaho Code.
(f) Modification or vacation of stop order. The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

30-14-307. WAIVER AND MODIFICATION. The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 30-14-302, 30-14-303 and 30-14-304(b), Idaho Code, or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 30-14-305(i), Idaho Code.

PART 4.
BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

30-14-401. BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) Registration requirement. It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d) of this section.
(b) Exemptions from registration. The following persons are exempt from the registration requirement of subsection (a) of this section:
(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:
(A) The issuer of the securities involved in the transactions;
(B) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;
(C) An institutional investor;
(D) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;
(E) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the securities exchange act of 1934 or is not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;
(F) A bona fide preexisting customer whose principal place of residence is in this state but who was not present in this state when the customer relationship was established, if:
(i) The broker-dealer is registered under the securities exchange act of 1934 or is not required to be registered under the securities exchange act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the cus-

tomer had maintained a principal place of residence; and

(ii) Within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause;

(G) Not more than three (3) customers in this state during the previous twelve (12) months, in addition to those customers specified in subsections (b)(1)(A) through (b)(1)(F) and subsection (b)(1)(H) of this section, if the broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) Any other person exempted by a rule adopted or an order issued under this chapter; and

(2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

(c) Limits on employment or association. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the securities regulator of a state, the securities and exchange commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) Foreign transactions. A rule adopted or an order issued under this chapter may permit:

(1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a

self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in subsection (b)(1) of this subsection.

30-14-402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) Registration requirement. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b) of this section.

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the securities exchange act of 1934 (15 U.S.C. 78(o)(2));

(2) An individual who represents a broker-dealer that is exempt under section 30-14-401(b) or (d), Idaho Code;

(3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 30-14-202, Idaho Code, other than sections 30-14-202(11) and 30-14-202(14), Idaho Code;

(5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, provided however that an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(d) of the securities act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) An individual who represents a broker-dealer registered in this state under section 30-14-401(a), Idaho Code, or exempt from registration under section 30-14-401(b), Idaho Code, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars ($100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(7) An individual who represents an issuer in connection with the

purchase of the issuer's own securities;

(8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) Any other individual exempted by a rule adopted or an order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling or purchasing its securities in this state.

(d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) of this section or is exempt from registration under subsection (b) of this section.

(e) Limit on affiliations. Unless prohibited by a rule adopted or an order issued under this chapter, an individual may act as an agent for more than one (1) broker-dealer or one (1) issuer at a time.

30-14-403. INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) Registration requirement. It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b) of this section.

(b) Exemptions from registration. The following persons are exempt from the registration requirement of subsection (a) of this section:

(1) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) Any other client exempted by a rule adopted or an order issued under this chapter;

(2) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subsection (b)(1) of this section;

(3) A federal covered investment adviser; or

(4) Any other person exempted by a rule adopted or an order issued under this chapter.

(c) Limits on employment or association. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an

investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the securities and exchange commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) Investment adviser representative registration required. It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 30-14-404(a), Idaho Code, or is exempt from registration under section 30-14-404(b), Idaho Code.

30-14-404. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS. (a) Registration requirement. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b) of this section.

(b) Exemptions from registration. The following individuals are exempt from the registration requirement of subsection (a) of this section:

(1) An individual who is employed by or associated with an investment adviser that is exempt from registration under section 30-14-403(b), Idaho Code, unless the individual has a place of business in this state or is not an investment adviser representative as defined by this chapter; and

(2) Any other individual exempted by a rule adopted or an order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 30-14-405, Idaho Code.

(d) Limit on affiliations. An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or an order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser.

(e) Limits on employment or association. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred or enjoined from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the securities and exchange commission, or a self-regulatory organization, or a court of competent

jurisdiction. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) Referral fees. An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under section 30-14-405, Idaho Code, or a broker-dealer registered under this chapter, is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under section 30-14-405, Idaho Code, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.

30-14-405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT. (a) Notice filing requirement. Except with respect to a federal covered investment adviser described in subsection (b) of this section, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c) of this section.

(b) Notice filing requirement not required. The following federal covered investment advisers are not required to comply with subsection (c) of this section:

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state; or

(D) Other clients specified by a rule adopted or an order issued under this chapter;

(2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under subsection (b)(1) of this section; and

(3) Any other person excluded by a rule adopted or an order issued under this chapter.

(c) Notice filing procedure. A person acting as a federal covered investment adviser, not excluded under subsection (b) of this section, shall file a notice, a consent to service of process complying with section 30-14-611, Idaho Code, and such records as have been filed with the securities and exchange commission under the investment advisers act of 1940 required by a rule adopted or an order issued under this chapter and pay the fees specified in section 30-14-410(e), Idaho Code.

(d) Effectiveness of filing. The notice under subsection (c) of this section becomes effective upon its filing and expires on December thirty-first of each year unless renewed.

30-14-406. REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE. (a) Application for initial registration. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 30-14-611, Idaho Code, and paying the fee specified in section 30-14-410, Idaho Code, and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

(1) The information or record required for the filing of a uniform application; and

(2) Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) Amendment. If the information or record contained in an application filed under subsection (a) of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Effectiveness of registration. If an order is not in effect and a proceeding is not pending under section 30-14-412, Idaho Code, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or an order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) Registration renewal. A registration is effective until midnight on December thirty-first of the year for which the application for registration is filed. Unless an order is in effect under section 30-14-412, Idaho Code, a registration may be automatically renewed each year by filing such records as are required by a rule adopted or an order issued under this chapter, by paying the fee specified in section 30-14-410, Idaho Code, and by paying costs charged by the designee of the administrator for processing the filings.

(e) Additional conditions or waivers. A rule adopted or an order issued under this chapter may impose such other conditions, not inconsistent with the national securities markets improvement act of 1996 (110 Stat. 3416). An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

30-14-407. SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER. (a) Succession. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section 30-14-401 or 30-14-403, Idaho Code, or a notice pursuant to section 30-14-405, Idaho Code, for the unexpired portion of the current registration or notice filing.

(b) Organizational change. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its

financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) Name change. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) Change of control. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or an order issued under this chapter.

30-14-408. TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION. (a) Notice of termination. If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) Transfer of employment or association. If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 30-14-405, Idaho Code, and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section 30-14-405, Idaho Code; then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of section 30-14-406(a), Idaho Code, and payment of the filing fee required under section 30-14-410, Idaho Code, the registration of the agent or investment adviser representative is:

(1) Immediately effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

(2) Temporarily effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) Withdrawal of temporary registration. The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in section 30-14-412, Idaho Code, and the administrator does so within thirty (30) days after the filing of the application. If the administrator does not withdraw the temporary registration within the thirty (30) day period, registration becomes automatically effective on the thirty-first day after filing.

(d) Power to prevent registration. The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) of this section based on the public interest and the protection of investors.

(e) Termination of registration or application for registration. If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator or guardian, or cannot reasonably be located, a rule adopted or an order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

30-14-409. WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE. Withdrawal of registration by a broker-dealer, agent, investment adviser or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by a rule adopted or an order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by a rule adopted or an order issued under this chapter. The administrator may institute a revocation or suspension proceeding under section 30-14-412, Idaho Code, within one (1) year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

30-14-410. FILING FEES. (a) Broker-dealers. A person shall pay a fee of two hundred dollars ($200) when initially filing an application for registration as a broker-dealer and a fee of two hundred dollars ($200) when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(b) Agents. The fee for an individual is fifty dollars ($50.00) when filing an application for registration as an agent, a fee of fifty dollars ($50.00) when filing a renewal of registration as an agent, and a fee of fifty dollars ($50.00) when filing for a change of registration

as an agent. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(c) Investment advisers. A person shall pay a fee of one hundred fifty dollars ($150) when filing an application for registration as an investment adviser and a fee of one hundred fifty dollars ($150) when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(d) Investment adviser representatives. The fee for an individual is thirty dollars ($30.00) when filing an application for registration as an investment adviser representative, a fee of thirty dollars ($30.00) when filing a renewal of registration as an investment adviser representative, and a fee of thirty dollars ($30.00) when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee.

(e) Federal covered investment advisers. A federal covered investment adviser required to file a notice under section 30-14-405, Idaho Code, shall pay an initial fee of thirty dollars ($30.00) and an annual notice fee of thirty dollars ($30.00).

(f) Payment. A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

(g) Dual agent/investment adviser representative. An investment adviser representative who is registered as an agent under section 30-14-402, Idaho Code, and who represents a person that is both registered as a broker-dealer under section 30-14-401, Idaho Code, and registered as an investment adviser under section 30-14-403, Idaho Code, or required as a federal covered investment adviser to make a notice filing under section 30-14-405, Idaho Code, is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

30-14-411. POSTREGISTRATION REQUIREMENTS. (a) Financial requirements. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22), a rule adopted or an order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) Financial reports. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222(b) of the investment advisers act of 1940 (15 U.S.C. 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or an order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Recordkeeping. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22):

(1) A broker-dealer registered or required to be registered under

this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books and other records required by a rule adopted or an order issued under this chapter;

(2) Broker-dealer records required to be maintained under subsection (c)(1) of this section may be maintained in any form of data storage acceptable under section 17(a) of the securities exchange act of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the administrator; and

(3) Investment adviser records required to be maintained under subsection (c)(1) of this section may be maintained in any form of data storage required by a rule adopted or an order issued under this chapter.

(d) Audits or inspections. The records of every person issuing or guaranteeing any securities subject to the provisions of this chapter, if such person is registered or required to be registered under this chapter, and of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under this chapter are subject to such reasonable periodic, special or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and may remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Custody and discretionary authority bond or insurance. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22), a rule adopted or an order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed twenty-five thousand dollars ($25,000). The administrator may determine the requirements of the insurance, bond or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond or other satisfactory form of security if instituted within the time limitations in section 30-14-509(j)(2), Idaho Code.

(f) Requirements for custody. Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or an order issued under this chapter may pro-

hibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) Investment adviser brochure rule. With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or an order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) Continuing education. A rule adopted or an order issued under this chapter may require an individual registered under section 30-14-402 or 30-14-404, Idaho Code, to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or an order issued under this chapter may require continuing education for an individual registered under section 30-14-404, Idaho Code.

30-14-412. DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF REGISTRATION. (a) Disciplinary conditions -- Applicants. If the administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) Disciplinary conditions -- Registrants. If the administrator finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. Provided however, the administrator may not:

(1) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one (1) year after the date of the order on which it is based; or

(2) Under subsection (d)(5)(A) or (B) of this section, issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) of this section would authorize the action had the conduct occurred in this state.

(c) Disciplinary penalties -- Registrants. If the administrator finds that the order is in the public interest and subsections (d)(1) through (6), (8), (9), (10), (12) or (13) of this section authorizes the action, an order under this chapter may censure, impose a bar or suspension from association with a broker-dealer or investment adviser regis-

tered in this state, or impose a civil penalty in an amount not to exceed five thousand dollars ($5,000) for each violation, on a registrant and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) of this section if the person:

(1) Has filed an application for registration in this state under this chapter or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act within the previous ten (10) years;

(3) Has been convicted of any felony or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(5) Is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities, depository institution, insurance or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) A court adjudicating a United States postal service fraud order;

(E) The insurance regulator of a state denying, suspending or revoking registration as an insurance agent; or

(F) A depository institution regulator suspending or barring the person from the depository institution business;

(6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange

commission, the commodity futures trading commission; the federal trade commission; a federal depository institution regulator, or a depository institution, insurance or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking or finance is regulated;

(7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, provided however that the administrator may not enter an order against an applicant or registrant under this paragraph (7) without a finding of insolvency as to the applicant or registrant;

(8) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 30-14-411(d), Idaho Code, or refuses access to a registrant's office to conduct an audit or inspection under section 30-14-411(d), Idaho Code;

(9) Has failed to reasonably supervise an agent, investment adviser representative or other individual, if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act within the previous ten (10) years;

(10) Has not paid the proper filing fee within thirty (30) days after having been notified by the administrator of a deficiency, provided however that the administrator shall vacate an order under this paragraph (10) when the deficiency is corrected;

(11) After notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;

(B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or

(C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) Is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten (10) years; or

(14) Is not qualified on the basis of factors such as training, experience and knowledge of the securities business. Provided however, in the case of an application by an agent for a broker-dealer

that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph (14) if the individual has successfully completed all examinations required by subsection (e) of this section. The administrator may require an applicant for registration under section 30-14-402 or 30-14-404, Idaho Code, who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

(e) Examinations. A rule adopted or an order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) Summary process. The administrator may suspend or deny an application summarily; restrict, condition, limit or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) Procedural requirements. An order issued may not be issued under this section, except under subsection (f) of this section, without:

(1) Appropriate notice to the applicant or registrant;

(2) Opportunity for hearing; and

(3) Findings of fact and conclusions of law in a record in accordance with chapter 52, title 67, Idaho Code.

(h) Control person liability. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) Limit on investigation or proceeding. The administrator may not institute a proceeding under subsection (a), (b) or (c) of this section based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one (1) year after the administrator actually acquires knowledge of the material facts.

PART 5.
FRAUD AND LIABILITIES

30-14-501. GENERAL FRAUD. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) To employ a device, scheme, or artifice to defraud;

(2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

30-14-502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE. (a) Fraud in providing investment advice. It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

(1) To employ a device, scheme, or artifice to defraud another person; or

(2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) Rules defining fraud. A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, as fraudulent, deceptive or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive or manipulative.

(c) Rules specifying contents of advisory contract. A rule adopted or an order issued under this chapter may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

30-14-503. EVIDENTIARY BURDEN. (a) Civil. In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden to prove the applicability of the claim.

(b) Criminal. In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden of going forward with evidence of the claim.

30-14-504. FILING OF SALES AND ADVERTISING LITERATURE. (a) Filing requirement. Except as otherwise provided in subsection (b) of this section, a rule adopted or an order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) Excluded communications. This section does not apply to sales and advertising literature specified in subsection (a) of this section which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 30-14-201, 30-14-202 or 30-14-203, Idaho Code, except as required pursuant to section 30-14-201(7), Idaho Code.

30-14-505. MISLEADING FILINGS. It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

30-14-506. MISREPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION. The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

30-14-507. QUALIFIED IMMUNITY. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

30-14-508. CRIMINAL PENALTIES. (a) Criminal penalties. A person that willfully violates this chapter, or a rule adopted or an order issued under this chapter, except section 30-14-504, Idaho Code, or the notice filing requirements of section 30-14-302 or 30-14-405, Idaho Code, or that willfully violates section 30-14-505, Idaho Code, knowing the statement made to be false or misleading in a material respect, shall be guilty of a felony and upon conviction, shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than five (5) years, or both. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(b) A person that willfully violates section 30-14-501 or 30-14-502(a), Idaho Code, and in connection with that violation, the

violator knowingly accepts any money representing:

(1) Equity in a person's home;

(2) A withdrawal from any individual retirement account or similar retirement account; or

(3) A withdrawal from any qualified retirement plan as defined in the Internal Revenue Code,

shall upon conviction be punished by imprisonment for not less than three (3) years or more than fifteen (15) years if, at the time the crime was committed, the property, money or thing unlawfully obtained or sought to be obtained was worth ten thousand dollars ($10,000) or more.

(c) If, in the commission of an offense described in subsection (a) or (b) of this section, the victim is an elder or dependent adult, and the violator has knowledge that the victim is an elder or dependent adult, the defendant shall receive an additional term of imprisonment as follows:

(1) Three (3) years if the victim is under seventy (70) years of age.

(2) Five (5) years if the victim is seventy (70) years of age or older.

(d) As used in this section, "elder" means any person who is sixty-five (65) years of age or older.

(e) As used in this section, "dependent adult" means any person who is between the ages of eighteen (18) and sixty-four (64) years, who has physical or mental limitations which restrict the person's ability to carry out normal activities or to protect the person's rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(f) No indictment or information may be returned under this chapter more than five (5) years after the alleged violation.

(g) Criminal reference not required. The attorney general or the proper prosecuting attorney with or without a reference from the administrator, may institute criminal proceedings under this chapter.

(h) No limitation on other criminal enforcement. This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

30-14-509. CIVIL LIABILITY. (a) Securities litigation uniform standards act. Enforcement of civil liability under this section is subject to the securities litigation uniform standards act of 1998, as cited in section 30-14-103, Idaho Code.

(b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a security in violation of section 30-14-301, Idaho Code, or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the annual rate of interest set

forth in section 28-22-104(2), Idaho Code, from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in subsection (b)(3) of this section.

(2) The tender referred to in subsection (b)(1) of this section may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subsection (b)(3) of this section.

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) Liability of purchaser to seller. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in subsection (c)(3) of this section.

(2) The tender referred to in subsection (c)(1) of this section may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subsection (c)(3) of this section.

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or agent that sells or buys a security in violation of section 30-14-401(a), 30-14-402(a) or 30-14-506, Idaho Code, is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3) of this section, or, if a seller, for a remedy as specified in subsections (c)(1) through (3) of this section.

(e) Liability of unregistered investment adviser and investment adviser representative. A person acting as an investment adviser or investment adviser representative that provides investment advice for

compensation in violation of section 30-14-403(a), 30-14-404(a) or 30-14-506, Idaho Code, is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) Liability for investment advice. A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) Joint and several liability. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f) of this section:

(1) A person that directly or indirectly controls a person liable under subsections (b) through (f) of this section, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) An individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f) of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) An individual who is an employee of or associated with a person liable under subsections (b) through (f) of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f) of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) Right of contribution. A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) Survival of cause of action. A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) Statute of limitations. A person may not obtain relief:

(1) Under subsection (b) of this section for violation of section 30-14-301, Idaho Code, or under subsection (d) or (e) of this section, unless the action is instituted within one (1) year after the violation occurred; or

(2) Under subsection (b) of this section, other than for violation of section 30-14-301, Idaho Code, or under subsection (c) or (f) of this section, unless the action is instituted within the earlier of two (2) years after discovery of the facts constituting the violation or five (5) years after the violation.

(k) No enforcement of violative contract. A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or an order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(l) No contractual waiver. A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or an order issued under this chapter is void.

(m) Survival of other rights or remedies. The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 30-14-411(e), Idaho Code.

30-14-510. RESCISSION OFFERS. A purchaser, seller, or recipient of investment advice may not maintain an action under section 30-14-509, Idaho Code, if:

(a) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(1) An offer stating the respect in which liability under section 30-14-509, Idaho Code, may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;

(2) If the basis for relief under this section may have been a violation of section 30-14-509(b), Idaho Code, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the

annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(3) If the basis for relief under this section may have been a violation of section 30-14-509(c), Idaho Code, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the sale;

(4) If the basis for relief under this section may have been a violation of section 30-14-509(d), Idaho Code; and if the customer is a purchaser, an offer to pay as specified in subsection (b) of this section; or, if the customer is a seller, an offer to tender or to pay as specified in subsection (c) of this section;

(5) If the basis for relief under this section may have been a violation of section 30-14-509(e), Idaho Code, an offer to reimburse in cash the consideration paid for the advice and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of payment; or

(6) If the basis for relief under this section may have been a violation of section 30-14-509(f), Idaho Code, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the annual rate of interest set forth in section 28-22-104(2), Idaho Code, from the date of the violation causing the loss;

(b) The offer under subsection (a)(1) of this section states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three (3) days, that the administrator, by order, specifies;

(c) The offeror has the present ability to pay the amount offered or to tender the security under subsection (a)(1) of this section;

(d) The offer under subsection (a)(1) of this section is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(e) The purchaser, seller, or recipient of investment advice that accepts the offer under subsection (a)(1) of this section in a record within the period specified under subsection (a)(2) of this section is paid in accordance with the terms of the offer.

PART 6.
ADMINISTRATION AND JUDICIAL REVIEW

30-14-601. ADMINISTRATION. (a) Administration. The administration of the provisions of this chapter shall be under the general supervision and control of the administrator.

(b) Unlawful use of records or information. It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 30-14-607(b), Idaho Code. This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 30-14-602, 30-14-607(c) or 30-14-608, Idaho Code.

(c) No privilege or exemption created or diminished. This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) Investor education. The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(e) The securities investor education and training fund. The securities investor education and training fund is hereby created to provide funds for the purposes specified in subsection (d) of this section. All moneys received by the state by reason of civil penalties and administrative fines collected pursuant to this chapter shall be deposited in the securities investor education and training fund up to but not exceeding fifty thousand dollars ($50,000) per year. The administrator may use funds in this account in a manner consistent with the duties of the department of finance under this chapter.

30-14-602. INVESTIGATIONS AND SUBPOENAS. (a) Authority to investigate. The administrator may:

(1) Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or an order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or

an order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) Administrator powers to investigate. For the purpose of an investigation or proceeding under this chapter, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation or proceeding.

(c) Procedure and remedies for noncompliance. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to any court of competent jurisdiction or a court of another state for an order to enforce compliance. The court may:

(1) Hold the person in contempt;

(2) Order the person to appear before the administrator;

(3) Order the person to testify about the matter under investigation or in question;

(4) Order the production of records;

(5) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) Impose a civil penalty of not less than five hundred dollars ($500) and not greater than five thousand dollars ($5,000) for each violation; and

(7) Grant any other necessary or appropriate relief.

(d) Application for relief. This section does not preclude a person from applying to any court of competent jurisdiction or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) Use immunity procedure. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to any court of competent jurisdiction to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) Assistance to securities regulator of another jurisdiction. At the request of a law enforcement or other governmental or regulatory agency or self-regulatory organization, the administrator may provide assistance if the requesting entity states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign

jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state, federal or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the administrator to carry out the request for assistance.

30-14-603. CIVIL ENFORCEMENT. (a) Civil action instituted by administrator. If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or an order issued under this chapter, the administrator may maintain an action in any court of competent jurisdiction to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or an order issued under this chapter.

(b) Relief available. In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Order other appropriate or ancillary relief, which may include:

(A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets;

(B) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) Imposing a civil penalty not to exceed ten thousand dollars ($10,000) for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or an order issued under this chapter or the predecessor act; and

(D) Ordering the payment of prejudgment and postjudgment interest; or

(3) Order such other relief as the court considers appropriate.

(c) No bond required. The administrator shall not be required to post a bond in an action or proceeding under this chapter.

30-14-604. ADMINISTRATIVE ENFORCEMENT. (a) Issuance of an order or notice. If the administrator determines that a person has engaged, is

engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or an order issued under this chapter, the administrator may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 30-14-401(b)(1)(D) or (F), Idaho Code, or an investment adviser under section 30-14-403(b)(1)(C), Idaho Code; or

(3) Issue an order under section 30-14-204, Idaho Code.

(b) Summary process. An order under subsection (a) of this section is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty (30) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b) of this section, a hearing must be held pursuant to chapter 52, title 67, Idaho Code. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record pursuant to chapter 52, title 67, Idaho Code. The final order may make final, vacate, or modify the order issued under subsection (a) of this section.

(d) Civil penalty. In a final order under subsection (c) of this section, the administrator may impose a civil penalty not to exceed five thousand dollars ($5,000) for each violation.

(e) Costs. In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or an order issued under this chapter.

(f) Filing of certified final order with court -- Effect of filing. If a petition for judicial review of a final order is not filed in accordance with section 30-14-609, Idaho Code, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) Enforcement by court -- Further civil penalty. If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court

may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five hundred dollars ($500) but not greater than five thousand dollars ($5,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

30-14-605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS. (a) Issuance and adoption of forms, orders, and rules. The administrator may:

(1) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) By rule, define terms, whether or not used in this chapter but those definitions may not be inconsistent with this chapter; and

(3) By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Findings and cooperation. Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, section 30-14-608, Idaho Code, applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Financial statements. Subject to section 15(h) of the securities exchange act and section 222 of the investment advisers act of 1940, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or an order issued under this chapter. A rule adopted or an order issued under this chapter may establish:

(1) Subject to section 15(h) of the securities exchange act and section 222 of the investment advisors act of 1940, the form and content of financial statements required under this chapter;

(2) Whether unconsolidated financial statements must be filed; and

(3) Whether required financial statements must be audited by an independent certified public accountant.

(d) Interpretative opinions. The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or an order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

(e) Effect of compliance. A penalty under this chapter may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this chapter.

(f) Presumption for public hearings. A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

30-14-606. ADMINISTRATIVE FILES AND OPINIONS. (a) Public register of filings. The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) Public availability. The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) Copies of public records. The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

30-14-607. PUBLIC RECORDS -- CONFIDENTIALITY. (a) Presumption of public records. Except as otherwise provided in subsection (b) of this section, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) Nonpublic records. Records as set forth in section 9-340H, Idaho Code, are not public records and are not available for public examination under subsection (a) of this section.

(c) Administrator discretion to disclose. If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 30-14-608(a), Idaho Code, the administrator may disclose a record obtained in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or a record obtained in connection with an investigation under section 30-14-602, Idaho Code.

30-14-608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES. (a) Objective of uniformity. The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 30-14-607, Idaho Code, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the

federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking or insurance regulator, and a governmental law enforcement or regulatory agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) Policies to consider. In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in the administrator's discretion, take into consideration in carrying out the public interest the following general policies:

(1) Maximizing effectiveness of regulation for the protection of investors;

(2) Maximizing uniformity in federal and state regulatory standards; and

(3) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) Subjects for cooperation. The cooperation, coordination, consultation, and sharing of records and information authorized by this section include:

(1) Establishing or employing one (1) or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;

(2) Developing and maintaining uniform forms;

(3) Conducting a joint examination or investigation;

(4) Holding a joint administrative hearing;

(5) Instituting and prosecuting a joint civil or administrative proceeding;

(6) Sharing and exchanging personnel;

(7) Coordinating registrations under section 30-14-301, Idaho Code, and sections 30-14-401 through 30-14-404, Idaho Code, and exemptions under section 30-14-203, Idaho Code;

(8) Sharing and exchanging records, subject to section 30-14-607, Idaho Code;

(9) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) Formulating common systems and procedures;

(11) Notifying the public of proposed rules, forms, statements of policy, and guidelines;

(12) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

30-14-609. JUDICIAL REVIEW. Judicial review of orders. A final order issued by the administrator under this chapter is subject to judicial review in accordance with chapter 52, title 67, Idaho Code.

30-14-610. JURISDICTION. (a) Sales and offers to sell. Sections 30-14-301, 30-14-302, 30-14-401(a), 30-14-402(a), 30-14-403(a), 30-14-404(a), 30-14-501, 30-14-506, 30-14-509 and 30-14-510, Idaho Code, do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) Purchases and offers to purchase. Sections 30-14-401(a), 30-14-402(a), 30-14-403(a), 30-14-404(a), 30-14-501, 30-14-506, 30-14-509 and 30-14-510, Idaho Code, do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

(1) Originates from within this state; or

(2) Is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) Acceptances in this state. For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

(1) Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(2) Has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) Publications, radio, television, or electronic communications. An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the previous twelve (12) months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(1) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(4) The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) Investment advice and misrepresentations. Sections 30-14-403(a), 30-14-404(a), 30-14-405(a), 30-14-502, 30-14-505 and 30-14-506, Idaho Code, apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

30-14-611. SERVICE OF PROCESS. (a) Signed consent to service of process. From September 1, 2004, through June 30, 2005, all persons applying for registration or making a notice filing shall submit to the administrator a signed consent to service of process. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or an order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. From July 1, 2005, and thereafter, registrants shall be required to submit a consent to service of process only if there has been a material change.

(b) Conduct constituting appointment of agent for service. If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or an order issued under this chapter and the person has not filed a consent to service of process under subsection (a) of this section, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Procedure for service of process. Service under subsection (a) or (b) of this section may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

(1) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) Service in administrative proceedings or civil actions by administrator. Service pursuant to subsection (c) of this section may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(e) Opportunity to defend. If process is served under subsection (c) of this section, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

30-14-612. SEVERABILITY CLAUSE. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

PART 7.
TRANSITION

30-14-701. EFFECTIVE DATE. This act takes effect on September 1, 2004.

30-14-702. REPEALS. The following chapter is repealed: The Idaho securities act, chapter 14, title 30, Idaho Code.

30-14-703. APPLICATION OF CHAPTER TO EXISTING PROCEEDING AND EXISTING RIGHTS AND DUTIES. (a) Applicability of predecessor act to pending proceedings and existing rights. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier.

(b) Continued effectiveness under predecessor act. All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(c) Applicability of predecessor act to offers or sales. The predecessor act exclusively applies to an offer or sale made within one (1) year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

SECTION 3. That Chapter 3, Title 9, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 9-340H, Idaho Code, and to read as follows:

9-340H. EXEMPTION FROM DISCLOSURE -- RECORDS RELATED TO THE UNIFORM SECURITIES ACT. Except as otherwise determined by the director of the department of finance pursuant to section 30-14-607(c), Idaho Code, the following records are exempt from disclosure:

(1) A record obtained or created by the director of the department of finance or a representative of the director in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or an investigation under section 30-14-602, Idaho Code;

(2) A part of a record filed in connection with a registration statement under section 30-14-301, Idaho Code, and sections 30-14-303

through 30-14-305, Idaho Code, or a record under section 30-14-411(d), Idaho Code, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) A record that is not required to be provided to the director of the department of finance or filed under chapter 14, title 30, Idaho Code, and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) A nonpublic record received from a person specified in section 30-14-608(a), Idaho Code; and

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed pursuant to chapter 14, title 30, Idaho Code.

SECTION 4. That Section 18-7803, Idaho Code, be, and the same is hereby amended to read as follows:

18-7803. DEFINITIONS. As used in this chapter, (a) "Racketeering" means any act which is chargeable or indictable under the following sections of the Idaho Code or which are equivalent acts chargeable or indictable as equivalent crimes under the laws of any other jurisdiction:

(1) Homicide (section 18-4001, Idaho Code);

(2) Robbery, burglary, theft, forgery, counterfeiting, and related crimes (sections 18-1401, 18-1405, 18-2403, 18-2407, 18-3123, 18-3124, 18-3125, 18-3601, 18-3602, 18-3603, 18-3605, 18-3606, 18-3607, 18-3609, 18-3610, 18-3614, 18-3615, 18-3618, 18-4630, 18-6501 and 49-518, Idaho Code);

(3) Kidnapping (section 18-4501, Idaho Code);

(4) Prostitution (sections 18-5601, 18-5602, 18-5603, 18-5604, 18-5605, 18-5606, 18-5608 and 18-5609, Idaho Code);

(5) Arson (sections 18-801, 18-802, 18-803, 18-804 and 18-805, Idaho Code);

(6) Assault (sections 18-908 and 18-4015, Idaho Code);

(7) Lotteries and gambling (sections 18-3801, 18-3802, 18-3809, 18-4902, 18-4903, 18-4904, 18-4905, 18-4906 and 18-4908, Idaho Code);

(8) Indecency and obscenity (sections 18-1515, 18-1518, 18-4103, 18-4103A, 18-4104, 18-4105, 18-4105A and 18-4107, Idaho Code);

(9) Poisoning (sections 18-4014 and 18-5501, Idaho Code);

(10) Fraudulent practices, false pretenses, insurance fraud, financial transaction card crimes and fraud generally (sections 18-2403, 18-2706, 18-3002, 18-3101, 18-3124, 18-3125, 18-3126, 18-6713, 41-293, 41-294 and 41-1306, Idaho Code);

(11) Alcoholic beverages (sections 23-602, 23-606, 23-610, 23-703, 23-905, 23-914, 23-928, 23-934 and 23-938, Idaho Code);

(12) Cigarette taxes (sections 63-2505 and 63-2512(b), Idaho Code);

(13) Securities (sections ~~30-1403, 30-1403A, 30-1404, 30-1405, 30-1406, 30-1438~~ 30-14-401, 30-14-402, 30-14-403, 30-14-404, 30-14-501, 30-14-502, 30-14-505 and ~~30-1439~~ 30-14-506, Idaho Code);

(14) Horseracing (section 54-2512, Idaho Code);

(15) Interest and usurious practices (sections 28-45-401 and 28-45-402, Idaho Code);

(16) Corporations (sections 18-1901, 18-1902, 18-1903, 18-1904, 18-1905, 18-1906 and 30-1510, Idaho Code);
(17) Perjury (sections 18-5401 and 18-5410, Idaho Code);
(18) Bribery and corrupt influence (sections 18-1352 and 18-1353, Idaho Code);
(19) Controlled substances (sections 37-2732(a), (b), (c), (e) and (f), 37-2732B, 37-2734 and 37-2734B, Idaho Code);
(20) Motor vehicles (sections 49-228, 49-231, 49-232 and 49-518, Idaho Code);
(21) Terrorism (section 18-8103, Idaho Code).

(b) "Person" means any individual or entity capable of holding a legal or beneficial interest in property;

(c) "Enterprise" means any sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or any group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities; and

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

SECTION 5. That Section 39-1452, Idaho Code, be, and the same is hereby amended to read as follows:

39-1452. EXEMPTION FROM TAXATION -- SECURITIES LAW. The authority is hereby declared to be performing a public function for the benefit of the people of the state for the improvement of their health and living conditions and to be a public instrumentality of the state. Accordingly, the income or other revenues of the authority, and all properties at any time owned by the authority, and any bonds, notes, or other obligations issued under this act, their transfer and income therefrom, including any profit made on the sale thereof, shall be exempt at all times from all taxation in the state of Idaho. Also, bonds issued by the authority shall be exempt from the ~~Idaho~~ uniform ~~S~~securities ~~A~~act, chapter 14, title 30, Idaho Code, or any amendments thereto.

SECTION 6. That Section 41-1004, Idaho Code, be, and the same is hereby amended to read as follows:

41-1004. LICENSE REQUIRED. (1) A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed as a producer for that line of authority in accordance with this chapter.

(2) A person shall not, for a fee, engage in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any policy of insurance that could be issued in Idaho unless that person is:

(a) A licensed insurance producer offering advice concerning a class of insurance as to which the producer is licensed to transact business in this state;

(b) An attorney rendering services in the performance of the duties of an attorney;
(c) A certified public accountant rendering services in the performance of the duties of a certified public accountant, as authorized by law;
(d) An actuary rendering actuarial services if such actuary is a member of an organization determined by the director as establishing standards for the actuarial profession;
(e) A person providing services to producers or authorized insurers only;
(f) A person rendering services as an expert pursuant to the Idaho rules of evidence; or
(g) An investment adviser, investment adviser representative or federally-covered investment adviser as defined in section ~~30-1402~~ 30-14-102, Idaho Code.

SECTION 7. That Section 41-3821, Idaho Code, be, and the same is hereby amended to read as follows:

41-3821. MUTUAL INSURANCE HOLDING COMPANIES.
(1) (a) A domestic mutual insurer, upon approval of the director, may reorganize by forming an insurance holding company system, "the mutual insurance holding company," based upon a mutual plan and continuing the corporate existence of the reorganizing insurer as a stock insurer. The director, after a public hearing as provided in section 41-3805, Idaho Code, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the director finds necessary for the protection of the policyholders' interests. The director may retain consultants as provided in section 41-3805(4), Idaho Code. A reorganization pursuant to this subsection is subject to sections 41-3802 and 41-3803, Idaho Code. The director shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.
(b) All of the initial shares of the capital stock of the reorganized insurer shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurer shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurer shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurer.
(2) (a) A domestic mutual insurer, upon the approval of the director, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection (1) of this section and continuing the corporate existence of the reorganizing insurer as a stock insurer subsidiary of the mutual insurance holding company. The director, after a public hearing as provided in section 41-3805, Idaho Code, if satisfied that

the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the director finds necessary for the protection of the policyholders' interests. The director may retain consultants as provided in section 41-3805(4), Idaho Code. A merger pursuant to this subsection is subject to sections 41-3802 and 41-3803, Idaho Code. The director shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(b) All of the initial shares of the capital stock of the reorganized insurer shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurer shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurer. A merger of policyholders' membership interests in a mutual insurer into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to section 41-2857, Idaho Code, and section 41-2857, Idaho Code, is also applicable.

(c) A foreign mutual insurer, which if a domestic corporation would be organized under chapter 3, title 41, Idaho Code, may reorganize upon the approval of the director and in compliance with the requirements of any law or rule which is applicable to the foreign mutual insurer by merging its policyholders' membership interests into a mutual insurance holding company formed pursuant to subsection (1) of this section and continuing the corporate existence of the reorganizing foreign mutual insurer as a foreign stock insurer subsidiary of the mutual insurance holding company. The director, after a public hearing as provided in section 41-3805, Idaho Code, may approve the proposed merger. The director may retain consultants as provided in section 41-3805(4), Idaho Code. A merger pursuant to this paragraph is subject to sections 41-3802 and 41-3803, Idaho Code. The reorganizing foreign mutual insurer may remain a foreign company or foreign corporation after the merger, and may be admitted to do business in this state. A foreign mutual insurer which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of subsection (2)(b) shall apply to a merger authorized under this paragraph.

(3) A mutual insurance holding company resulting from the reorganization of a domestic mutual insurer organized under chapter 1, title 30, Idaho Code, shall be incorporated pursuant to chapter 1, title 30, Idaho Code. This requirement shall supersede any conflicting provisions of chapter 1, title 30, Idaho Code. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the director in the same manner as those of an insurance company.

(4) A mutual insurance holding company is deemed to be an insurer subject to chapter 33, title 41, Idaho Code, and shall automatically be

a party to any proceeding under chapter 33, title 41, Idaho Code, involving an insurer which as a result of a reorganization pursuant to subsection (1) or (2) of this section is a subsidiary of the mutual insurance holding company. In any proceeding under chapter 33, title 41, Idaho Code, involving the reorganized insurer, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurer for purposes of satisfying the claims of the reorganized insurer's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the director or as ordered by the district court pursuant to chapter 33, title 41, Idaho Code.

(5) (a) Section 41-2855, Idaho Code, is not applicable to a reorganization or merger pursuant to this section.

(b) Section 41-2855, Idaho Code, is applicable to demutualization of a mutual insurance holding company which resulted from the reorganization of a domestic mutual insurer organized under chapter 3, title 41, Idaho Code, as if it were a mutual life insurer.

(6) A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in section ~~30-1402(12)~~ 30-14-102(28), Idaho Code.

(7) The majority of the voting shares of the capital stock of the reorganized insurer, which is required by this section to be at all times owned by a mutual insurance holding company, shall not be conveyed, transferred, assigned, pledged, subject to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in or on the majority of the voting shares of the reorganized insurer which is required by this section to be at all times owned by a mutual insurance holding company, is in violation of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to the shares necessary to constitute a majority of such voting shares. The majority of the voting shares of the capital stock of the reorganized insurer which is required by this section to be at all times owned by a mutual insurance holding company shall not be subject to execution and levy as provided in title 11, Idaho Code. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two (2) or more reorganized insurers or two (2) or more intermediate holding companies which were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations as provided in this section to which the shares of the merging or consolidating reorganized insurers or intermediate holding companies were subject by this section prior to the merger or consolidation.

As used in this section, "majority of the voting shares of the capital stock of the reorganized insurer" means shares of the capital stock of the reorganized insurer which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurer for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurer. The ownership of a majority of the voting shares of the capital stock of the reorganized insurer which are required by this

section to be at all times owned by a parent mutual insurance holding company includes indirect ownership through one (1) or more intermediate holding companies in a corporate structure approved by the director. However, indirect ownership through one (1) or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurer. The director shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company.

As used in this section, "intermediate holding company" means a holding company which is a subsidiary of a mutual insurance holding company, and which either directly or through a subsidiary intermediate holding company has one (1) or more subsidiary reorganized insurers of which a majority of the voting shares of the capital stock would otherwise have been required by this section to be at all times owned by the mutual insurance holding company.

(8) It is the intent of the legislature that the formation of a mutual insurance holding company should not increase the Idaho tax burden of the mutual insurance holding company system and that a stock insurance subsidiary shall continue to be subject to Idaho insurance premium taxation in lieu of all other taxes except real property taxes as provided in section 41-405, Idaho Code. Subject to approval by the director as required under Idaho law, a stock insurance subsidiary may issue dividends or distributions to the mutual insurance holding company or any intermediate holding company, and such dividends or distributions shall be excluded from the Idaho taxable income of the recipients; provided however, that such exclusion shall not apply to the extent that, in the year preceding the year in which the dividends or distributions were made, the subsidiary insurer's liability for Idaho premium tax was less than the amount of Idaho income tax for which the insurer would have been liable in such year had the insurer been subject to Idaho income taxation rather than premium taxation.

SECTION 8. This act shall be in full force and effect on and after September 1, 2004.

Approved March 10, 2004.

CHAPTER 46
(S.B. No. 1365)

AN ACT
APPROPRIATING MONEYS TO THE LIEUTENANT GOVERNOR FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

FOR:	
Lieutenant Governor	$117,800
FROM:	
General Fund	$117,800

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, 2004, through June 30, 2005, 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 10, 2004.

CHAPTER 47
(S.B. No. 1377)

AN ACT
APPROPRIATING MONEYS TO THE LEGISLATIVE COUNCIL FOR FISCAL YEAR 2005.

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, 2004, through June 30, 2005:

A. LEGISLATIVE SERVICES OFFICE:	
FROM:	
General Fund	$3,692,600
Miscellaneous Revenue Fund	44,000
Professional Services Fund	1,128,800
TOTAL	$4,865,400
B. LEGISLATIVE TECHNOLOGY:	
FROM:	
General Fund	$ 342,300
C. OFFICE OF PERFORMANCE EVALUATIONS:	
FROM:	
General Fund	$ 624,200
GRAND TOTAL	$5,831,900

Approved March 10, 2004.

CHAPTER 48
(H.B. No. 500, As Amended in the Senate)

AN ACT
RELATING TO AN ELECTION CANDIDATE DISAGREEING WITH RECOUNT RESULTS; AMENDING SECTION 34-2308, IDAHO CODE, TO PROVIDE WHEN A CANDIDATE MAY APPEAL THE RESULTS OF A RECOUNT OR THE DETERMINATION THAT A RECOUNT IS NOT NECESSARY AND TO REVISE PROCEDURES.

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

SECTION 1. That Section 34-2308, Idaho Code, be, and the same is hereby amended to read as follows:

34-2308. CANDIDATE DISAGREEING WITH RECOUNT RESULTS -- APPEAL. (1) Any candidate may appeal the results of a recount or the determination that a recount is not necessary when:

(a) Any candidate for the office for which recount has been requested ~~disagreeing~~ disagrees with the results of the recount and ~~alleging~~ alleges that the law has been misinterpreted or misapplied~~, and if~~;

(b) ~~It~~ appears that a different application or interpretation of the law would have required a general recount where no general recount was ordered; or

(c) It appears that a different application or interpretation of the law would not have required a general recount where a general recount was ordered;

then the candidate claiming the misinterpretation or the misapplication of law may appeal to the district court in the county concerned if the office ~~be~~ is a county or municipal office or to the district court in Ada county if the office ~~be~~ is a federal or state office.

(2) The submittal on appeal shall be by brief and submitted within twenty-four (24) hours following the recount. The appeal submittal shall be served upon the attorney general of Idaho within twenty-four (24) hours of filing it within the district court. The appeal submittal shall also be served upon the opposing candidate(s) within twenty-four (24) hours of filing the appeal in the district court.

(3) The attorney general, in consultation with the secretary of state, may respond to the submittal by brief.

(4) The opposing candidate(s) may respond to the submittal by brief.

(5) At the discretion of the district court judge, a hearing may be ordered within five (5) days of the filing of the appeal. All parties required to be served with the appeal may participate fully in the hearing. The judge may determine that the appeal may be decided on the brief without a hearing.

(6) A decision thereon shall be given within five (5) days. Any appeal from the decision of the district court must be taken within twenty-four (24) hours after a decision is rendered. A decision on the appeal shall be given within five (5) days. No further appeal shall be allowed.

Approved March 16, 2004.

CHAPTER 49
(S.B. No. 1210)

AN ACT

RELATING TO FORGERY AND COUNTERFEITING; AMENDING SECTION 18-3601, IDAHO CODE, TO PROVIDE THAT PERSONS WHO FALSELY MAKE, ALTER, FORGE OR COUNTERFEIT FEDERAL RESERVE NOTES OR UNITED STATES CURRENCY OR MONEY WITH INTENT TO DEFRAUD ANOTHER SHALL BE GUILTY OF FORGERY AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 18-3618, IDAHO CODE,

RELATING TO THE CIRCULATION OF ILLEGAL MONEY; AND AMENDING SECTION 18-7803, IDAHO CODE, TO DELETE A CODE REFERENCE.

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

SECTION 1. That Section 18-3601, Idaho Code, be, and the same is hereby amended to read as follows:

18-3601. FORGERY DEFINED. Every person who, with intent to defraud another, falsely makes, alters, forges or counterfeits, any charter, letters, patent, deed lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, federal reserve note, United States currency or United States money, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any state controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit action demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is ~~bylaw~~ by law evidence, or any record of any judgment of a court, or the return of any officer to any process of any court, is guilty of forgery.

SECTION 2. That Section 18-3618, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 18-7803, Idaho Code, be, and the same is hereby amended to read as follows:

18-7803. DEFINITIONS. As used in this chapter, (a) "Racketeering" means any act which is chargeable or indictable under the following sections of the Idaho Code or which are equivalent acts chargeable or indictable as equivalent crimes under the laws of any other jurisdiction:

(1) Homicide (section 18-4001, Idaho Code);

(2) Robbery, burglary, theft, forgery, counterfeiting, and related

crimes (sections 18-1401, 18-1405, 18-2403, 18-2407, 18-3123, 18-3124, 18-3125, 18-3601, 18-3602, 18-3603, 18-3605, 18-3606, 18-3607, 18-3609, 18-3610, 18-3614, 18-3615, ~~18-3618,~~ 18-4630, 18-6501 and 49-518, Idaho Code);

(3) Kidnapping (section 18-4501, Idaho Code);

(4) Prostitution (sections 18-5601, 18-5602, 18-5603, 18-5604, 18-5605, 18-5606, 18-5608 and 18-5609, Idaho Code);

(5) Arson (sections 18-801, 18-802, 18-803, 18-804 and 18-805, Idaho Code);

(6) Assault (sections 18-908 and 18-4015, Idaho Code);

(7) Lotteries and gambling (sections 18-3801, 18-3802, 18-3809, 18-4902, 18-4903, 18-4904, 18-4905, 18-4906 and 18-4908, Idaho Code);

(8) Indecency and obscenity (sections 18-1515, 18-1518, 18-4103, 18-4103A, 18-4104, 18-4105, 18-4105A and 18-4107, Idaho Code);

(9) Poisoning (sections 18-4014 and 18-5501, Idaho Code);

(10) Fraudulent practices, false pretenses, insurance fraud, financial transaction card crimes and fraud generally (sections 18-2403, 18-2706, 18-3002, 18-3101, 18-3124, 18-3125, 18-3126, 18-6713, 41-293, 41-294 and 41-1306, Idaho Code);

(11) Alcoholic beverages (sections 23-602, 23-606, 23-610, 23-703, 23-905, 23-914, 23-928, 23-934 and 23-938, Idaho Code);

(12) Cigarette taxes (sections 63-2505 and 63-2512(b), Idaho Code);

(13) Securities (sections 30-1403, 30-1403A, 30-1404, 30-1405, 30-1406, 30-1438 and 30-1439, Idaho Code);

(14) Horseracing (section 54-2512, Idaho Code);

(15) Interest and usurious practices (sections 28-45-401 and 28-45-402, Idaho Code);

(16) Corporations (sections 18-1901, 18-1902, 18-1903, 18-1904, 18-1905, 18-1906 and 30-1510, Idaho Code);

(17) Perjury (sections 18-5401 and 18-5410, Idaho Code);

(18) Bribery and corrupt influence (sections 18-1352 and 18-1353, Idaho Code);

(19) Controlled substances (sections 37-2732(a), (b), (c), (e) and (f), 37-2732B, 37-2734 and 37-2734B, Idaho Code);

(20) Motor vehicles (sections 49-228, 49-231, 49-232 and 49-518, Idaho Code);

(21) Terrorism (section 18-8103, Idaho Code).

(b) "Person" means any individual or entity capable of holding a legal or beneficial interest in property;

(c) "Enterprise" means any sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or any group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities; and

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

Approved March 16, 2004.

CHAPTER 50
(S.B. No. 1221)

AN ACT

RELATING TO JUVENILE CORRECTIONS; AMENDING SECTION 18-2505, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 20-504, IDAHO CODE, TO REVISE THE DUTIES OF THE DEPARTMENT OF JUVENILE CORRECTIONS; AMENDING SECTION 20-524, IDAHO CODE, TO STRIKE PROVISIONS RELATING TO PAYMENT BY THE DEPARTMENT OF CERTAIN DETENTION COSTS; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-524A, IDAHO CODE, TO PROVIDE FOR PAYMENT OF CERTAIN DETENTION COSTS BY THE DEPARTMENT; AND AMENDING SECTION 20-532A, IDAHO CODE, TO PROVIDE FOR TRANSPORTATION OF CERTAIN APPREHENDED JUVENILES TO THE DEPARTMENT'S NEAREST REGIONAL FACILITY.

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

SECTION 1. That Section 18-2505, Idaho Code, be, and the same is hereby amended to read as follows:

18-2505. ESCAPE BY ONE CHARGED WITH, CONVICTED OF, OR ON PROBATION FOR A FELONY -- ESCAPE BY A JUVENILE FROM CUSTODY. (1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any correctional facility, as defined in section 18-101A, Idaho Code, including any private correctional facility, or who while outside the walls of such correctional facility in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such correctional facility, who escapes or attempts to escape from such officer or person, or from such correctional facility, or from such factory, farm or other place without the walls of such correctional facility, shall be guilty of a felony, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged. Escape shall be deemed to include abandonment of a job site or work assignment without the permission of an employment supervisor or officer.

(2) Any person who is years charged with, found to have committed, adjudicated for or is on probation for an offense which would be a felony if committed by an adult, and who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of any officer or person shall be subject to proceedings under chapter 5, title 20, Idaho Code, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to section 20-508 or 20-509, Idaho Code, the person shall be guilty of a felony for a violation of this section and shall be subject to adult criminal proceedings.

SECTION 2. That Section 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 or within the department's regions.

(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 or private 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 or program 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 provide technical assistance to counties ~~in~~ establishing ~~meaningful~~ research-based 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 for county juvenile probation services, as well as qualifications for and standards for the training of juvenile probation officers.

(15) All of the powers and duties imposed upon or granted to the director of the department of health and welfare or the board of health and welfare pursuant to chapter 18, title 16, Idaho Code, are hereby transferred to the director of the department of juvenile corrections. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law with respect to chapter 18, title 16, Idaho Code, and shall be the successor in law to all contractual obligations entered into by his predecessor in law.

SECTION 3. That Section 20-524, Idaho Code, be, and the same is hereby amended to read as follows:

20-524. SUPPORT OF JUVENILE -- REIMBURSEMENT FOR COSTS INCURRED. -- ~~PAYMENT OF DETENTION COSTS.~~ (1) Whenever a juvenile is placed by the court in custody other than that of the juvenile's parents, guardian or custodian, after due notice to the parent, guardian or other persons legally obligated to care for and support the juvenile, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the juvenile. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(2) If the juvenile is detained, the court may order that the parents or other legal guardian of the juvenile contribute to the costs of detention in an amount to be set by the court. The order may be filed and shall have the effect of a civil judgment. It is the intent of the legislature that foster parents or a parent or legal guardian receiving public assistance relating to that juvenile should not benefit from the continued receipt of payments or public assistance from any state or federal agency while the juvenile is detained. The department of health and welfare is directed to promulgate a rule implementing this intent.

(3) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code.

(4) Failure to include these provisions does not affect the validity of the support order or decree. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

~~(5) If the juvenile is committed to the custody of the department of juvenile corrections pursuant to chapter 5, title 20, Idaho Code, the department shall reimburse the county for the period of time in excess of five (5) days during which the juvenile is housed at a detention~~

~~facility. The time period shall begin to run from the day the department receives a copy of the order of commitment executed by the court. Facsimile transmissions of the order are acceptable.~~

SECTION 4. 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 20-524A, Idaho Code, and to read as follows:

20-524A. PAYMENT OF DETENTION COSTS. If the juvenile is committed to the custody of the department of juvenile corrections pursuant to chapter 5, title 20, Idaho Code, the department shall reimburse the county for the period of time in excess of five (5) calendar days during which the juvenile is housed at a detention facility. This time period shall begin to run on the first business day the department receives a copy of the order of commitment, executed by the court. Orders received by the department after 3 o'clock p.m., mountain standard time, on a business day, will be considered to have been received the next business day. Facsimile transmissions of the order are acceptable.

SECTION 5. That Section 20-532A, Idaho Code, be, and the same is hereby amended to read as follows:

20-532A. ORDER FOR APPREHENSION AND DETENTION OF ESCAPEES FROM CUSTODY. Upon a finding by the Idaho department of juvenile corrections that a juvenile in the custody of the department has escaped from custody, a written order signed by the director or his designee shall be a sufficient order for detention for any law enforcement officer to apprehend and take into custody such person. It is hereby made the duty of all sheriffs, police, constables, parole officers, prison officials and other peace officers, to execute such order. From and after the issuance of the detention order and until taken into custody, the escapee shall be considered a fugitive from justice. Upon apprehension, the juvenile shall be detained in the closest available detention center and shall thereafter be transported by the department as soon as possible or, at the discretion of the detaining authority, the juvenile may be transported directly by that authority to the department's ~~juvenile management center~~ nearest regional facility.

Approved March 16, 2004.

CHAPTER 51
(S.B. No. 1237)

AN ACT

RELATING TO PYRAMID SCHEMES; AMENDING SECTION 18-3101, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROHIBIT CERTAIN ACTIONS RELATING TO PYRAMID PROMOTIONAL SCHEMES, TO DELETE THE DEFINITION FOR "CHAIN DISTRIBUTOR" OR "PYRAMID DISTRIBUTOR SCHEME," TO DEFINE TERMS, TO REVISE DEFINITIONS, TO PROVIDE THAT CERTAIN PLANS OR OPERATIONS SHALL NOT BE PROHIBITED OR DEFINED AS PYRAMID PROMOTIONAL SCHEMES, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 18-3101, Idaho Code, be, and the same is hereby amended to read as follows:

18-3101. ~~CHAIN--OR~~ PYRAMID ~~DISTRIBUTOR~~ PROMOTIONAL SCHEMES PROHIBITED -- PENALTIES -- SALE OF INTEREST VOIDABLE -- SCOPE OF REMEDY. (1) It is illegal and prohibited for any person, or any agent or employee thereof, to establish, promote, offer, operate, advertise or grant participation in ~~a chain or~~ any pyramid ~~distributor~~ promotional scheme.

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

(a) ~~A--"chain-distributor-scheme"-or-a-"pyramid-distributor-scheme" means-any-plan-or-operation-whereby-a-person-gives-consideration-for the-opportunity-to-receive-consideration--to--be--derived--primarily from--any--person's-introduction-of-other-persons-into-participation in-the-plan-or-operation-rather-than-from-the-sale--of--goods,--services,--or--other-intangible-property-by-the-person-or-other-persons introduced-into-the-plan-or-operation~~ "Appropriate inventory repurchase program" means a program by which a plan or operation repurchases, upon request at the termination of a participant's business relationship with the plan or operation and based upon commercially reasonable terms, current and marketable inventory purchased and maintained by the participant for resale, use or consumption, provided such plan or operation clearly describes the program in its recruiting literature, sales manual, or contracts with participants, including the manner in which the repurchase is exercised and disclosure of any inventory that is not eligible for repurchase under the program.

(b) "Commercially reasonable terms" means the repurchase of current and marketable inventory within twelve (12) months from the date of original purchase at not less than ninety percent (90%) of the original net cost to the participant, less appropriate set-offs and legal claims, if any. In the case of service products, the repurchase of such service products shall be on a pro rata basis, unless clearly disclosed otherwise to the participant, in order to qualify as "commercially reasonable terms."

(c) "Compensation" means a payment of any money, thing of value, or financial benefit.

(d) "Consideration" means ~~anything--of--value;~~ a payment of any money, or the purchase of goods, services, or intangible property but shall not include:

1. The ~~not-for-profit-sale-of--sales--demonstration--equipment and--materials--for-use~~ purchase of goods or services furnished at cost to be used in making sales and not for resale.

2. Time ~~or~~ and effort spent in ~~selling~~ pursuit of sales or recruiting activities.

(e) "Current and marketable" includes inventory that, in the case of consumable or durable goods, is unopened, unused and within its commercially reasonable use of shelf-life period. In the case of services and intangible property, including internet sites, "current and marketable" means the unexpired portion of any contract or agreement. The term "current and marketable" does not include inventory that has been clearly described to the participant prior to purchase as a seasonal, discontinued, or special promotion product

not subject to the plan or operation's inventory repurchase program.

(f) "Inventory" includes both goods and services, including company-produced promotional materials, sales aids and sales kits that the plan or operation requires independent salespersons to purchase.

(g) "Inventory loading" means that the plan or operation requires or encourages its independent salespersons to purchase inventory in an amount that unreasonably exceeds that which the salesperson can expect to resell for ultimate consumption, or to use or consume, in a reasonable time period.

(h) "Participant" means a natural person who joins a plan or operation.

(~~e~~i) "Person" means a natural person, partnership, corporation, trust, estate, business trust, joint venture, unincorporated association, or any other legal or commercial entity.

(j) "Promote" means to contrive, prepare, establish, plan, operate, advertise or otherwise induce or attempt to induce another person to be a participant.

(k) "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation rather than from the sales of goods, services or intangible property to participants or by participants to others.

(3) A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or upon payment of anything of value by a person whereby the person obtains any other property in addition to the right to receive consideration, does not change the identity of the scheme as a ~~chain-or~~ pyramid ~~distributor~~ promotional scheme.

(4) Any person, or any agent or employee thereof who ~~wilfully~~ willfully and knowingly promotes, offers, advertises, or grants participation in a ~~chain-or~~ pyramid ~~distributor~~ promotional scheme shall be guilty of a felony.

(5) All ~~chain--or~~ pyramid ~~distribution~~ promotional schemes offered by the same person, or agents or employees thereof, or any person controlled by or affiliated with such person, for the same type of consideration, at substantially the same period of time and for the same general purpose, shall be deemed to be one (1) integrated ~~chain-or~~ pyramid ~~distributor~~ promotional scheme, even though such ~~chain-or~~ pyramid ~~distributor~~ promotional schemes may be given different names or other designations.

(6) Nothing in this section or in any rule promulgated pursuant to this section shall be construed to prohibit a plan or operation, or to define such plan or operation as a pyramid promotional scheme, based upon the fact that participants in the plan or operation give consideration in return for the right to receive compensation based upon purchases of goods, services or intangible property by participants for personal use, consumption or resale, provided the plan or operation implements an appropriate inventory repurchase program and does not promote inventory loading.

(7) Any violation of this ~~act~~ section shall also be deemed an unfair and deceptive practice in violation of the Idaho consumer protection act. Any person aggrieved by a violation of this section can

recover monetary damages pursuant to the Idaho consumer protection act.

(~~7~~8) The rights and remedies that are granted under the provisions of this section to purchasers in ~~chain--or~~ pyramid ~~distributor~~ promotional schemes are independent of and in addition to any other right or remedy available to them in law or equity, and nothing contained herein shall be construed to diminish or abrogate any such right or remedy.

Approved March 16, 2004.

CHAPTER 52
(S.B. No. 1244)

AN ACT

RELATING TO PERSONS ELIGIBLE FOR APPOINTMENT AS GUARDIAN OR CONSERVATOR; AMENDING SECTION 15-5-311, IDAHO CODE, TO PROHIBIT APPOINTMENT OF A CONVICTED FELON AS GUARDIAN EXCEPT UPON CONDITIONS SPECIFIED; AND AMENDING SECTION 15-5-410, IDAHO CODE, TO PROHIBIT APPOINTMENT OF A CONVICTED FELON AS CONSERVATOR EXCEPT UPON CONDITIONS SPECIFIED.

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

SECTION 1. That Section 15-5-311, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-311. WHO MAY BE GUARDIAN -- PRIORITIES. (a) Any competent person, except as set forth hereafter, or a suitable institution may be appointed guardian of an incapacitated person.

(b) The person preferred by the incapacitated person shall be appointed guardian unless good cause be shown why appointment of such person is contrary to the best interests of the incapacitated person. If the incapacitated person is unable to express a preference, any previous expression, including a durable power of attorney for health care, may be considered by the court.

(c) Persons who are not disqualified have priority for appointment as guardian in the following order:

(1) The person preferred by the incapacitated person. The court shall always consider the wishes expressed by an incapacitated person as to who shall be appointed guardian;

(2) The spouse of the incapacitated person;

(3) An adult child of the incapacitated person;

(4) A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(5) Any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;

(6) A person nominated by the person who is caring for him or paying benefits to him.

(d) No convicted felon shall be appointed as a guardian of an incapacitated person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the incapacitated person.

SECTION 2. That Section 15-5-410, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-410. WHO MAY BE APPOINTED CONSERVATOR -- PRIORITIES. (a) The court may appoint an individual, except as set forth hereafter, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1) an individual or corporation nominated by the protected person if he is fourteen (14) or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(2) the spouse of the protected person;

(3) an adult child of the protected person;

(4) a conservator, guardian of property or other like fiduciary (but not a fiduciary serving only as a trustee) appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(5) a parent of the protected person, or a person nominated by the will of a deceased parent;

(6) any relative of the protected person with whom he has resided for more than six (6) months prior to the filing of the petition;

(7) a person nominated by the person who is caring for him or paying benefits to him.

(b) A person in priorities (2), (3), (4), (5), or (6) of subsection (a) of this section may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

(c) No convicted felon shall be appointed as a conservator of the estate of a protected person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the protected person.

Approved March 16, 2004.

CHAPTER 53
(S.B. No. 1245)

AN ACT

RELATING TO CONSERVATORS; AMENDING PART 4, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-407A, IDAHO CODE, TO AUTHORIZE APPOINTMENT OF TEMPORARY AND EMERGENCY CONSERVATORS, AND TO GOVERN CONDITIONS OF AN APPOINTMENT, DUTIES OF A TEMPORARY CONSERVATOR AND PROCEDURES GOVERNING THE APPOINTMENT; AND AMENDING SECTION 15-5-312, IDAHO CODE, TO FURTHER GOVERN POWERS AND DUTIES OF A GUARDIAN.

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

SECTION 1. That Part 4, Chapter 5, 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 15-5-407A, Idaho Code, and to read as follows:

15-5-407A. TEMPORARY AND EMERGENCY APPOINTMENTS. (a) The court may appoint upon an ex parte petition, without hearing, a person to act as temporary conservator, pending the final hearing, upon a finding supported by statement made under oath that an emergency situation exists. The emergency appointment shall remain in effect no longer than ninety (90) days, unless extended for good cause upon application of the temporary conservator.

(b) A report from a medical doctor or a licensed psychologist to the effect that the person to be protected is unable to take care of his own activities of daily living, together with any one (1) of the following, shall be considered an emergency situation:

(1) A finding that the person to be protected is unable to reasonably manage said person's finances and as a result the person's assets will be wasted or dissipated unless proper management is provided without delay; or

(2) A finding that the person to be protected has been taken advantage of and that the situation is likely to continue unless a temporary appointment is made without delay; or

(3) A finding that funds are needed for support, care and welfare of the person to be protected and a temporary appointment is necessary to secure such funding; or

(4) A finding that other conditions exist that in the court's determination necessitate the appointment of a temporary conservator.

(c) The duty of a temporary conservator shall be to preserve and protect the assets of the estate and to provide the funding necessary for the support, care and welfare of the person to be protected. The conservator shall have all the powers enumerated in section 15-5-424, Idaho Code, to be exercised, however, only within said limited context. The court may expand the duties of the temporary conservator upon application and a finding that a proposed action is necessary prior to the hearing.

(d) A temporary conservator shall not remove any of the assets of the estate from the jurisdiction of the court without a specific order to that effect.

(e) The petition for appointment of a temporary conservator must be accompanied by a petition for appointment of a conservator pursuant to section 15-5-404, Idaho Code.

(f) If the person to be protected is a minor, the court shall appoint a guardian ad litem for said minor at the same time the temporary appointment of a conservator is made.

(g) Upon application by an interested party and a hearing, the court may limit the powers and duties of the temporary conservator.

(h) Notice of the appointment of a temporary conservator shall be given to all interested persons by the petitioner within five (5) days after the date of such appointment.

(i) The court shall hold a hearing on the appropriateness of the temporary appointment within five (5) days if requested by an interested party. In such event, if a visitor and physician have not already been

appointed, the court shall appoint a visitor to meet with the alleged incapacitated person and to make a written report to the court, and shall appoint a physician to examine the proposed ward and submit a written report to the court, giving preference to the appointment of the proposed ward's treating physician if the proposed ward has a current treating physician.

SECTIO N 2. That Section 15-5-312, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-312. GENERAL PO WERSA NDDUTIES O FGUARDIA N.(a) A guardian of an incapacitated person has the powers and responsibilities of a parent who has not been deprived of custody of his unemancipated minor child except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons for acts of the ward, and except as hereinafter limited. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court when the guardianship is limited:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(2) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward, and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service. A guardian shall be automatically entitled to any information governed by the health insurance portability and accountability act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164, and the appointment of such guardian shall be deemed to grant such release authority.

(4) If no conservator for the estate of the ward has been appointed, ~~he may:~~

~~(A) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;~~

~~(B) receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one (1) of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs~~ the guardian may institute proceedings to appoint a conservator. In no circumstances shall the guardian exercise any of the powers of a conservator.

(5) A guardian shall be required to report as provided in section 15-5-419, Idaho Code.

(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(c) A guardian may delegate certain of his responsibilities for decisions affecting the ward's well-being to the ward when reasonable under all of the circumstances.

Approved March 16, 2004.

CHAPTER 54
(S.B. No. 1246)

AN ACT

RELATING TO APPORTIONMENT OF ESTATE TAX; REPEALING SECTION 15-3-916, IDAHO CODE; AMENDING CHAPTER 3, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 13, CHAPTER 3, TITLE 15, IDAHO CODE, TO PROVIDE ADOPTION OF THE UNIFORM ESTATE TAX APPORTIONMENT ACT, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO SPECIFY THE RULES APPLICABLE TO THE APPORTIONMENT BY WILL OR OTHER DISPOSITIVE INSTRUMENT, TO SPECIFY STATUTORY RULES APPLICABLE WHEN THERE IS NO CONTROLLING INSTRUMENT, TO SPECIFY THE RULES APPLICABLE TO CREDITS AND DEFERRALS OF ESTATE TAXES, TO SPECIFY CONDITIONS FOR ADVANCEMENT OF TAX FOR UNINSULATED PROPERTY, TO PROVIDE AN INITIAL APPORTIONMENT AND RECAPTURE OF SPECIAL ELECTIVE BENEFITS, TO AUTHORIZE SECURING PAYMENT OF ESTATE TAX FROM PROPERTY IN POSSESSION OF A FIDUCIARY, TO AUTHORIZE COLLECTION OF ESTATE TAX BY A FIDUCIARY, TO GOVERN THE RIGHT OF REIMBURSEMENT, TO AUTHORIZE AN ACTION TO DETERMINE OR ENFORCE THE PROVISIONS OF THIS ACT, TO PROVIDE UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE SEVERABILITY, AND TO PROVIDE DELAYED APPLICATION.

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

SECTION 1. That Section 15-3-916, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 15, Chapter 3, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW PART, to be known and designated as Part 13, Chapter 3, Title 15, Idaho Code, and to read as follows:

PART 13
UNIFORM ESTATE TAX APPORTIONMENT

15-3-1301. SHORT TITLE. This part may be cited as the "Uniform Estate Tax Apportionment Act."

15-3-1302. DEFINITIONS. As use in this part:

(a) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(1) Any claim or expense allowable as a deduction for purposes of the tax;

(2) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(3) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(b) "Estate tax" means a federal, state, or foreign tax, however denominated, imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(c) "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

(d) "Person" has the same meaning set forth in section 15-1-201(33), Idaho Code.

(e) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(f) "Time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest.

(g) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction:

(1) For taxes paid or required to be paid; or

(2) For any special valuation adjustment.

15-3-1303. APPORTIONMENT BY WILL OR OTHER DISPOSITIVE INSTRUMENT. (a) Except as otherwise provided in subsection (c), the following rules apply:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly regardless of whether such will is probated.

(2) Any portion of an estate tax not apportioned pursuant to paragraph (a)(1) of this section must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs the apportionment

of an estate tax. If conflicting apportionment provisions appear in two (2) or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph:

(A) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(B) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(3) If any portion of an estate tax is not apportioned pursuant to paragraph (a)(1) of this section or paragraph (a)(2) of this section, and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(b) Subject to subsection (c) of this section, and unless the decedent expressly and unambiguously directs the contrary, the following rules apply:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest,

(A) The tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument, or

(B) If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

(3) Except as otherwise provided in paragraph (4) of this subsection, if an apportionment provision directs that an estate tax be apportioned to property in which one (1) or more time-limited interests exist, other than interests in specified property under section 15-3-1307, Idaho Code, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one (1) or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons enti-

tled to receive the interests.

(c) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

(d) For purposes of this section, a decedent's will, revocable trust, or other dispositive instrument that contains the applicable phrase(s) set forth in paragraphs (1), (2) or (3) of this subsection (or other substantially similar language in other dispositive instruments not listed in said paragraphs), shall satisfy the part's requirement for an express and unambiguous direction as to what properties are to bear or not bear the payment of those taxes. Other language may be used to direct the apportionment of the estate tax, but if it is determined by a court that the direction in the will, trust, or other dispositive instrument does not expressly and unambiguously direct the apportionment of all of the estate tax with respect to all property that constitutes the gross estate, the estate tax that is not clearly and unambiguously apportioned shall be apportioned in accordance with the provisions of this part. The portions of said phrase(s) set forth in parentheses indicate suggestions or descriptions of alternate language for the word or phrase immediately preceding the language in parentheses which may be added, deleted, or varied in the instrument. Said phrases are:

(1) In the case of a will, "all taxes arising as a result of my death, whether attributable to assets passing under this will or otherwise, shall be paid out of the residue of my probate estate (or apportioned to other specifically identified assets, probate or otherwise)"; or

(2) In the case of a revocable trust, "all taxes arising as a result of the Grantor's (Settlor's or Trustor's) death, whether attributable to assets passing under this trust instrument or otherwise, shall be paid out of the residue of the trust estate (or apportioned to other specifically identified assets in trust or otherwise)"; or

(3) In the case of a charitable remainder trust as to assets already transferred to or in the trust, "no estate taxes and state death taxes shall be charged or apportioned to and paid from the assets of this charitable remainder trust" or "The (lifetime or term) annuity (unitrust) interest of the Successor Recipient (Beneficiary) will take effect upon the death of the Initial Recipient (Beneficiary) only if the Successor Recipient (Beneficiary) furnishes the funds for payment of any federal estate taxes and state death taxes for which the Trustee may be liable upon the death of the Initial Recipient (Beneficiary). If the funds are not furnished by the Successor Recipient (Beneficiary), the annuity (unitrust) period shall terminate on the death of the Initial Recipient (Beneficiary), notwithstanding any other provision in this instrument to the contrary."

15-3-1304. STATUTORY APPORTIONMENT OF ESTATE TAXES. To the extent that apportionment of an estate tax is not controlled by an instrument described in section 15-3-1303, Idaho Code, and except as otherwise pro-

vided in sections 15-3-1306 and 15-3-1307, Idaho Code, the following rules apply:

(1) Subject to subsections (2), (3) and (4) of this section, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to whom the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of section 2044 of the Internal Revenue Code of 1986 or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in section 15-3-1303(b)(4), Idaho Code, and except as to property to which section 15-3-1307, Idaho Code applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

15-3-1305. CREDITS AND DEFERRALS. Except as otherwise provided in sections 15-3-1306 and 15-3-1307, Idaho Code, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

15-3-1306. INSULATED PROPERTY, ADVANCEMENT OF TAX. (a) In this section:

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (c) of this section.

(3) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

(b) If an estate tax is to be advanced pursuant to subsection (c) of this section by persons holding interests in uninsulated property subject to a time-limited interest other than property to which section 15-3-1307, Idaho Code applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

(c) Subject to section 15-3-1309(b) and (d), Idaho Code, an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under section 15-3-1302(a)(2), Idaho Code, as if those interests were in uninsulated property.

(d) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(e) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(f) Upon a distribution of insulated property for which, pursuant to subsection (d) of this section, the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder.

15-3-1307. APPORTIONMENT AND RECAPTURE OF SPECIAL ELECTIVE BENEFITS. (a) In this section:

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(A) A reduced valuation of specified property that is included in the gross estate;

(B) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(C) An exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

(b) If an election is made for one (1) or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The

aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

15-3-1308. SECURING PAYMENT OF ESTATE TAX FROM PROPERTY IN POSSESSION OF FIDUCIARY. (a) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee.

15-3-1309. COLLECTION OF ESTATE TAX BY FIDUCIARY. (a) A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

(b) Except as otherwise provided in section 15-3-1306, Idaho Code, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) Any person having an interest in the apportionable estate which is not exonerated from the tax;

(2) Any other person having an interest in the apportionable estate;

(3) Any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person pursuant to this part may not exceed the value of the person's interest.

15-3-1310. RIGHT OF REIMBURSEMENT. (a) A person required under section 15-3-1309, Idaho Code, to pay an estate tax greater than the amount due from the person under section 15-3-1303 or 15-3-1304, Idaho Code, has a right to reimbursement from another person to the extent that the other person has not paid the tax required by section 15-3-1303 or 15-3-1304, Idaho Code, and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under section 15-3-1309(b), Idaho Code.

(b) A fiduciary may enforce the right of reimbursement under subsection (a) of this section on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

15-3-1311. ACTION TO DETERMINE OR ENFORCE PART. A fiduciary, transferee, or beneficiary of the gross estate may maintain an action including, but not limited to, petitioning for declaratory judgment, to have a court determine and enforce this part or may petition a court pursuant to section 15-3-704 or 15-7-201, Idaho Code, whichever is applicable.

15-3-1312. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

15-3-1313. SEVERABILITY. If any provision of this part or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

15-3-1314. DELAYED APPLICATION. (a) Sections 15-3-1303 through 15-3-1307, Idaho Code, do not apply to the estate of a decedent who dies prior to January 1, 2005.

(b) For the estate of a decedent who dies on or after the effective date of this act, but prior to January 1, 2005, and as to which sections 15-3-1303 through 15-3-1307, Idaho Code do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before the effective date of this act.

Approved March 16, 2004.

CHAPTER 55
(S.B. No. 1248)

AN ACT

RELATING TO MATTERS OF PROBATE; AMENDING SECTION 15-1-201, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 15-3-706, IDAHO CODE, TO PROVIDE INSTRUCTION REGARDING THE INVENTORY OF PROPERTY PREPARED BY A PERSONAL REPRESENTATIVE; AND AMENDING SECTION 15-7-403, IDAHO CODE, TO PROVIDE THAT APPOINTMENT OF TRUSTEE DOES NOT REQUIRE A HEARING.

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 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~~ business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial 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" is as defined in section 32-903, Idaho Code.

(55) "Community property" is as defined in section 32-906, Idaho Code.

SECTION 2. That Section 15-3-706, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-706. DUTY OF PERSONAL REPRESENTATIVE -- INVENTORY AND APPRAISEMENT. Within three (3) months after his appointment, a personal representative, ~~who is not~~ except for a special administrator or a successor to another representative who has previously discharged this duty, shall prepare ~~and file or mail~~ an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to ~~heirs, devisees, the state tax commission and to~~ interested persons who request it, ~~or~~ and he may file the original of the inventory with the court.

SECTION 3. That Section 15-7-403, Idaho Code, be, and the same is hereby amended to read as follows:

15-7-403. APPOINTMENT OF TRUSTEE AND LETTERS OF TRUSTEESHIP. Upon application to the court in which the trust is registered in the state of Idaho, and ~~upon hearing after~~ notice to all interested parties, the court may appoint the trustee as such (or as successor trustee, if applicable). Upon filing of an acceptance of the duties of the office of trustee by the trustee, containing the oath of the trustee to the effect that the trustee will perform the duties of his office according to the law, letters of trusteeship shall be issued, evidencing the authority of the trustee. Such letters may be recorded in the office of the county recorder in any county in which property held by the trust is located and, from the time of filing of such letters for record, notice is imparted to all persons of the contents of such letters of trusteeship. The application to the court shall contain at least the following:

(1) A statement of the interest of the applicant in the matter, including the priority of the person whose appointment is sought and a statement of the names and addresses and priority for appointment of any other persons having a prior or equal right to the appointment under law or the terms of the trust;

(2) A description of the trust;

(3) A statement identifying and indicating the address of any existing trustee of the trust whose appointment has not been terminated;

(4) The name and address of the person or entity for whom appointment is sought;

(5) A statement identifying and indicating the address of all current and contingent beneficiaries of the trust, and the ages of any such beneficiaries that are minors;

(6) A statement that a copy of the trust is either in the possession of the court or accompanies the application, or that copies of portions of the trust accompany the application showing:

(a) The grantor and original trustee of the trust,

(b) Any language regarding the appointment of an original or successor trustee, including any limitations thereon,

(c) The signature page(s) of the trust,

(d) Any amendments to the trust which relate to the appointment of an original or successor trustee, including any limitations thereon;

(7) A statement that, after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the trust;

(8) If the application is for appointment of a successor trustee, a statement of the method of termination of the appointment of the prior trustee and the effective date thereof and that copies of any documents relating thereto are in the possession of the court or accompany the application.

Approved March 16, 2004.

CHAPTER 56
(S.B. No. 1249)

AN ACT

RELATING TO PROVISIONS OF A LIVING WILL AND A DURABLE POWER OF ATTORNEY; AMENDING SECTION 39-4504, IDAHO CODE, TO ESTABLISH THE EFFECT OF CERTAIN LIVING WILLS; AMENDING SECTION 39-4505, IDAHO CODE, TO

ESTABLISH THE EFFECT OF A DURABLE POWER OF ATTORNEY FOR HEALTH CARE, TO GOVERN APPLICATION UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4507, IDAHO CODE, TO REMOVE A CONDITION GOVERNING THE EFFECT OF A DIRECTIVE; AMENDING SECTION 56-1020, IDAHO CODE, TO RECOGNIZE APPLICABILITY OF A DIRECTIVE TO LIFESAVING PROCEDURES; AMENDING SECTION 56-1021, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 56-1026, IDAHO CODE, TO PROVIDE APPLICATION TO ALL HEALTH CARE PROVIDERS; AMENDING SECTION 56-1027, IDAHO CODE, TO PROVIDE APPLICATION TO ALL HEALTH CARE PROVIDERS; AND AMENDING SECTION 56-1029, IDAHO CODE, TO GOVERN APPLICATION OF IMMUNITY PROVISIONS TO ALL HEALTH CARE PROVIDERS.

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

SECTION 1. That Section 39-4504, Idaho Code, be, and the same is hereby amended to read as follows:

39-4504. LIVING WILL. Any competent person may execute a document known as a "living will." Such document shall be in the following form or in another form that contains the elements set forth in this section. A "living will" executed prior to the effective date of an amendment of this section, but which was in the "living will" form in effect under this section at the time of execution, or in another form that contained the elements set forth in this section at the time of execution, shall be deemed to be in compliance with this section. A "living will" or similar document executed in another state which substantially complies with this section shall be deemed to be in compliance with this section.

A LIVING WILL

A Directive to Withhold or to Provide Treatment

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

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

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

"Check One Box"

☐ If at any time I should become unable to communicate my instructions, then I direct that all medical treatment, care, and nutrition and hydration necessary to restore my health, sustain my life, and

to abolish or alleviate pain or distress be provided to me. Nutrition and hydration shall not be withheld or withdrawn from me if I would die from malnutrition or dehydration rather than from my injury, disease, illness or condition.

☐ If at any time I should become unable to communicate my instructions and where the application of artificial life-sustaining procedures shall serve only to prolong artificially my life, I direct such procedures be withheld or withdrawn except for the administration of nutrition and hydration as follows (if none of the following boxes are checked, then both nutrition and hydration shall be administered):

☐ Only hydration shall be administered;

☐ Only nutrition shall be administered;

☐ Both nutrition and hydration shall be administered.

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

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

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

~~4~~3. If I have been diagnosed as pregnant, ~~and that diagnosis is known to any interested person,~~ this directive shall have no force during the course of my pregnancy.

~~5~~4. I understand the full importance of this directive and am emotionally and mentally competent to make this directive. No participant in the making of this directive or in its being carried into effect, whether it be a medical doctor, my spouse, a relative, friend or any other person shall be held responsible in any way, legally, professionally or socially, for complying with my directions.

Signed .....

City, county and state of residence .....

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

Witness ..... Witness.....

Address ..... Address.....

SECTION 2. That Section 39-4505, Idaho Code, be, and the same is hereby amended to read as follows:

39-4505. DURABLE POWER OF ATTORNEY FOR HEALTH CARE. ~~In order to implement the general desires of a person as expressed in the "living will," a~~A competent person may appoint any adult person to exercise a durable power of attorney for health care. The power shall be effective only when the competent person is unable to communicate rationally. The person granted the durable power of attorney for health care may make health decisions for the person to the same extent that the principal could make such decisions given the capacity to do so.

The durable power of attorney for health care may list alternative holders of the power in the event that the first person named is unable or unwilling to exercise the power.

A durable power of attorney for health care may be in the following form, or in any other form which contains the elements set forth in the following form, including a form executed pursuant to the laws of another state.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT.

I, ...

(Insert your name and address)

do hereby designate and appoint .....

(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: (1) your treating health care provider, (2) a nonrelative employee of your treating health care provider, (3) an operator of a community care facility, or (4) a nonrelative employee of an operator of a community care facility).

as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures, including such desires set forth in a living will or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate

your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in ~~the~~ a living will or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations:

.....

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign each of the additional pages at the same time you date and sign this document.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. A. General Grant of Power and Authority. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(d) Consent to the donation of any of my organs for medical purposes.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and

the Medical Information Bureau, Inc. or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose, and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present, or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS.

(You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent .....
(Insert name, address, and telephone number of first alternate agent)

B. Second Alternate Agent .....
(Insert name, address, and telephone number of second alternate agent)

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL

(You Must Date and Sign This Power of Attorney)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on ..... at ....., ...
(Date) (City) (State)

.....
(You sign here)

(This Power of Attorney will not be valid unless it is signed by two qualified witnesses who are present when you sign or acknowledge your signature. If you have attached any additional pages to this form, you must date and sign each of the additional pages at the same time you date and sign this Power of Attorney.)

STATEMENT OF WITNESSES

(This document must be witnessed by two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community care facility. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

I declare under penalty of perjury under the laws of Idaho that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, nor an employee of an operator of a community care facility.

Signature: .....

Print name: .....

Date: ..... Residence address: .....

Signature: .....

Print name: .....

Date: ..... Residence address: .....

(At least one of the above witnesses must also sign)

I further declare under penalty of perjury under the laws of Idaho that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: .....

Signature: .....

NOTARY

(Signer of instrument may either have it witnessed as above or have his/her signature notarized as below, to legalize this instrument.)

State of Idaho

County of ..... ss.

On this ..... day of ..... ~~19~~....

before me personally appeared .....

(full name of signer of instrument)

to me known (or proved to me on basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

.....

(Signature of Notary)

SECTION 3. That Section 39-4507, Idaho Code, be, and the same is hereby amended to read as follows:

39-4507. EXECUTION OF DIRECTIVE. A directive shall be effective from the date of execution unless otherwise revoked. Nothing in this chapter shall be construed to prevent a competent person from reexecuting a directive at any time. ~~If--the--competent--person--becomes comatose--or--is--rendered-incapable-of-communicating-with-the-attending physician,-the-directive-shall-remain-in-effect-for-the-duration-of--the comatose-condition-or-until-such-time-as-the-patient's-condition-renders him-able-to-communicate-with-the-attending-physician.~~

SECTION 4. That Section 56-1020, Idaho Code, be, and the same is hereby amended to read as follows:

56-1020. LEGISLATIVE INTENT. It is the legislative intent to recognize the established common law and the fundamental right of a person to control the decisions relative to the rendering or withholding of their medical care. ~~Sections-56-1020-through-56-1035,-Idaho-Code,-in-keeping with--sections--39-4501--through---39-4509,---Idaho---Code,---apply---to noninstitutional-situations.~~

It is the purpose of this legislation to establish rules and procedures allowing the physician of a terminally ill person, with the authorization of the person or their legal representative, to be able to issue a directive, in advance, instructing ~~emergency~~ medical ~~services~~ personnel not to perform resuscitation if called to attend to those persons. A method of identification is defined and correct procedures outlined for ~~emergency~~ medical ~~services~~ personnel to properly respond to these situations.

SECTION 5. That Section 56-1021, Idaho Code, be, and the same is hereby amended to read as follows:

56-1021. DEFINITIONS. As used in sections 56-1020 through 56-1035, Idaho Code:

(1) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient, including the physician responsible for monitoring and directing the activities of ~~emergency~~ medical ~~services~~ personnel.

(2) "Cardiopulmonary resuscitation" or "CPR" means measures to restore cardiac function or to support breathing in the event of cardiac or respiratory arrest or malfunction. "CPR" includes, but is not limited to, chest compression, delivering electric shock to the chest, or placing tubes in the airway to assist breathing.

(3) "Comfort care" means treatment given in an attempt to protect and enhance quality of life without artificially prolonging that life.

(4) "Decisional capacity" means the ability to provide informed consent to or refusal of medical treatment.

(5) "Department" means the department of health and welfare.

(6) "Do not resuscitate identification" or "DNR identification" means a standardized form of identification approved by the department, that signifies that the possessor has a DNR order that has not been revoked or that the possessor's attending physician has issued a DNR

order for the possessor and has documented the order in the possessor's medical file.

(7) "Do not resuscitate order" or "DNR order" means a documented directive from a licensed physician that ~~emergency~~ life-sustaining procedures should not be administered to a particular person.

(8) "Do not resuscitate protocol" or "DNR protocol" means a standardized method of procedure, approved by the board of health and welfare and adopted in the rules of the department, for the withholding of ~~emergency~~ life-sustaining procedures by physicians and ~~emergency~~ medical ~~services~~ personnel.

(9) "Emergency medical services personnel" means the personnel of a service engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians, advanced emergency medical technicians, and paramedics.

(10) "Health care provider" or "provider" means any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency medical personnel.

(11) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(12) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

SECTION 6. That Section 56-1026, Idaho Code, be, and the same is hereby amended to read as follows:

56-1026. ADHERENCE TO DNR PROTOCOL. (1) ~~Emergency m~~Medical ~~services~~ personnel shall comply with the DNR protocol when presented with either DNR identification, or, upon transfer, a written DNR order issued directly by the attending physician and shall provide comfort care to the person.

(2) An attending physician shall take all reasonable steps to comply with the intent of the DNR identification.

SECTION 7. That Section 56-1027, Idaho Code, be, and the same is hereby amended to read as follows:

56-1027. DISREGARDING OF DNR ORDER. ~~Emergency medical services personnel~~ Health care providers may disregard the DNR order:

(1) If they believe in good faith that the order has been revoked; or

(2) To avoid verbal or physical confrontation; or

(3) If ordered to do so by the attending physician.

SECTION 8. That Section 56-1029, Idaho Code, be, and the same is hereby amended to read as follows:

56-1029. IMMUNITY. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person and compliance with the DNR order:

(a) A physician who causes the withholding or withdrawal of life-sustaining procedures from that person;
(b) A person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;
(c) Health care providers, including e~~E~~mergency medical services personnel, who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person; ~~or~~
(d) Physicians, persons under the direction or authorization of a physician, or ~~emergency~~ medical ~~services~~ personnel that provide life-sustaining procedures pursuant to an oral or written revocation communicated to them by a person who possesses DNR identification; or
(e) Health care providers acting pursuant to and in compliance with section 56-1027, Idaho Code.

(2) The provisions of subsections (1)(a) through (1)(~~d~~e) of this section apply when a life-sustaining procedure is withheld or withdrawn in accordance with a DNR protocol.

(3) ~~Emergency medical services--personnel~~ Health care providers, coroners and deputy coroners who follow a DNR order from a licensed physician are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

Approved March 16, 2004.

CHAPTER 57
(S.B. No. 1255)

AN ACT

RELATING TO REIMBURSEMENT FOR DRIVER TRAINING COURSES; AMENDING SECTION 33-1707, IDAHO CODE, TO INCREASE THE AVERAGE COST PER PUPIL REIMBURSEMENT TO PUBLIC SCHOOL DISTRICTS FOR DRIVER TRAINING COURSES FROM ONE HUNDRED TEN DOLLARS TO ONE HUNDRED TWENTY-FIVE DOLLARS.

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

SECTION 1. That Section 33-1707, Idaho Code, be, and the same is hereby amended to read as follows:

33-1707. REIMBURSEMENT — DETERMINATION -- CERTIFICATION. a. From the data provided by the school district, as required by section 33-1706, Idaho Code, the state department of education shall compute the average of the number of pupils enrolling in the course and those completing the same, and determine for such average number, the per-pupil cost thereof.

The amount due the district from the driver training fund in the state treasury shall be the total cost of operating the program, or the average of the number enrolling in the course and those completing the same, multiplied by one hundred ~~ten~~ twenty-five dollars ($1~~1~~025), whichever is the lesser.

b. On or before the fifteenth day of February, and the thirtieth day of June, and the fifteenth day of September in each year, the state

superintendent of public instruction shall certify to the state controller a list of school districts having submitted the reports required in section 33-1706, Idaho Code, and the amount of money due to each as computed under the provisions of subsection a. of this section. The state controller shall draw his warrants against the driver training account in the state treasury, in favor of the several districts entitled thereto, in the amount so certified. Annually, not later than the first day of September in each year, the state superintendent of public instruction shall cause the supervisor of driver training to prepare a report listing the names of the school districts having submitted the reports as required in section 33-1706, Idaho Code, and the amounts of money paid each as computed under the provisions of subsection a. of this section.

Approved March 16, 2004.

CHAPTER 58
(S.B. No. 1266)

AN ACT

RELATING TO THE IDAHO HAZARDOUS SUBSTANCE RESPONSE ACT; AMENDING SECTION 39-7103, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-7104, IDAHO CODE, TO PROVIDE FOR IMPLEMENTATION THROUGH THE BUREAU OF HOMELAND SECURITY; AMENDING SECTION 46-1001, IDAHO CODE, TO INCLUDE REFERENCE TO THE IDAHO HOMELAND SECURITY ACT OF 2004; AMENDING SECTION 46-1002, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 46-1003, IDAHO CODE, TO REFER TO ACTS OF TERRORISM, TO PROVIDE REFERENCES TO HOMELAND SECURITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1004, IDAHO CODE, TO PROVIDE REFERENCES TO HOMELAND SECURITY; AMENDING SECTION 46-1006, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1008, IDAHO CODE, TO PROVIDE REFERENCE TO HOMELAND SECURITY, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1013, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 46-1017, IDAHO CODE, TO EXTEND IMMUNITY PROVISIONS TO THE BUREAU, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 46-1019, IDAHO CODE; AND AMENDING SECTION 46-1025, IDAHO CODE, TO PROVIDE REFERENCES TO HOMELAND SECURITY AND TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 39-7103, Idaho Code, be, and the same is hereby amended to read as follows:

39-7103. DEFINITIONS. As used in this chapter:

(1) ~~"Military division" means the military division of the office of the governor~~ "Bureau" means the bureau of homeland security within the military division.

(2) "Emergency" means an abrupt release which in the reasonable judgment of the local emergency response authority, threatens immediate

and irreparable harm to the environment or the health and safety of any individual and which requires immediate action for the containment or control of a hazardous substance.

(3) "Hazardous substance incident" means an emergency circumstance requiring a response by the state emergency response team or the local emergency response authority to a release of a hazardous substance. A hazardous substance incident may require containment or confinement or both, but does not include site cleanup or remediation efforts after the incident commander has determined the emergency has ended.

(4) "Hazardous substance" means:

(a) Any "hazardous substance" within the scope of section 101(14) of the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 U.S.C. 9601(14);

(b) Any hazardous material within the scope of section 104 of the federal hazardous materials transportation act, 49 U.S.C. 1803, and the federal department of transportation regulations promulgated pursuant thereto; and

(c) Any extremely hazardous substance within the scope of section 302 of the federal emergency planning and community right-to-know act, 42 U.S.C. 11002.

(5) "Incident commander" is the person in charge of all responders to a hazardous substance incident and who is identified in the Idaho hazardous materials emergency incident command and response plan or the private emergency response plan.

(6) "Local emergency response authority" means those persons designated under section 39-7105, Idaho Code, by the city, county, or the military division to be first responders to hazardous substance incidents.

(7) "Military division" means the military division of the office of the governor.

(8) "Person" means any individual, public or private corporation, partnership, joint venture, association, firm, trust, estate, the United States or any department, institution, or agency thereof, the state or any department, institution, or agency thereof, any municipal corporation, county, city, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(~~8~~9) "Private emergency response plan" means a plan designed to respond to emergency releases of hazardous substances at a specific facility or under a specific set of conditions.

(~~9~~10) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, dumping or disposing of a hazardous substance into the environment. "Release" does not include any discharge of a hazardous substance into the environment which is authorized by limits and conditions in a federal or state permit relating to the protection of public health or the environment so long as the permitted activity from which the release occurs is in compliance with applicable limits and conditions of the permit.

(~~10~~11) "State emergency response team" means one (1) of the state emergency response teams authorized by the military division to respond to hazardous substance incidents.

SECTION 2. That Section 39-7104, Idaho Code, be, and the same is hereby amended to read as follows:

39-7104. MILITARY DIVISION -- POWERS AND DUTIES. (1) The military division through the bureau of homeland security shall implement the provisions of this chapter and direct the activities of its staff and, in so doing, the military division may:

(a) ~~Create a~~ Through the bureau, ~~of--hazardous--materials--and,~~ in accordance with the laws of the state, hire, fix the compensation, and prescribe the powers and duties of such other individuals, including consultants, emergency teams and committees, as may be necessary to carry out the provisions of this chapter.

(b) Create and implement state emergency response teams that have appropriately trained personnel and necessary equipment to respond to hazardous substance incidents. The military division shall enter into a written agreement with each entity or person providing equipment or services to a designated emergency response team. The teams shall be available and may respond to hazardous substance incidents at the direction of the military division or its designee or local incident commander.

(c) Contract with persons to meet state emergency response needs for the teams and response authorities.

(d) Advise, consult and cooperate with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments and other persons concerned with emergency response and matters relating to and arising out of hazardous substance incidents.

(e) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with state emergency response teams, local emergency response authorities and other interested persons.

(f) Collect and disseminate information relating to emergency response to hazardous substance incidents.

(g) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, made to the state for emergency response activities provided for in this chapter.

(h) Submit an annual report prior to February 1 to the governor and to the legislature concerning emergency response to hazardous substance incidents.

(i) Prepare, coordinate, implement and update a statewide hazardous materials incident command and response plan that coordinates state and local emergency response authorities to respond to hazardous substance incidents within the state for approval by the legislature. The plan shall address radiation incidents. The Idaho hazardous materials incident command and response plan shall be consistent with and a part of the Idaho state disaster plan provided in section 46-1006, Idaho Code, after legislative approval.

(2) The military division shall have the powers and duties of a state emergency response commission under the federal emergency planning and community right-to-know act, 42 U.S.C. section 11001 et seq.

(3) The military division may promulgate rules and procedures to govern reimbursement of claims pursuant to this chapter.

(4) All state agencies and institutions will cooperate and provide staff assistance to the military division in carrying out its duties under this chapter.

SECTION 3. That Section 46-1001, Idaho Code, be, and the same is hereby amended to read as follows:

46-1001. SHORT TITLE. This act shall be cited as the "Idaho Disaster Preparedness Act of 1975, amended by the Idaho Homeland Security Act of 2004."

SECTION 4. That Section 46-1002, Idaho Code, be, and the same is hereby amended to read as follows:

46-1002. DEFINITIONS. As used in this act:

(1) "Bureau" means the bureau of ~~disaster services~~ homeland security, military division of the office of the governor.

(2) "Adjutant general" means the administrative head of the military division of the office of the governor.

(3) "Disaster" means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or ~~manmade~~ man-made cause, including but not limited to fire, flood, earthquake, windstorm, wave action, volcanic activity, explosion, riot, or hostile military or paramilitary action and including acts of terrorism.

(4) "Emergency" means occurrence or imminent threat of a disaster or condition threatening life or property which requires state emergency assistance to supplement local efforts to save lives and protect property or to avert or lessen the threat of a disaster.

(5) "Political subdivision" means any county, city, district, or other unit of state or local government.

(6) "Militia" means all ~~able-bodied--male--citizens--of-Idaho-as defined-in-section-46-102,-Idaho-Code~~ members of the Idaho army and air national guard in the service of the state.

(7) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress and preserving life of, and removing survivors from the site of a disaster, emergency or hazard to a place of safety in case of lost, stranded, entrapped, or injured persons.

(8) "Disaster emergency account" means the account created under this act for the purpose of paying obligations and expenses incurred by the state of Idaho during a declared state of disaster emergency.

~~(9) "Commission" means the Idaho emergency response commission.~~

~~(10)~~ "Bureau of hazardous materials" means the former bureau of hazardous materials which is now a part of the bureau of homeland security in the military division of the office of the governor.

SECTION 5. That Section 46-1003, Idaho Code, be, and the same is hereby amended to read as follows:

46-1003. POLICY AND PURPOSES. It is the policy of this state to plan and prepare for disasters and emergencies resulting from natural or man-made causes, enemy attack, terrorism, sabotage or other hostile action, and to implement this policy, it is found necessary:

(1) To create a bureau of ~~disaster services~~ homeland security, to authorize the creation of local organizations for disaster preparedness in the political subdivisions of the state, and to authorize the state and political subdivisions to execute agreements and to cooperate with

the federal government and the governments of other states.

(2) To prevent and reduce damage, injury, and loss of life and property resulting from natural or man-made ~~catastrophies~~ catastrophes, riots, or hostile military or paramilitary action.

(3) To prepare assistance for prompt and efficient search, rescue, care, and treatment of persons injured, victimized or threatened by disaster.

(4) To provide for rapid and orderly restoration and rehabilitation of persons and property affected by disasters.

(5) To prescribe the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to and recovery from disasters.

(6) To authorize and encourage cooperation in disaster prevention, preparedness, response and recovery.

(7) To provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by all state agencies, political subdivisions, and interstate, federal-state and Canadian activities in which the state and its political subdivisions may participate.

(8) To provide a disaster management system embodying all aspects of predisaster preparedness and postdisaster response.

(9) To provide for the payment of obligations and expenses incurred by the state of Idaho through the bureau of ~~disaster--services~~ homeland security during a declared state of disaster emergency.

SECTION 6. That Section 46-1004, Idaho Code, be, and the same is hereby amended to read as follows:

46-1004. BUREAU OF ~~DISASTER--SERVICES~~ HOMELAND SECURITY CREATED. Within the military division of the office of governor, a bureau of ~~disaster-services~~ homeland security is established.

SECTION 7. That Section 46-1006, Idaho Code, be, and the same is hereby amended to read as follows:

46-1006. POWERS AND DUTIES OF CHIEF AND BUREAU. (1) In all matters of disaster services, the adjutant general shall represent the governor and shall on behalf of the governor, coordinate the activities of all of the state agencies in disaster services. The bureau shall have a coordinating officer and other professional, technical, secretarial and clerical employees necessary for the performance of its functions.

(2) The bureau shall prepare, maintain and update a state disaster plan based on the principle of self help at each level of government. The plan may provide for:

(a) ~~p~~Prevention and minimization of injury and damage caused by disaster;

(b) ~~p~~Prompt and effective response to disaster;

(c) ~~e~~Emergency relief;

(d) ~~i~~Identification of areas particularly vulnerable to disasters;

(e) ~~a~~Assistance to local officials in designing local emergency action plans;

(f) ~~a~~Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from disaster;

(g) ~~p~~Preparation and distribution to the appropriate state and local officials of catalogs of federal, state and private assistance programs;

(h) ~~a~~Assistance to local officials in designing plans for search, rescue, and recovery of persons lost, entrapped, victimized, or threatened by disaster;

(i) ~~o~~Organization of manpower and chains of command;

(j) ~~c~~Coordination of federal, state, and local disaster activities;

(k) ~~c~~Coordination of the state disaster plan with the disaster plans of the federal government.

(3) The bureau shall participate in the development and revision of local and intergovernmental disaster plans. To this end it may employ or otherwise secure the services of professional and technical personnel to provide expert assistance to political subdivisions, their disaster agencies, and intergovernmental planning and disaster agencies. This personnel shall consult with subdivisions and agencies and shall make field examinations of the areas, circumstances, and conditions to which particular local and intergovernmental disaster plans are intended to apply.

(4) In preparing and maintaining the state disaster plan, the bureau shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and intergovernmental agencies, the bureau shall encourage them also to seek advice from these sources.

(5) The state disaster plan or any part thereof may be incorporated in ~~regulations~~ rules of the bureau promulgated subject to chapter 52, title 67, Idaho Code.

(6) The bureau shall:

(a) ~~p~~Promulgate standards and criteria for local and intergovernmental disaster plans;

(b) ~~p~~Periodically review local and intergovernmental disaster plans;

(c) ~~a~~Assist political subdivisions, their disaster agencies, and intergovernmental disaster agencies to establish and operate training programs and programs of public information;

(d) ~~p~~Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(e) ~~p~~Prepare executive orders and proclamations for issuance by the governor, as necessary or appropriate in coping with disasters;

(f) ~~c~~Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this act and in implementing programs for disaster prevention, preparation, response, and recovery;

(g) ~~m~~Maintain a register of search and rescue organizations, units, teams, or individuals operating within the state;

(h) ~~a~~Assist search and rescue units to accomplish standards for equipment, training and proficiency; and

(i) ~~i~~In addition to disaster prevention measures as included in the state, local, and intergovernmental disaster plans, the bureau shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. The governor from time to time may make recommendations to the legislature, local gov-

ernments and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters;

(j) ~~n~~Not limit the powers and duties of the department of transportation, division of aeronautics, as provided by sections 21-114 and 21-118, Idaho Code.

SECTION 8. That Section 46-1008, Idaho Code, be, and the same is hereby amended to read as follows:

46-1008. THE GOVERNOR AND DISASTER EMERGENCIES. (1) Under this act, the governor may issue executive orders, proclamations and amend or rescind them. Executive orders and proclamations have the force and effect of law.

(2) A disaster emergency shall be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the governor finds that the threat or danger has passed, or the disaster has been dealt with to the extent that emergency conditions no longer exist, and when either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation; provided, however, that no state of disaster emergency may continue for longer than thirty (30) days unless the governor finds that it should be continued for another thirty (30) days or any part thereof. The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened, the area subject to the proclamation, and the conditions which are causing the disaster. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and unless the circumstances attendant upon the disaster prevent or impede, be promptly filed with the bureau of ~~disaster services~~ homeland security, the office of the secretary of state and the office of the recorder of each county where the state of disaster emergency applies.

(3) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local and intergovernmental disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this act or any other provision of law relating to disaster emergencies.

(4) During the continuance of any state of disaster emergency the governor is commander-in-chief of the militia and may assume command of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster emergency.

(5) In addition to any other powers conferred upon the governor by law, he may:

(a) ~~s~~Suspend the provisions of any regulations prescribing the procedures for conduct of public business that would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(b) ~~u~~Utilize all resources of the state, including, but not limited to, those sums in the disaster emergency account as he shall deem necessary to pay obligations and expenses incurred during a declared state of disaster emergency;

(c) ~~t~~Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(d) ~~s~~Subject to any applicable requirements for compensation under section 46-1012, Idaho Code, commandeer or utilize any private property, real or personal, if he finds this necessary to cope with the disaster emergency;

(e) ~~d~~Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(f) ~~p~~Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(g) ~~c~~Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(h) ~~s~~Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(i) ~~m~~Make provision for the availability and use of temporary emergency housing.

(6) Whenever an emergency or a disaster has been declared to exist in Idaho by the president under the provisions of the disaster relief act of 1974 (public law 93-288, 42 U.S.C. 5121), as amended, the governor may:

(a) ~~e~~Enter into agreements with the federal government for the sharing of disaster recovery expenses involving public facilities;

(b) ~~r~~Require as a condition of state assistance that a local taxing district be responsible for paying forty ~~per-cent~~ percent (40%) of the nonfederal share of costs incurred by the local taxing district which have been determined to be eligible for reimbursement by the federal government, provided that the total local share of eligible costs for a taxing district shall not exceed ten ~~per--cent~~ percent (10%) of the taxing district's tax charges authorized by section 63-802, Idaho Code;

(c) ~~o~~Obligate the state to pay the balance of the nonfederal share of eligible costs within local taxing entities qualifying for federal assistance; and

(d) ~~e~~Enter into agreements with the federal government for the sharing of disaster assistance expenses to include individual and family grant programs. ~~(42-USC-5178).~~

SECTION 9. That Section 46-1013, Idaho Code, be, and the same is hereby amended to read as follows:

46-1013. COMMUNICATIONS. The bureau shall ascertain what means exist for rapid and efficient communications in times of disaster emergencies. The bureau shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communication system or network. The bureau shall make recommendations to the governor as appropriate.

SECTION 10. That Section 46-1017, Idaho Code, be, and the same is hereby amended to read as follows:

46-1017. IMMUNITY. Neither the state, nor the bureau, nor any political subdivision thereof nor other agencies, nor, except in cases of ~~wilful~~ willful misconduct, the agents, employees or representatives of any of them engaged in any civil defense, disaster or emergency and the planning or preparation for the same, or disaster or emergency relief activities, acting under ~~a declaration by~~ proper authority, nor, except in cases of ~~wilful~~ willful misconduct or gross negligence, any person, firm, corporation or entity under contract with them to provide equipment or work ~~on a cost basis~~ to be used in civil defense, disaster or emergency planning, preparation or relief, while complying with or attempting to comply with this act or any rule or regulation promulgated pursuant to the provisions of the act, shall be liable for the death of or any injury to persons or damage to property as a result of such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this act or under the ~~workmen's~~ worker's compensation law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

SECTION 11. That Section 46-1019, Idaho Code, be, and the same is hereby repealed.

SECTION 12. That Section 46-1025, Idaho Code, be, and the same is hereby amended to read as follows:

46-1025. FEDERAL FUNDS TO POLITICAL SUBDIVISIONS. (1) Annually, the chief of the Idaho bureau of ~~disaster services~~ homeland security shall prepare a written summary of all grants received from the federal emergency management agency to be distributed to the forty-four (44) county commission chairmen. The summary shall list those federal funds that are eligible for direct assistance to local disaster agencies in accordance with section 46-1009(2), Idaho Code, and those funds that are limited to use by the state and not eligible for direct assistance to local disaster agencies.

(2) Not less than thirty-four percent (34%) of the eligible direct assistance funds shall be subgranted by the Idaho bureau of ~~disaster services~~ homeland security to the local disaster agencies. Funds shall be distributed to the local disaster agencies subject to the provisions and ~~regulations~~ rules of the Idaho bureau of ~~disaster services~~ homeland security, the federal emergency management agency through the Robert T. Stafford Act, title 44 of the code of federal regulations, and pertinent circulars published by the United States office of management and budget.

(3) Direct financial assistance to the local disaster agencies is not an entitlement. Subgrants are awarded through the Idaho bureau of ~~disaster services~~ homeland security for the purpose of assisting counties to achieve goals and objectives outlined in an approved county grant proposal.

Approved March 16, 2004.

CHAPTER 59
(S.B. No. 1267)

AN ACT

RELATING TO PROTECTIONS FOR PERSONS IN THE MILITIA; AMENDING SECTION 46-409, IDAHO CODE, TO FURTHER DEFINE MEMBERS AS PERSONS ORDERED TO ACTIVE FEDERAL SERVICE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 46-409, Idaho Code, be, and the same is hereby amended to read as follows:

46-409. THE MILITIA CIVIL RELIEF ACT. (1) As used in this section, the following terms have the following meanings:

(a) "Active member" means any member of the Idaho air or army national guard who is called or ordered by the governor for thirty (30) consecutive days or more to state active duty, or to duty other than for training under title 32 U.S.C., or ordered by competent federal authoritv into active federal service under title 10 U.S.C. for thirty (30) consecutive days or more.

(b) "Be called or ordered by the governor" means to be called or ordered by the governor for thirty (30) consecutive days or more to state active duty or to duty other than for training under title 32 U.S.C.

(c) "Duty other than for training" means any state active duty or title 32 U.S.C. duty other than training unless training is required as part of thirty (30) days of the consecutive duty upon the call or order of the governor, or active federal service under title 10 U.S.C. Duty other than for training does not include weekend drill, annual training (generally fifteen (15) days) as part of normal ~~natio~~nal guard service, and does not include attendance at military schools unless such attendance is required as part of, or occurs in conjunction with thirty (30) days of consecutive duty upon the call or order of the governor, or by order of competent federal authority.

(d) "Employee" means any person employed by a public or private employer.

(e) "Soldiers' and sailors' civil relief act (SSCRA)" means the provisions of 50 App. U.S.C. section 501 et seq. which protects active military service members.

(f) "State active duty" means any active duty performed for thirty (30) consecutive days or more by an active member of the Idaho national guard in accordance with this title when called or ordered

by the governor.

(g) "Uniform services employment and reemployment rights act of 1994 (USERRA)" means the provisions of 38 U.S.C. section 4301 et seq., which gives employees who leave a civilian job to perform military service the right to return to the civilian job held before entering military service with the rights to seniority, to purchase insurance coverage and purchase retirement credit.

(2) Whenever any active member of the Idaho national guard in time of war, armed conflict, or emergency proclaimed by the governor or by the president of the United States, shall be called or ordered by the governor to state active duty for a period of thirty (30) consecutive days or more, or to duty other than for training pursuant to title 32 U.S.C., the provision as then in effect of the soldiers' and sailors' civil relief act, 50 App. U.S.C. section 501 et seq., and the uniform services employment and reemployment rights act, 38 U.S.C. section 4301 et seq., shall apply.

(3) With reference to 50 App. U.S.C. section 581, the adjutant general or his designee shall be responsible to execute certificates of service referred to therein.

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

Approved March 16, 2004.

CHAPTER 60
(S.B. No. 1268)

AN ACT

RELATING TO STUDENTS CALLED TO ACTIVE DUTY; AMENDING SECTION 33-3719, IDAHO CODE, TO EXTEND RIGHTS OF STUDENTS CALLED TO ACTIVE DUTY TO INDIVIDUALS CALLED UNDER CONDITIONS SPECIFIED; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-3719, Idaho Code, be, and the same is hereby amended to read as follows:

33-3719. STUDENT CALLED TO ACTIVE DUTY. Whenever any active member of the Idaho national guard is called or ordered by the governor to state active duty for thirty (30) consecutive days or more, or to duty other than for training pursuant to title 32, U.S.C., <u>or called or ordered by competent federal authority into active federal service under title 10 U.S.C. for duty other than for training for thirty (30) consecutive days or more,</u> an educational institution in this state in which the member is enrolled shall grant the member military leave of absence from his education. Individuals on military leave of absence from their educational institution, upon release from military duty, shall be restored to the educational status they had attained prior to their being ordered to military duty without loss of academic credits earned,

scholarships or grants awarded, or tuition and other fees paid prior to the commencement of the military duty. It shall be the duty of the educational institution to refund tuition or fees or to credit the tuition, scholarships, grants and fees to the next academic semester or term after the termination of the educational military leave of absence at the option of the student.

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

Approved March 16, 2004.

CHAPTER 61
(S.B. No. 1278)

AN ACT

RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-3626, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT MAY USE A LIMITED PORTION OF INTEREST REVENUES FROM WASTEWATER AND DRINKING WATER LOANS FOR OPERATION OF THE LOAN PROGRAMS SUBJECT TO ANNUAL APPROPRIATION.

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

SECTION 1. That Section 39-3626, Idaho Code, be, and the same is hereby amended to read as follows:

39-3626. AUTHORIZATION OF GRANTS AND LOANS -- DESIGNATION OF ADMINISTERING AGENCY -- RESERVATION OF FUNDS FOR OPERATIONS -- CRITERIA -- PRIORITY PROJECTS -- ELIGIBLE PROJECTS. (1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit noncommunity public water systems. The state of Idaho is hereby also authorized to make loans at or below market interest rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

(2) The department of environmental quality may use a portion of the interest revenues from wastewater and drinking water loans. in an amount not to exceed one percent (1%) of loans outstanding, subject to annual appropriation, for operation of the wastewater and drinking water loan programs.

(3) The Idaho board of environmental quality through the department of environmental quality shall be the agency for administration of funds aut~~horized for~~ grants or loans under this chapter, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan funds to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control fund to

be appropriated annually for the purpose of conducting water quality studies including monitoring.

(~~3~~4) In allocating state construction grants and loans under this chapter, the Idaho board of environmental quality shall give consideration to water pollution control needs, protection of public health and provision of safe drinking water.

(~~4~~5) Pursuant to subsection (~~3~~4) of this section, the Idaho board of environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

Approved March 16, 2004.

CHAPTER 62
(S.B. No. 1295)

AN ACT

RELATING TO WATER RIGHT TRANSFERS; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE THAT NOTICE OF AN APPLICATION FOR TRANSFER OF A WATER RIGHT SHALL BE MADE IN A MANNER SIMILAR TO THAT PROVIDED FOR APPLICATIONS UNDER SECTION 42-203A, IDAHO CODE, AND TO PROVIDE DISCRETION TO THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES IN GIVING NOTICE OF PROPOSED CHANGES TO THE POINT OF DIVERSION OR PLACE OF USE OF A WATER RIGHT THAT DO NOT IMPACT THE HYDROLOGIC SYSTEM OR AFFECT THE RIGHTS OF OTHER WATER USERS.

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

SECTION 1. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in ~~the same~~ a similar manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests

with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence. For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the department of water resources shall give only such notice to other users as he deems appropriate.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of

the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth. Provided however, minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

(3) Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years.

(4) Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights protected from forfeiture under the provisions of section 42-223, Idaho Code, are exempt from this requirement.

(a) Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, to the director of the department of water resources within ten (10) days of the last date of publication.

(b) Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

(c) The director of the department of water resources shall find

from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use.

(d) In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section.

(e) In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(5) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

Approved March 16, 2004.

CHAPTER 63
(S.B. No. 1296)

AN ACT

RELATING TO GEOTHERMAL RESOURCES; AMENDING SECTION 42-4005, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR SHALL NOT ISSUE A PERMIT FOR GEOTHERMAL RESOURCES IF HE FINDS THAT THE OPERATION OF ANY WELL UNDER A PROPOSED PERMIT WILL DECREASE GROUND WATER IN ANY AQUIFER OR OTHER GROUND WATER SOURCE OR WILL UNREASONABLY DECREASE GROUND WATER AVAILABLE FOR PRIOR WATER RIGHTS IN ANY AQUIFER OR OTHER GROUND WATER SOURCE OF WATER FOR BENEFICIAL USES, OTHER THAN USES AS A MINERAL SOURCE, AN ENERGY SOURCE OR OTHERWISE AS A MATERIAL MEDIUM, UNLESS AND UNTIL THE APPLICANT HAS ALSO OBTAINED A PERMIT FOR THE APPROPRIATION OF GROUND WATERS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 42-4005, Idaho Code, be, and the same is hereby amended to read as follows:

42-4005. PERMIT -- ISSUANCE -- BOND -- REVIEW -- APPEAL. (a) If the director finds that the well or the injection well as proposed to be constructed or altered is in the public interest, he shall issue a permit. The director may issue a permit substantially in accordance with the specifications on the application, or the director may limit the scope of the permit granted or may issue a permit subject to conditions.

(b) If the director finds that the well or injection well as it is proposed to be constructed or altered in the application will not be in the public interest, he shall refuse to issue a permit. In no case shall the director issue a permit to construct or alter a well or injection well if he finds that use of the proposed well or injection well may be expected to unreasonably reduce the quality of any surface or ground waters below the quality which such waters would have had but for the proposed well.

(c) If the director refuses to issue a permit, or issues one subject to conditions or limitations, he shall issue a clear statement of his reasons for refusing to issue or issuing the limited permit. The director shall issue a statement of findings of fact and conclusions of law that provides a factual and legal basis for the order. The refusal of the director to issue a permit, together with the clear statement of the reasons for refusing to issue the permit shall be served on the applicant by certified mail. A permit issued conditionally or subject to limitations shall, with the statement of reasons required under this subdivision, be served in the same manner as a refusal to issue a permit.

(d) An applicant denied a permit or issued a limited or conditional permit may seek a public hearing before the water resource board. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code. Judicial review of the final determination by the board may be secured pursuant to chapter 52, title 67, Idaho Code.

(e) The director shall not issue a permit if he finds that the operation of any well under a proposed permit will ~~unreasonably~~ decrease ground water ~~available for prior water rights~~ in any aquifer or other ground water source ~~for~~ or will unreasonably decrease ground water available for prior water rights in any aquifer or other ground water source of water for beneficial uses, other than uses as a mineral source, an energy source, or otherwise as a material medium, unless and until the applicant has also obtained a permit for the appropriation of ground waters under chapter 2, title 42, Idaho Code.

(f) The director shall require, as a condition of every permit, every person who engages in the construction, alteration, testing, or operation of a well to file with the director, on a form prescribed by the director, a bond indemnifying the state of Idaho providing good and sufficient security, conditioned upon the performance of the duties required by this chapter and the proper abandonment of any well covered

by such permit. The bond shall be in an amount not less than five thousand dollars ($5,000) or more than one hundred thousand dollars ($100,000) as determined by the director based on the size and depth of the well, the complexity of the well, the resource to be recovered, the area of operation, and other relevant factors.

Approved March 16, 2004.

CHAPTER 64
(S.B. No. 1381)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 2005; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO CERTAIN TRANSFERS BEING CONTINUOUSLY APPROPRIATED; AUTHORIZING THE TRANSFER OF HIGHWAY FUNDS TO THE AERONAUTICS FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR CONTRACT CONSTRUCTION AND RIGHT-OF-WAY ACQUISITION; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF THE RESTRICTED DISASTER STATE HIGHWAY FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR AIRPORT DEVELOPMENT GRANTS; AUTHORIZING THE TRANSFER OF HIGHWAY FUNDS TO THE TOURISM AND PROMOTION FUND; AND RECOGNIZING THE IDAHO TRANSPORTATION DEPARTMENT'S PRACTICE OF TRANSFERRING REMAINING ELIGIBLE SPENDING AUTHORITY TO CONTRACT CONSTRUCTION AND RIGHT-OF-WAY ACQUISITION.

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

SECTION 1. There is hereby appropriated to the Idaho Transportation Department the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT:					
FROM:					
State Highway Fund (Dedicated)	$12,248,100	$ 7,446,500	$ 674,200		$ 20,368,800
State Highway Fund (Federal)	241,400	148,600			390,000
State Highway Fund (Billing)	20,000	135,400			155,400
TOTAL	$12,509,500	$ 7,730,500	$ 674,200		$ 20,914,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. PLANNING:					
FROM:					
State Highway Fund (Dedicated)	$ 828,400	$ 232,000	$ 106,200		$ 1,166,600
State Highway Fund (Federal)	1,526,700	993,000			2,519,700
State Highway Fund (Billing)		41,500			41,500
TOTAL	$ 2,355,100	$ 1,266,500	$ 106,200		$ 3,727,800
III. MOTOR VEHICLES:					
FROM:					
State Highway Fund (Dedicated)	$11,581,100	$ 5,766,500	$ 346,000		$ 17,693,600
IV. HIGHWAY OPERATIONS:					
FROM:					
State Highway Fund (Dedicated)	$62,141,100	$34,186,900	$ 14,119,800		$110,447,800
State Highway Fund (Federal)	12,350,200	5,021,600			17,371,800
Idaho Traffic Safety Fund (Federal)				$2,000,000	2,000,000
State Highway Fund (Billing)		374,500			374,500
State Highway Fund (Local)	200,400	96,500			296,900
TOTAL	$74,691,700	$39,679,500	$ 14,119,800	$2,000,000	$130,491,000
V. CAPITAL FACILITIES:					
FROM:					
State Highway Fund (Dedicated)			$ 3,800,000		$ 3,800,000
State Aeronautics Fund (Dedicated)			50,000		50,000
TOTAL			$ 3,850,000		$ 3,850,000
VI. CONTRACT CONSTRUCTION & RIGHT-OF-WAY ACQUISITION:					
FROM:					
State Highway Fund (Dedicated)			$ 43,931,700		$ 43,931,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
State Highway Fund (Federal)			192,319,400	$1,000,000	193,319,400
State Highway Fund (Local)			4,348,700		4,348,700
TOTAL			$240,599,800	$1,000,000	$241,599,800
VII. AERONAUTICS:					
FROM:					
State Aeronautics Fund (Dedicated)	$ 761,300	$ 542,200	$ 66,000	$ 641,000	$ 2,010,500
State Aeronautics Fund (Federal)	18,100	239,500		1,000,000	1,257,600
State Aeronautics Fund (Billing)	55,300	93,400			148,700
TOTAL	$ 834,700	$ 875,100	$ 66,000	$1,641,000	$ 3,416,800
VIII. PUBLIC TRANSPORTATION:					
FROM:					
State Highway Fund (Dedicated)	$ 150,200	$ 50,400	$ 5,200	$ 312,000	$ 517,800
State Highway Fund (Federal)	362,900	49,700		3,286,700	3,699,300
TOTAL	$ 513,100	$ 100,100	$ 5,200	$3,598,700	$ 4,217,100
GRAND TOTAL	$102,485,200	$55,418,200	$259,767,200	$8,239,700	$425,910,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho Transportation Department is authorized no more than one thousand eight hundred thirty-three and five-tenths (1,833.5) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that all moneys transferred to the Local Bridge Inspection Fund and to the Railroad Grade Crossing Protection Fund, as provided in Section 63-2412, Idaho Code, are hereby continuously appropriated to the Idaho Transportation Department for the stated purposes of those funds.

SECTION 4. The Idaho Transportation Department is authorized to transfer up to $71,300 from the State Highway Fund to the State Aeronautics Fund during the fiscal year. It is legislative intent that the moneys transferred be used to offset operating costs of the Aircraft

Pool Program or be used to establish a reserve for capital replacement costs of the Aircraft Pool Program.

SECTION 5. There is hereby reappropriated to the Idaho Transportation Department any unexpended and unencumbered balances of the State Highway Fund appropriated for the Contract Construction and Right-of-Way Acquisition Program for fiscal year 2004, to be used for Contract Construction and Right-of-Way Acquisition only for the period July 1, 2004, through June 30, 2005.

SECTION 6. All unexpended and unencumbered moneys previously appropriated to the Idaho Transportation Department from funds deposited to the restricted disaster State Highway Fund are hereby reappropriated to the Idaho Transportation Department for the period July 1, 2004, through June 30, 2005.

SECTION 7. There is hereby reappropriated to the Idaho Transportation Department any unexpended and unencumbered balances of the State Aeronautics Fund appropriated for trustee and benefit payments for fiscal year 2004, to be used for Airport Development Grants for the period July 1, 2004, through June 30, 2005.

SECTION 8. There is hereby appropriated and the State Controller is directed to transfer $25,000 from the State Highway Fund to the Tourism and Promotion Fund in the Department of Commerce during fiscal year 2005. This transfer will provide the matching fund support of the Gateway Visitor Centers.

SECTION 9. The Legislature recognizes the Idaho Transportation Department's practice of transferring year-end remainders of eligible spending authority, when supported by actual revenue collections, to the Contract Construction and Right-of-Way Acquisition budget unit for use on construction projects. The Legislature joins with the Department in making this commitment to Idaho's roads and citizens.

Approved March 16, 2004.

CHAPTER 65
(S.B. No. 1385)

AN ACT

APPROPRIATING MONEYS FOR THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission for the Blind and Visually Impaired the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	$ 636,300	$ 80,400	$618,400	$1,335,100
Randolph Sheppard Fund		7,200	117,900	125,100
Rehabilitation Revenue and Refunds Fund	41,800	33,700	12,800	88,300
Adaptive Aids and Appliances Fund		46,700		46,700
Federal Grant Fund	1,412,700	412,600	212,500	2,037,800
Miscellaneous Revenue Fund		17,400	9,100	26,500
TOTAL	$2,090,800	$598,000	$970,700	$3,659,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission for the Blind and Visually Impaired is authorized no more than thirty-nine and fifty-hundredths (39.50) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 66
(S.B. No. 1386)

AN ACT
APPROPRIATING MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission on Aging the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
COMMISSION ON AGING:				
FROM:				
General Fund	$506,000	$ 61,000	$ 3,929,200	$ 4,496,200
Federal Grant Fund	434,500	272,200	6,741,200	7,447,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund		35,000		35,000
TOTAL	$940,500	$368,200	$10,670,400	$11,979,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on Aging is authorized no more than fifteen (15) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 67
(S.B. No. 1396)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF BUILDING SAFETY FOR FISCAL YEAR 2005; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DIRECTING THE STATE CONTROLLER TO MAKE A TRANSFER OF FUNDS.

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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. ADMINISTRATION:				
FROM:				
Electrical Fund	$ 247,000	$ 26,000	$ 12,200	$ 285,200
Building Fund	61,200	6,300	2,900	70,400
Plumbing Fund	165,800	16,800	7,800	190,400
Manufactured Housing Fund	11,000	700	300	12,000
Public Works Contractors Licensing Fund	29,700	3,100	1,400	34,200
Miscellaneous Revenue/ Industrial Safety Fund	58,100	5,800	2,700	66,600
Miscellaneous Revenue/ Logging Fund	23,700	2,300	1,100	27,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Miscellaneous Revenue/ Building Bureau NCSBCS Fund	1,500	100	100	1,700
Federal Grant Fund	8,300	900	400	9,600
TOTAL	$ 606,300	$ 62,000	$ 28,900	$ 697,200
II. BUILDING SAFETY:				
FROM:				
Electrical Fund	$2,921,100	$ 653,500	$237,900	$ 3,812,500
Building Fund	673,700	219,900	58,900	952,500
Plumbing Fund	1,846,600	564,900	219,100	2,630,600
Manufactured Housing Fund	50,500	23,500	300	74,300
Public Works Contractors Licensing Fund	179,200	146,200	7,700	333,100
Miscellaneous Revenue/ Industrial Safety Fund	546,900	248,700	105,400	901,000
Miscellaneous Revenue/ Logging Fund	269,700	82,500	7,800	360,000
Miscellaneous Revenue/ Building Bureau NCSBCS Fund	11,000	6,700	100	17,800
Miscellaneous Revenue Energy Program Fund	110,800	15,300		126,100
Heating, Ventilation and Air Conditioning Board Fund	337,200	456,300	83,600	877,100
Federal Grant Fund	82,900	58,000	800	141,700
TOTAL	$7,029,600	$2,475,500	$721,600	$10,226,700
GRAND TOTAL	$7,635,900	$2,537,500	$750,500	$10,923,900

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 thirty-two and one-tenth (132.1) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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. The State Controller is hereby directed to transfer on July 1, 2004, or as soon thereafter as is practicable, $877,100 from the Plumbing Board Fund to the Heating, Ventilation and Air Conditioning Board Fund.

Approved March 16, 2004.

CHAPTER 68
(S.B. No. 1397)

AN ACT
APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. COMPENSATION:					
FROM:					
Industrial Administration Fund	$2,457,000	$ 935,000	$22,000	$1,354,700	$ 4,768,700
Federal Grant Fund	2,700	2,300			5,000
Miscellaneous Revenue Fund		25,000			25,000
TOTAL	$2,459,700	$ 962,300	$22,000	$1,354,700	$ 4,798,700
II. REHABILITATION:					
FROM:					
Industrial Administration Fund	$2,694,400	$ 670,500	$37,400		$ 3,402,300
III. CRIME VICTIMS COMPENSATION:					
FROM:					
Crime Victims Compensation Fund	$ 486,100	$ 172,900	$13,500	$2,270,400	$ 2,942,900
Federal Grant Fund				820,900	820,900
TOTAL	$ 486,100	$ 172,900	$13,500	$3,091,300	$ 3,763,800
IV. ADJUDICATION:					
FROM:					
Industrial Administration Fund	$1,360,700	$ 490,600	$ 2,000		$ 1,853,300
GRAND TOTAL	$7,000,900	$2,296,300	$74,900	$4,446,000	$13,818,100

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, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 69
(S.B. No. 1398)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO STATE LOTTERY FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

FOR:	
Personnel Costs	$ 2,545,100
Operating Expenditures	7,983,700
Capital Outlay	317,100
TOTAL	$10,845,900
FROM:	
State Lottery Fund	$10,845,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho State Lottery is authorized no more than forty-eight (48) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 70
(S.B. No. 1399)

AN ACT
APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the State Liquor Dispensary the following amounts to be expended according to the designated expense classes from the listed fund for the period July 1, 2004, through June 30, 2005:

FOR:	
Personnel Costs	$ 7,611,000
Operating Expenses	3,230,800
Capital Outlay	497,600
TOTAL	$11,339,400
FROM:	
Liquor Control Fund	$11,339,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Liquor Dispensary is authorized no more than one hundred sixty (160) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 71
(S.B. No. 1400)

AN ACT
APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE COMMISSION ON THE ARTS FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

COMMISSION ON THE ARTS:	
FROM:	
General Fund	$ 836,100
Federal Grant Fund	645,300
Miscellaneous Revenue Fund	71,500
TOTAL	$1,552,900

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, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 72
(S.B. No. 1401)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$504,600	$ 89,200		$593,800
Federal Grant Fund	111,400	84,800	$1,600	197,800
Miscellaneous Revenue Fund		6,700		6,700
TOTAL	$616,000	$180,700	$1,600	$798,300

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, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 73
(S.B. No. 1402)

AN ACT

APPROPRIATING MONEYS FOR THE MILITARY DIVISION FOR FISCAL YEAR 2005; GRANTING A CONTINUOUS APPROPRIATION FOR THE BUREAU OF HOMELAND SECURITY'S MISCELLANEOUS REVENUE FUND FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Military Division the following amounts to be expended for the following programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MILITARY MANAGEMENT:				
FROM:				
General Fund	$ 1,576,900	$ 647,300	$ 100,000	$ 2,324,200
Indirect Cost Recovery Fund	60,100	44,800		104,900
Federal Grant Fund		164,100		164,100
Miscellaneous Revenue Fund		38,800		38,800
Armory Revenue Fund		75,000		75,000
TOTAL	$ 1,637,000	$ 970,000	$ 100,000	$ 2,707,000
II. FEDERAL AND STATE CONTRACTS:				
FROM:				
General Fund	$ 728,800	$ 567,100		$ 1,295,900
Federal Grant Fund	8,298,900	6,490,300		14,789,200
TOTAL	$ 9,027,700	$ 7,057,400		$16,085,100
III. BUREAU OF HOMELAND SECURITY:				
FROM:				
General Fund	$ 1,127,700	$ 174,900		$ 1,302,600
Federal Grant Fund	1,470,100	6,020,700	$14,659,400	22,150,200
TOTAL	$ 2,597,800	$ 6,195,600	$14,659,400	$23,452,800
GRAND TOTAL	$13,262,500	$14,223,000	$14,759,400	$42,244,900

SECTION 2. The Military Division is hereby granted continuous appropriation authority for the Bureau of Homeland Security's Miscellaneous Revenue Fund for the period July 1, 2004, through June 30, 2005.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Military Division is authorized no more than two hundred five and eighty-hundredths (205.80) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 74
(S.B. No. 1403)

AN ACT
APPROPRIATING MONEYS FOR THE IDAHO WOMEN'S COMMISSION FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$29,700	$ 9,200	$38,900
Miscellaneous Revenue Fund		6,700	6,700
TOTAL	$29,700	$15,900	$45,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho Women's Commission is authorized no more than fifty-two hundredths (0.52) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 75
(S.B. No. 1404)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. WAGE AND HOUR:			
FROM:			
General Fund	$390,000	$ 52,000	$442,000
Unemployment Penalty and Interest Fund	50,600	49,400	100,000
Miscellaneous Revenue Fund		10,400	10,400
TOTAL	$440,600	$111,800	$552,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Labor is authorized no more than seven (7) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 76
(S.B. No. 1405)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Commerce the following amounts from the listed funds to be expended according to the designated expense classes for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DEPARTMENT OF COMMERCE:					
FROM:					
General Fund	$2,049,900	$1,067,500		$ 3,750,000	$ 6,867,400
Tourism and Promotion Fund	546,500	2,604,100	$ 9,000	2,802,000	5,961,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Federal Grant Fund	451,100	238,800	9,000	15,329,500	16,028,400
Miscellaneous Revenue Fund	118,900	104,700			223,600
Seminars and Publications Fund		371,100			371,100
TOTAL	$3,166,400	$4,386,200	$18,000	$21,881,500	$29,452,100
II. IDAHO RURAL PARTNERSHIP:					
FROM:					
Miscellaneous Revenue Fund		$ 124,300			$ 124,300
Federal Grant Fund	$ 107,300	50,100			157,400
TOTAL	$ 107,300	$ 174,400			$ 281,700
GRAND TOTAL	$3,273,700	$4,560,600	$18,000	$21,881,500	$29,733,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Commerce is authorized no more than fifty-three and one-half (53.5) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 16, 2004.

CHAPTER 77
(S.B. No. 1387)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF VETERANS SERVICES WITHIN THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR FISCAL YEAR 2005; 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 Veterans Services within the Department of Self-Governing Agencies the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

FROM:	
General Fund	$ 2,054,700
Miscellaneous Revenue Fund	9,882,400
Veterans Services Endowment Income Fund	475,200
Federal Grant Fund	4,900,300
TOTAL	$17,312,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Veterans Services is authorized no more than three hundred five and thirty-two hundredths (305.32) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 17, 2004.

CHAPTER 78
(S.B. No. 1224)

AN ACT

RELATING TO SPECIAL MOTORCYCLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-418D, IDAHO CODE, TO ESTABLISH A SPECIAL MILITARY VETERAN MOTORCYCLE 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 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 <u>and 49-418D,</u> Idaho Code. For special plates issued pursuant to sections <u>49-406</u> 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, 49-419C, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, ~~and~~ 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 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 49-418D, Idaho Code, and to read as follows:

49-418D. MILITARY VETERAN MOTORCYCLE LICENSE PLATE. (1) On and after January 1, 2005, any person who is the owner of a motorcycle registered under the provisions of section 49-402, Idaho Code, may apply for and upon department approval receive a military veteran motorcycle license plate in lieu of a regular motorcycle license plate.

(2) Proof of being a current or former member of the United States armed forces must be furnished to the department before a military veteran motorcycle plate will be issued. Acceptable proof shall be a copy of form DD214 or an equivalent document or statement from the department of veterans affairs.

(3) In addition to the annual registration fee required in section 49-402(3), Idaho Code, the applicant shall be charged a fee of twenty-five dollars ($25.00) for the initial issuance of a plate, and fifteen dollars ($15.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial program fee and ten dollars ($10.00) of the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special motorcycle license plate program. Fifteen dollars ($15.00) of the initial program fee and five dollars ($5.00) of the annual program fee shall be deposited to the veterans cemetery maintenance fund created in section 65-107, Idaho Code, to operate and maintain a state veterans cemetery.

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

(5) The military veteran motorcycle license plate shall be of a color and design:

(a) In accordance with the provisions of section 49-402C, Idaho Code, except that there shall be no decals to indicate the veteran's branch of service or the period of duty served; and

(b) The plate shall display the words "Scenic Idaho" at the top and "Veteran" at the bottom of the plate; and

(c) The license plate design shall comply with all applicable rules of the department, and shall include a separate and distinct numbering system; and

(d) The design, color, and numbering system shall be subject to approval of the department.

SECTION 3. This act shall be in full force and effect on and after January 1, 2005.

Approved March 18, 2004.

CHAPTER 79
(S.B. No. 1264)

AN ACT

RELATING TO LOCAL LIQUOR STORES AND DISTRIBUTING STATIONS; AMENDING SECTION 23-307, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE PROHIBITION ON SALES OR DELIVERY OF ANY ALCOHOLIC LIQUOR IN, ON, OR FROM THE PREMISES OF ANY STATE LIQUOR STORE OR DISTRIBUTING STATION ON SUNDAYS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 3, TITLE 23, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 23-308, IDAHO CODE, TO PROVIDE FOR THE SALE OR DELIVERY OF ANY ALCOHOLIC LIQUOR IN, ON, OR FROM THE PREMISES OF ANY STATE LIQUOR STORE OR DISTRIBUTING STATION IN A COUNTY ON ANY SUNDAY WHICH DOES NOT FALL ON CHRISTMAS DAY BY RESOLUTION OF THE COUNTY COMMISSIONERS, OR BY A LOCAL OPTION COUNTY ELECTION HELD FOR THE PURPOSE OF DETERMINING WHETHER SUCH SALES SHALL BE ALLOWED; AMENDING CHAPTER 3, TITLE 23, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 23-308A, IDAHO CODE, TO PROVIDE FOR THE FORM OF THE LOCAL OPTION COUNTY ELECTION BALLOT; AMENDING CHAPTER 3, TITLE 23, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 23-308B, IDAHO CODE, TO PROVIDE FOR THE EFFECT OF A LOCAL OPTION COUNTY ELECTION; AND AMENDING CHAPTER 3, TITLE 23, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 23-308C, IDAHO CODE, TO PROVIDE FOR SUBSEQUENT LOCAL OPTION COUNTY ELECTIONS.

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

SECTION 1. That Section 23-307, Idaho Code, be, and the same is hereby amended to read as follows:

23-307. DAYS WHEN SALES ARE PROHIBITED. It shall be unlawful to transact the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or ~~distribution~~ distributing station~~;~~:

(a) After the closing hours as established by the dispensary.

(b) On any Thanksgiving, Christmas or Memorial Day.

(c) On any Sunday, except as provided by county option pursuant to section 23-308, Idaho Code.

(d) On any national or state election day.

(e) On any municipal election day held in the municipality in which a store or distributing station may be situated during the time the polls are open.

(f) During such other periods or days as may be designated by the dispensary.

SECTION 2. That Chapter 3, Title 23, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 23-308, Idaho Code, and to read as follows:

23-308. COUNTY OPTION SUNDAY LIQUOR SALES -- RESOLUTION OF COUNTY COMMISSIONERS -- LOCAL OPTION COUNTY ELECTION. (1) The board of county commissioners of each county may, by resolution regularly adopted, allow for the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county

on any Sunday which does not fall on Christmas Day, and such sales shall be allowed so long as the resolution remains in effect. If such a resolution is adopted by the board, a copy of such resolution shall be delivered to the superintendent of the state liquor dispensary and to the director of the Idaho state police.

(2) Within thirty (30) days after the effective date of this act, a petition in writing signed by not less than twenty percent (20%) of the registered, qualified electors of any county may be filed with the clerk of said county requesting an election to be held to determine whether or not the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station in the county on any Sunday which does not fall on Christmas Day, shall be allowed.

(3) In the event a petition is presented, the county commissioners of any such county shall, within five (5) days after the presentation of the petition, meet and determine the sufficiency thereof by ascertaining whether such petition is signed by the required number of registered, qualified electors of the county affected.

(4) In the event that a petition does not contain the required number of certified signatures, the commissioners 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 commissioners find the petition defective for lack of certified signatures. If the petition is not perfected within the sixty (60) day period, the commissioners shall declare the petition null and void ab initio in its entirety.

(5) In the event the county commissioners of said county determine that the petition is signed by the required percentage of registered, qualified electors, the commissioners shall forthwith make an order calling an election to be held within the county, subject to the provisions of section 34-106, Idaho Code, in the manner provided by law for holding elections for county officers. All the laws of the state of Idaho relating to the holding of elections of county officers for such county shall apply to the holding of the election provided for in this section. 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.

SECTION 3. That Chapter 3, Title 23, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 23-308A, Idaho Code, and to read as follows:

23-308A. FORM OF LOCAL OPTION COUNTY ELECTION BALLOT. The county clerk shall furnish the ballots to be used in the local option county election, which ballots shall contain the following words:

"Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, Yes."

"Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, No."

and the elector in order to vote must mark an "X" or other mark sufficient to show his intent, opposite one (1) of the questions in a space provided therefor.

SECTION 4. That Chapter 3, Title 23, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 23-308B, Idaho Code, and to read as follows:

23-308B. EFFECT OF LOCAL OPTION COUNTY ELECTION. Upon a canvass of the votes cast, the clerk of the county shall certify the result thereof to the director and to the superintendent of the state liquor dispensary. If a majority of the votes cast are "Shall the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station be allowed on any Sunday which does not fall on Christmas Day, Yes," then all liquor stores and distributing stations in the county shall be allowed to transact the sale or delivery of any alcoholic liquor in, on, or from all such premises in the county on any Sunday which does not fall on Christmas Day.

SECTION 5. That Chapter 3, Title 23, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 23-308C, Idaho Code, and to read as follows:

23-308C. SUBSEQUENT LOCAL OPTION COUNTY ELECTIONS. A similar local county option election may be subsequently called and held upon the issue of whether the sale or delivery of any alcoholic liquor in, on, or from the premises of any state liquor store or distributing station shall be allowed on any Sunday which does not fall on Christmas Day. Such subsequent election shall be held upon the filing of a petition, as provided in section 23-308, Idaho Code, signed by the requisite percentage of qualified electors. No such subsequent election shall be held more often than two (2) years after the holding of any local option county election or subsequent election.

Approved March 18, 2004.

CHAPTER 80
(H.B. No. 610)

AN ACT

RELATING TO INCOME TAX CREDITS FOR CHARITABLE CONTRIBUTIONS; AMENDING SECTION 63-3029C, IDAHO CODE, TO PROVIDE AN INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS MADE TO CHILDREN'S VILLAGE, INC. OR ITS FOUNDATION.

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

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

63-3029C. INCOME TAX CREDIT FOR CERTAIN CHARITABLE CONTRIBUTIONS -- LIMITATION. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit

against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to the anchor house or its foundation, to the children's home society of Idaho, inc., to the Idaho youth ranch or its foundation, to kinderhaven or its foundation, to children's village, inc. or its foundation, to gem youth services or its foundation, to the hope house, inc. or its foundation, to the north Idaho children's home or its foundation, to a center for independent living located within the state of Idaho, to a nonprofit substance abuse center licensed by the department of health and welfare, or to a nonprofit rehabilitation facility located within the state of Idaho or its foundation.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars ($100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars ($500), whichever is less.

(3) For the purposes of this section, "center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

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

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

(c) Is cross-disability.

(4) For the purposes of this section, "nonprofit rehabilitation facility" means only a facility that is accredited by the commission on accreditation of rehabilitation facilities or another accreditation organization recognized by the state of Idaho.

Approved March 19, 2004.

CHAPTER 81
(H.B. No. 480)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-416A, IDAHO CODE, TO ESTABLISH AN HISTORIC LEWISTON SPECIAL LICENSE PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

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

(2) For all 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 49-416A, 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-418B, 49-418C, 49-419, 49-419A, 49-419B, 49-419C, 49-420, 49-420A, 49-420B, 49-420C, 49-420D, ~~and~~ 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 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 49-416A, Idaho Code, and to read as follows:

49-416A. HISTORIC LEWISTON PLATES. (1) On and after January 1, 2005, 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 historic Lewiston 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 historic Lewiston 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 Lewiston historic preservation commission, and shall be used by the commission to demonstrate commitment, through substantial educational, economic and outreach programs, to the preservation and interpretation of Idaho history and Lewiston's role as Idaho's first territorial capital.

(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 historic Lewiston license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code.

The design and any slogan on the plate shall be acceptable to the Lewiston historic preservation commission and shall be approved by the Idaho transportation 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 Lewiston historic preservation commission.

(5) Sample historic Lewiston 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 Lewiston historic preservation commission and shall be used to demonstrate commitment, through substantial educational, economic and outreach programs, to the preservation and interpretation of Idaho history and Lewiston's role as Idaho's first territorial capital.

SECTION 3. This act shall be in full force and effect on and after January 1, 2005.

Approved March 19, 2004.

CHAPTER 82
(H.B. No. 483)

AN ACT

RELATING TO LICENSURE BY THE IDAHO BOARD OF COSMETOLOGY; AMENDING SECTION 54-805, IDAHO CODE, TO ELIMINATE A REQUIREMENT OF WORK EXPERIENCE FOR INSTRUCTOR LICENSES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-805, Idaho Code, be, and the same is hereby amended to read as follows:

54-805. REQUIREMENTS FOR LICENSE. Except as herein otherwise provided, the following shall be considered minimum requirements for license in the respective categories, and all applicants shall be of good moral character and temperate habits:

(1) As a registered cosmetologist:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Completion of two (2) years' high school education or its equivalent.

(c) Graduation from and completion of a two thousand (2,000) hour course of instruction in a school of cosmetology, or a four thousand (4,000) hour course of instruction as an apprentice covering all phases of the practice of cosmetology.

(d) Successful passage of the examination for cosmetologist given under the direction of the board.

(2) As an instructor of cosmetology, nail technology, esthetics or electrology: twelve (12) semester college credit hours or equivalent as approved by the board or successful completion of the examination required by board rules, and

(a) ~~One (1) year's experience~~ Hold a current license as a ~~licensed~~

cosmetologist, nail technologist, esthetician or electrologist ~~in a registered cosmetological establishment or school~~ and satisfactory completion of a six (6) months teacher's course of instruction in a school of cosmetology, or

(b) Two (2) years' experience as a licensed cosmetologist, nail technologist, esthetician or electrologist in a registered cosmetological establishment and a three (3) months teacher's course of instruction in a school of cosmetology, or

(c) Five (5) years' experience as a licensed cosmetologist, nail technologist, esthetician or electrologist immediately preceding the application for license.

(3) As a student:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(4) As an apprentice:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(5) As a nail technician:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least a four hundred (400) hour course of instruction and graduated from such training in a board approved school, or an eight hundred (800) hour course of instruction as an apprentice in a specified cosmetological establishment under the direct personal supervision of a licensed cosmetology instructor, who shall have at least one (1) licensed nail technician on-site in the specified cosmetological establishment for each student being trained.

(d) Successful passage of the examination for nail technician given under the direction of the board.

(6) As an electrologist:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least an eight hundred (800) hour course of instruction and graduated from such training in a school approved by the board to teach electrology, or a one thousand six hundred (1,600) hour course of instruction as an apprentice in a specified cosmetological establishment under the direct personal supervision of a licensed electrologist instructor, who shall have at least one (1) licensed electrologist on-site in the specified cosmetological establishment as established by board rules.

(d) Successfully passed the examination for electrologist given under the direction of the board.

(7) As an esthetician:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least a six hundred (600) hour course of instruction for such in a school approved by the board to teach esthetics or a one thousand two hundred (1,200) hour

course of instruction as an apprentice in a specified cosmetological establishment under the direct personal supervision of a licensed cosmetology instructor, who shall have at least one (1) licensed esthetician on-site in the specified cosmetological establishment for each student being trained.

(d) Successfully passed the examination for esthetician given under the direction of the board.

Approved March 19, 2004.

CHAPTER 83
(H.B. No. 484)

AN ACT

RELATING TO RECORDING OF SURVEYS; AMENDING SECTION 55-1902, IDAHO CODE, TO INCLUDE A DEFINITION OF "BASIS OF BEARING"; AND AMENDING SECTION 55-1906, IDAHO CODE, TO CLARIFY REQUIRED CONTENTS OF RECORDS OF SURVEY.

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

SECTION 1. That Section 55-1902, Idaho Code, be, and the same is hereby amended to read as follows:

55-1902. DEFINITIONS. As used in this chapter:

(1) "Basis of bearing" means the bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) monuments or corners which serves as the reference bearing for all other lines on the survey.

(2) "Corner" unless otherwise defined, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(~~2~~3) "GPS" is the abbreviation for global positioning system which is satellite surveying based on observations of the electromagnetic signals broadcast from the U.S. department of defense's NAVSTAR GPS system.

(~~3~~4) "Idaho coordinate system" shall mean that system of plane coordinates as established and designated by chapter 17, title 55, Idaho Code.

(~~4~~5) "Monument" is a physical structure or object that occupies the exact position of a corner.

(~~5~~6) "Property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one (1) or more of the property corners of the property in question.

(~~6~~7) "Property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property.

(~~7~~8) "Public land survey corner" is any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management.

(~~8~~9) "Survey" shall mean the locating and monumenting of points of

lines which define the exterior boundary or boundaries common to two (2) or more ownerships, except those boundaries defining ownership in established and ongoing mineral extraction operations; or which reestablish or restore public land survey corners in accordance with established principles of land surveying by or under the supervision of a surveyor.

(~~9~~10) "Surveyor" shall mean every person authorized by the state of Idaho to practice the profession of land surveying.

SECTION 2. That Section 55-1906, Idaho Code, be, and the same is hereby amended to read as follows:

55-1906. RECORDS OF SURVEY -- CONTENTS. The records of survey shall show:

(1) All monuments found~~,~~ or set~~,~~ or reset~~,~~ or replaced, or removed, describing their kind, size, ~~and~~ location using bearings and distances, and giving other data relating thereto;

(2) Evidence of compliance with chapter 16, title 55, Idaho Code, including instrument numbers of any corner records which have been recorded previously ~~or~~ and corner records of any corners which are set in conjunction with the survey being submitted; basis of bearings, bearing and length of lines, scale of map, and north arrow;

(3) Section, or part of section, township and range in which the survey is located and reference to ~~adjoining~~ surveys of record within or crossing or adjoining the survey;

(4) Certificate of survey;

(5) Ties to at least two (2) public land survey corner monuments of record in one (1) or more of the sections containing the record of survey, or in lieu of public land survey corners, to two (2) corners of records recognized by the county surveyor. Records of survey which are within previously platted subdivisions of record need not be tied to public land survey corner monuments.

Approved March 19, 2004.

CHAPTER 84
(H.B. No. 485)

AN ACT

RELATING TO PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; AMENDING SECTION 54-1212, IDAHO CODE, TO CLARIFY EDUCATION, EXAMINATION AND GRADUATE EDUCATION REQUIREMENTS TO MEET QUALIFICATIONS FOR LICENSURE; AMENDING SECTION 54-1212, IDAHO CODE, AS AMENDED BY SECTION 1, CHAPTER 125, LAWS OF 2002, AS AMENDED BY SECTION 2, CHAPTER 15, LAWS OF 2003, TO CLARIFY EDUCATION, EXAMINATION AND GRADUATE EDUCATION REQUIREMENTS TO MEET QUALIFICATIONS FOR LICENSURE; AMENDING SECTION 54-1213, IDAHO CODE, TO CLARIFY THAT THE BOARD MAY CHARGE APPLICANTS FOR THE COST OF ADMINISTRATION OF EXAMINATIONS; AMENDING SECTION 54-1220, IDAHO CODE, TO CLARIFY AUTHORITY OF THE EXECUTIVE DIRECTOR IN DISCIPLINARY ACTIONS; AND AMENDING CHAPTER 12, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1236, IDAHO CODE, TO SPECIFY EXCLUSIVE JURISDICTION OF THE STATE AND TO PROHIBIT REQUIREMENTS FOR ADDITIONAL LICENSES OR FEES.

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, after graduation, 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 evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record, after graduation, 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.

(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, 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 credit hours of college level academic education beyond high school, ~~with~~ including a minimum of fifteen (15) semester credit~~s~~ hours 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 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 an additional eight (8) years of progressive combined office and field 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 evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, 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 credit hours of college level academic education beyond high school, ~~with~~ including a minimum of fifteen (15) semester credit~~s~~ hours 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 toward a master's degree and not in excess of an additional one (1) year for satisfactory graduate study toward a doctor-

ate degree. In the event an applicant obtains a doctorate degree without first obtaining a master's degree, the board may, at its discretion, give credit, not in excess of two (2) years.

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 2. That Section 54-1212, Idaho Code, as amended by Section 1, Chapter 125, Laws of 2002, as amended by Section 2, Chapter 15, Laws of 2003, 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, after graduation, 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 evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, passage of an examination on the fundamentals of engineering acceptable to the board, and a specific record, after graduation, of 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.

(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 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 evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum, 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 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 evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum, 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, evidence satisfactory to the board that the applicant possesses knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum, 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 pass-

ing 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 toward a master's degree and not in excess of an additional one (1) year for satisfactory graduate study toward a doctorate degree. In the event an applicant obtains a doctorate degree without first obtaining a master's degree, the board may, at its discretion, give credit, not in excess of two (2) years.

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 54-1213, Idaho Code, be, and the same is hereby amended to read as follows:

54-1213. APPLICATIONS AND REGISTRATION FEES. Applications for registration as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, shall be on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's education and a detailed summary of his technical and engineering or land surveying experience. An applicant for registration as a professional engineer or professional land surveyor shall furnish not less than five (5) references, of whom three (3) or more should be registered professional engineers or professional land surveyors, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. An applicant for certification as an engineer-in-training or land surveyor-in-training shall furnish not less than three (3) references of whom at least one (1) should be a registered professional engineer or professional land surveyor, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. Applications for certificates of authorization shall be made in accordance with section 54-1235, Idaho Code.

The maximum application fee for professional engineers or professional land surveyors seeking to be licensed by an eight (8) hour or longer examination shall be an amount equal to the amount charged the board by the entity preparing and administering the examination, plus an administrative fee not to exceed one hundred dollars ($100). The total

application fee shall accompany the application.

The maximum application fee for an applicant who seeks a certificate as an engineer-in-training or land surveyor-in-training shall be an amount equal to the amount charged the board by the entity preparing and administering the examination, plus an administrative fee not to exceed fifty dollars ($50.00). The application fee shall accompany the application.

The maximum application fee for business entities seeking a certificate of authorization shall be two hundred dollars ($200). The application fee shall accompany the application.

Separate application fees shall accompany all applications for each of the four (4) classes of examinations: professional land surveyor, engineer-in-training, land surveyor-in-training and professional engineer.

The amount of the registration fee or certificate fee shall be fixed by the board prior to June 30th of any year and shall continue in force until changed.

Should the board deny the issuance of a certificate of registration or authorization to any applicant, the fee deposited shall be retained as an application fee.

SECTION 4. That Section 54-1220, Idaho Code, be, and the same is hereby amended to read as follows:

54-1220. DISCIPLINARY ACTION -- PROCEDURES. (1) Any affected party may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct or violation of any provision of this chapter, or violation of any of the rules promulgated by the board against any individual registrant or against any business entity holding a certificate of authorization or against a person applying for a certificate of authorization. Repeated acts of negligence may be considered as a gross act for disciplinary action. Such charges shall be in writing, and shall be sworn to by the person or persons making them and shall be filed with the executive director of the board. The executive director of the board ~~may~~ shall be considered an affected party and may be the person making and filing the charges.

(2) All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within six (6) months after the date they were received at the board office unless such time is extended by the board for justifiable cause.

(3) The time and place for said hearing shall be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such individual registrant or business entity holding a certificate of authorization at least thirty (30) days before the date fixed for the hearing. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(4) If, after such hearing, the board votes in favor of sustaining the charges, the board may, in its discretion, impose an administrative penalty, not to exceed two thousand dollars ($2,000) for deposit in the general account of the state of Idaho. In addition, the board, in its discretion, may admonish, reprimand, suspend, revoke, refuse to renew, refuse to grant, or any combination thereof, the individual's certificate of registration or a business entity's certificate of authoriza-

tion. The board may also, in its discretion, require the individual to practice under the supervision of another licensee, or require the individual to successfully complete continuing education courses as may be prescribed by the board.

(5) The board shall have jurisdiction over registrants whose licenses are not current provided the action relates to services performed when the license was current and valid.

SECTION 5. That Chapter 12, 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 54-1236, Idaho Code, and to read as follows:

54-1236. EXCLUSIVE JURISDICTION OF THE STATE — RESTRICTION ON REQUIREMENT FOR ADDITIONAL LICENSES OR FEES. (1) Only the board of registration of professional engineers and professional land surveyors of the state of Idaho is authorized and empowered to issue licenses to persons to practice the profession of engineering or land surveying.

(2) No local jurisdiction shall have the authority to require additional licensure or to require payment of any fees in order for any professional engineer or professional land surveyor to engage in the practice of the profession for which the board has issued a license.

Approved March 19, 2004.

CHAPTER 85
(H.B. No. 486)

AN ACT

RELATING TO THE SCOPE OF AUTHORITY OF THE BOARD OF REAL ESTATE APPRAISERS; AMENDING SECTION 54-4105, IDAHO CODE, TO FURTHER DEFINE EXEMPTIONS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-4105, Idaho Code, be, and the same is hereby amended to read as follows:

54-4105. EXCEPTIONS. (1) The provisions of this chapter do not restrict the right to use the term "appraiser," provided that such term is not used in a manner that creates the impression of certification by the state of Idaho to perform real estate appraisals other than ad valorem tax appraisals. However, nothing in this chapter shall entitle a state licensed or state certified real estate appraiser to appraise real estate for ad valorem tax purposes unless he has first been certified by the Idaho state tax commission pursuant to section 63-105A(17), Idaho Code.

(2) The provisions of this chapter shall not apply to a licensed real estate broker, associate broker or salesperson who, in the ordinary course of his business gives an opinion of the price of real estate for the purpose of a prospective listing or sale, provided that such person does not represent himself as being a state licensed or certified real estate appraiser.

(3) The provisions of this chapter shall not prohibit a real estate broker or associate broker licensed under chapter 20, title 54, Idaho Code, whose license is active and in good standing, from rendering a broker's price opinion, for which the broker may charge a fee, provided the broker's price opinion complies with the following requirements:

(a) The broker's price opinion shall be in writing and contain the following:

(i) A statement of the intended purpose of the price opinion;

(ii) A brief description of the subject property and property interest to be priced;

(iii) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;

(iv) Any assumptions or limiting conditions;

(v) A disclosure of any existing or contemplated interest of the broker(s) issuing the opinion;

(vi) The name and signature of the broker(s) issuing the price opinion and the date of its issuance;

(vii) A disclaimer that, unless the broker is licensed under the Idaho real estate appraisers act, chapter 41, title 54, Idaho Code, the report is not intended to meet the uniform standards of professional appraisal practice~~.~~;

(viii) A disclaimer that the broker's price opinion is not intended to be an appraisal of the market value of the property, and that if an appraisal is desired, the services of a licensed or certified appraiser should be obtained.

The broker's price opinion permitted under this chapter may not be used as an appraisal, or in lieu of an appraisal, in a federally related transaction.

(4) Any person who is not licensed or certified under the provisions of this chapter may assist a state licensed or certified real estate appraiser in the performance of an appraisal, provided that he is actively and personally supervised by the state licensed or certified appraiser and provided further that any appraisal report rendered in connection with the appraisal is reviewed and signed by the state licensed or certified real estate appraiser.

(5) The provisions of this chapter requiring mandatory licensure or certification shall not apply to employees or agents of the Idaho transportation department when estimating the market value ~~of or just compensation~~ for~~, a~~ property that is subject to eminent domain by the department, or property owned by the department that has been declared surplus, where a noncomplex appraisal would normally be ordered, and the market value ~~or compensation~~ is ten thousand dollars ($10,000) or less. Such estimates of market value ~~or just compensation~~ shall be reviewed and approved by an Idaho state certified general real estate appraiser. Idaho state certified general real estate appraisers who estimate or review market value of property under this section shall be exempt from the requirements of uniform standards of professional appraisal practice. A value estimate shall be provided to the property owner who shall also be informed of his right to request and receive an appraisal of his property.

(6) This chapter shall not prohibit a property owner from expressing his personal opinion of the value of his own property, nor shall the

provisions of this chapter prohibit a lender, or employee of a lending institution, from forming and expressing an opinion of collateral value in the ordinary course of business including, but not limited to, mortgaging property, underwriting a loan, or foreclosing a loan, so long as such opinion of collateral value is not represented as being an appraisal of the market value of the property, or prepared under the provisions of this chapter.

(7) This chapter shall not prohibit an attorney or accountant from rendering professional advice within the ordinary course of his profession, so long as such advice is not represented to be an appraisal of the market value of the property.

Approved March 19, 2004.

CHAPTER 86
(H.B. No. 489)

AN ACT

RELATING TO SELF-FUNDED HEALTH CARE PLANS; AMENDING SECTION 41-4003, IDAHO CODE, TO INCREASE APPLICABLE DEDUCTIBLE AND OBLIGATION AMOUNTS OF SELF-FUNDED PLANS FOR PURPOSES OF DETERMINING EXEMPTION FROM REGISTRATION REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 41-4003, Idaho Code, be, and the same is hereby amended to read as follows:

41-4003. REGISTRATION REQUIRED -- EXEMPTIONS -- NOT SUBJECT TO INSURANCE CODE. (1) No self-funded plan shall operate in this state except while registered with the director as hereinafter provided. Self-funded plans already in operation at the effective date of this act shall so register within ninety (90) days after such effective date.

(2) No registration shall be required of:

(a) Any self-funded plan established for the sole purpose of funding the dollar amount of a deductible clause contained in the provisions of an insurance contract issued by an insurer duly authorized to transact disability insurance in this state if the deductible does not exceed an amount applicable to each beneficiary of ~~five hundred~~ two thousand dollars ($~~500~~2,000) per annum and the total of all obligations to all beneficiaries insured under the plan arising out of the application of such a deductible does not exceed the aggregate amount of ~~fifty~~ two hundred thousand dollars ($~~50,000~~200,000) in any one (1) year.

(b) Any plan established and maintained for the purpose of complying with any ~~workmen's~~ worker's compensation law or unemployment compensation disability insurance law.

(c) Any plan administered by or for the federal government or agency thereof or any county of this state.

(d) Any plan which is primarily for the purpose of providing first aid care and treatment, at a dispensary of an employer, for injury or sickness of employees while engaged in their employment.

(e) Any employer's self-insured health plan or service established and maintained solely for its members and their immediate families, or to any self-insured health plan or service established, maintained, and insured jointly by any employer and any labor organization or organizations if such health plan or service has been in existence and operation for fifteen (15) years immediately preceding the effective date of this act.

(3) Plans while so registered shall not be deemed to be engaged in the business of insurance and shall not be subject to provisions of the Idaho insurance code except as expressly provided in this act.

Approved March 19, 2004.

CHAPTER 87
(H.B. No. 490)

AN ACT

RELATING TO SURPLUS LINES INSURERS; AMENDING SECTION 41-1217, IDAHO CODE, TO REQUIRE ELIGIBLE SURPLUS LINES INSURERS TO NOTIFY THE DIRECTOR OF ANY CHANGES TO THE INSURER'S NAME, ADDRESS OR STATE OF DOMICILE WITHIN SIXTY DAYS.

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

SECTION 1. That Section 41-1217, Idaho Code, be, and the same is hereby amended to read as follows:

41-1217. ELIGIBLE SURPLUS LINES INSURERS. (1) A broker shall not knowingly place surplus lines insurance with an insurer that is unsound financially, or that is ineligible under this section.

(2) The director shall from time to time compile or approve a list of all surplus lines insurers deemed by him to be eligible currently, and shall cause to be sent a copy of such list to each broker at his office last of record with the director. This subsection shall not be deemed to require the director to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the director, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the director has no credible evidence to the contrary. While any such list is in effect the broker shall restrict to the insurers so listed all surplus lines business placed by him and a person who independently procures its own insurance pursuant to this chapter for risks located in Idaho shall only purchase surplus line insurance from insurers so listed.

(3) An eligible surplus lines insurer shall notify the director of any change to the name of the insurer, its physical or mailing address, or its state of domicile, within sixty (60) days of such change.

Approved March 19, 2004.

CHAPTER 88
(H.B. No. 491)

AN ACT

RELATING TO SUSPENSION OF INSURER CERTIFICATES OF AUTHORITY; AMENDING SECTION 41-329, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY ISSUE NEW ORDERS OF SUSPENSION, TO PROVIDE THAT CERTIFICATES OF AUTHORITY SHALL BE DEEMED TERMINATED AT THE END OF THE SUSPENSION PERIOD IF NOT REINSTATED OR IF A NEW ORDER OF SUSPENSION IS NOT ISSUED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 41-329, Idaho Code, be, and the same is hereby amended to read as follows:

41-329. DURATION OF SUSPENSION -- INSURER'S OBLIGATIONS DURING SUSPENSION PERIOD -- REINSTATEMENT. (1) Suspension of an insurer's certificate of authority shall be for such period as the director specifies in the order of suspension, but not to exceed one (1) year. During the suspension the director may rescind or shorten the suspension by his further order.

(2) During the suspension period the insurer shall not solicit or write any new business in this state, but shall file its annual statement, pay fees, licenses, and taxes as required under this code, and may service its business already in force in this state, as if the certificate of authority had continued in full force.

(3) Upon expiration of the suspension period, if within such period the certificate of authority has not terminated, the insurer's certificate of authority shall automatically reinstate unless the director finds that the causes of the suspension have not terminated, or that the insurer is otherwise not in compliance with the requirements of this code, and of which the director shall give the insurer notice not less than thirty (30) days in advance of the expiration of the suspension period after which time the director may issue a new order of suspension. If not ~~so automatically~~ reinstated or if a new order of suspension is not issued, the certificate of authority shall be deemed to have terminated as of the end of the suspension period.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate. The director shall promptly notify the insurer and its agents in this state of record in the department, of such reinstatement. If pursuant to section 41-328(3), Idaho Code, the director has published notice of such suspension he shall in like manner publish notice of the reinstatement.

Approved March 19, 2004.

CHAPTER 89
(H.B. No. 492)

AN ACT

RELATING TO AUTHORIZATION OF INSURERS; AMENDING SECTION 41-319, IDAHO CODE, TO REQUIRE FOREIGN CORPORATIONS TO SUBMIT ONE COPY AND DOMESTIC CORPORATIONS TO SUBMIT THREE COPIES OF SPECIFIED CORPORATE DOCUMENTS WITH AN APPLICATION FOR AN ORIGINAL CERTIFICATE OF AUTHORITY AND TO DELETE DOCUMENT REQUIREMENTS RELATING TO WORKER'S COMPENSATION INSURERS AND AUTHORIZED REPRESENTATION.

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

SECTION 1. That Section 41-319, Idaho Code, be, and the same is hereby amended to read as follows:

41-319. APPLICATION FOR CERTIFICATE OF AUTHORITY. To apply for an original certificate of authority an insurer shall file with the director its application therefor, accompanied by the applicable fees set forth by rule pursuant to section 41-401, Idaho Code, showing its name, location of its home office or principal office in the United States (if an alien insurer), the kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the director may reasonably require, together with the following documents, as applicable:

(1) If a foreign corporation, ~~two--(2)--copies~~ one (1) copy (photostatic ~~copies~~ copy or similar form of reproduction) of its corporate charter, articles of incorporation or other charter documents, with all amendments thereto, currently certified by the public official with whom the originals are on file in the state or country of domicile. If a domestic corporation, three (3) copies pursuant to section 41-2804, Idaho Code.

(2) If a foreign corporation, one (1) copy (photostatic copy or similar form of reproduction) of its bylaws as amended, certified by the insurer's corporate secretary. If a domestic ~~insurer or mutual insurer~~ corporation, ~~one (1) copy~~ three (3) copies (photostatic ~~copy~~ copies or similar form of reproduction) of its bylaws as amended, certified by the insurer's corporate secretary.

(3) If a reciprocal insurer, a copy of the power of attorney of its attorney in fact, and a copy of its subscribers' agreement, if any, both certified by the attorney in fact; and if a domestic reciprocal insurer, the declaration provided for in section 41-2908, Idaho Code.

(4) A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer, or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States.

(5) Copy of report of last examination, if any, made of the insurer within not more than three (3) years next preceding, certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States; or, in the case of newly formed insurers, copy of the report of the "qualifying" examination of the

insurer, similarly certified. Provided, however, that if the law of the applicant's state of domicile requires that examinations shall be completed in a period of more than three (3) years or does not specify any period of time for examinations, then the applicant shall provide a copy of a report within not more than the five (5) years next preceding.

(6) Appointment of the director pursuant to section 41-333, Idaho Code, as its attorney to receive service of legal process.

(7) If a foreign insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized to transact in such state or country the kind or kinds of insurance proposed to be transacted in this state.

(8) ~~If--a--worker's--compensation--insurer,--tender--of-the-special deposit-required-under-section-41-317,-Idaho-Code.~~

~~(9)~~ If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

(~~10~~9) If a foreign insurer, certificate as to deposit if to be tendered pursuant to section 41-316, Idaho Code.

(1~~1~~0) If a life or disability insurer, one (1) copy of the insurer's rate book and of each form of policy proposed to be issued in this state.

~~(12) A-certificate-of-the-insurer-granting-authority-to--an--officer or--authorized--representative--of--the--insurer--to--appoint-and-remove agents.~~

Approved March 19, 2004.

CHAPTER 90
(H.B. No. 493)

AN ACT

RELATING TO FOREIGN AND ALIEN INSURERS; AMENDING SECTION 41-316, IDAHO CODE, TO CLARIFY AN EXCEPTION TO THE REQUIREMENT OF DEPOSIT BASED UPON A CERTIFICATE FROM THE INSURER'S STATE OF DOMICILE AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 41-317, IDAHO CODE, RELATING TO SPECIAL DEPOSITS FOR FOREIGN OR ALIEN INSURERS WRITING WORKMEN'S COMPENSATION COVERAGES IN IDAHO; AMENDING SECTIONS 41-319 AND 41-802, IDAHO CODE, TO REMOVE LANGUAGE REFERENCING SPECIAL DEPOSITS FOR WORKER'S COMPENSATION COVERAGE; AMENDING SECTION 41-803, IDAHO CODE, TO REMOVE A CODE REFERENCE; AMENDING SECTION 41-804, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE APPLICABLE TO SPECIAL DEPOSITS FOR WORKMEN'S COMPENSATION COVERAGE; AND AMENDING SECTION 41-810, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE APPLICABLE TO SPECIAL DEPOSITS FOR WORKMEN'S COMPENSATION COVERAGE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-316, Idaho Code, be, and the same is hereby amended to read as follows:

41-316. DEPOSIT -- FOREIGN OR ALIEN INSURERS. (1) This section shall apply as to all foreign and alien insurers.

(2) The director shall not authorize any foreign or alien insurer to transact insurance in this state unless it makes and thereafter maintains in trust in this state through the director for the protection of all its policyholders or of all its policyholders and creditors, a deposit of cash or securities eligible for deposit under section 41-803, Idaho Code, in the amount of one million dollars ($1,000,000), except that:

(a) As to foreign insurers, except foreign title insurers, in lieu of such Idaho deposit, the director shall accept the certificate in proper form of the public official having supervision over insurers in ~~any other~~ the insurer's state of domicile that:

(i) A like deposit by such insurer is being maintained in public custody or control for the protection generally of the insurer's policyholders or its policyholders and creditors; and

(ii) The insurer is a member in good standing of such state's insurance guaranty association or other legal entity created for the same purpose; or if a life or health insurer, the insurer is a member in good standing of such state's insurance guaranty association or other legal entity created for the same purpose, and such guaranty association does and shall provide protection for its own state's residents.

(b) As to foreign title insurers, in lieu of such Idaho deposit, the director shall accept the certificate or certificates in proper form from the public official or officials having supervision over title insurers in any other state or states to the effect that a like deposit or total deposits by such insurer, in an equal or greater amount than required in this section, are being maintained in public custody or control for the protection generally of the insurer's policyholders or its policyholders and creditors.

(c) As to alien insurers, in lieu of such deposit or part thereof in this state, the director shall accept evidence satisfactory to him that the insurer maintains within the United States by way of trust deposits with public depositaries, or in trust institutions acceptable to the director, assets available for discharge of its United States insurance obligations, which assets shall be in an amount not less than the outstanding liabilities of the insurer arising out of its insurance transactions in the United States together with a surplus equal to the larger of the following sums:

(i) The largest deposit required by this code to be made by a foreign insurer transacting like kinds of insurance; or

(ii) One million dollars ($1,000,000). Such surplus shall for all purposes under this code be deemed to be the "capital" or "surplus" of the insurer.

(3) Deposits of foreign or alien insurers in another state shall be in cash and/or securities of substantially as high quality as those eligible for deposit in this state under section 41-803, Idaho Code.

(4) All such deposits in this state are subject to the applicable provisions of chapter 8 (administration of deposits), title 41, Idaho Code, except that the release and return of deposits brought about by changes to section 41-316(2), Idaho Code, effective July 1, 1987, shall not require a hearing thereon as required under section 41-812(2), Idaho Code.

(5) Any foreign or alien insurer which requires that its agents maintain a separate trust account for transactions involving that

insurer shall make and thereafter maintain in trust in this state, through the director, for the protection of all its policyholders and agents, a deposit of cash or securities eligible for deposit under section 41-803, Idaho Code, in the amount of twenty ~~per cent~~ percent (20%) of its gross written premiums, upon which such insurer is subject to the premium tax of this state under section 41-402, Idaho Code.

(6) A foreign or alien insurer holding a valid certificate of authority to transact insurance in this state immediately prior to January 1, 1995, shall have a period of two (2) years from and after that date within which to comply with any increase in deposit requirements.

SECTION 2. That Section 41-317, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 41-319, Idaho Code, be, and the same is hereby amended to read as follows:

41-319. APPLICATION FOR CERTIFICATE OF AUTHORITY. To apply for an original certificate of authority an insurer shall file with the director its application therefor, accompanied by the applicable fees set forth by rule pursuant to section 41-401, Idaho Code, showing its name, location of its home office or principal office in the United States (if an alien insurer), the kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the director may reasonably require, together with the following documents, as applicable:

(1) If a corporation, two (2) copies (photostatic copies or similar form of reproduction) of its corporate charter, articles of incorporation or other charter documents, with all amendments thereto, currently certified by the public official with whom the originals are on file in the state or country of domicile.

(2) If a domestic insurer or mutual insurer, one (1) copy (photostatic copy or similar form of reproduction) of its bylaws as amended, certified by the insurer's corporate secretary.

(3) If a reciprocal insurer, a copy of the power of attorney of its attorney in fact, and a copy of its subscribers' agreement, if any, both certified by the attorney in fact; and if a domestic reciprocal insurer, the declaration provided for in section 41-2908, Idaho Code.

(4) A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer, or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States.

(5) Copy of report of last examination, if any, made of the insurer within not more than three (3) years next preceding, certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States; or, in the case of newly formed insurers, copy of the report of the "qualifying" examination of the insurer, similarly certified. Provided, however, that if the law of the applicant's state of domicile requires that examinations shall be completed in a period of more than three (3) years or does not specify any period of time for examinations, then the applicant shall provide a copy of a report within not more than the five (5) years next preceding.

(6) Appointment of the director pursuant to section 41-333, Idaho Code, as its attorney to receive service of legal process.

(7) If a foreign insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized to transact in such state or country the kind or kinds of insurance proposed to be transacted in this state.

(8) ~~If a worker's compensation insurer, tender of the special deposit required under section 41-317, Idaho Code.~~

~~(9)~~ If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

(~~10~~9) If a foreign insurer, certificate as to deposit if to be tendered pursuant to section 41-316, Idaho Code.

(1~~1~~0) If a life or disability insurer, one (1) copy of the insurer's rate book and of each form of policy proposed to be issued in this state.

(1~~2~~1) A certificate of the insurer granting authority to an officer or authorized representative of the insurer to appoint and remove agents.

SECTION 4. That Section 41-802, Idaho Code, be, and the same is hereby amended to read as follows:

41-802. PURPOSE OF DEPOSIT. Such deposits shall be held for purposes as follows:

(1) Deposits made in this state under sections 41-316, Idaho Code, (foreign and alien insurance deposit requirements), and 41-316A, Idaho Code, (domestic insurance deposit requirements), ~~and 41-317, Idaho Code, (special deposit, workmen's compensation insurer's),~~ shall be held for the purposes stated in the respective sections.

(2) A deposit made in this state by a domestic insurer transacting insurance in another state, province or country, and as required by the laws of such state, province or country, shall be held for the purpose or purposes specified pursuant to such laws.

(3) Deposits of foreign insurers required pursuant to the retaliatory provision, section 41-340, Idaho Code, shall be held for such purposes as are required by such law, and as specified by the director's order by which the deposit is required.

SECTION 5. That Section 41-803, Idaho Code, be, and the same is hereby amended to read as follows:

41-803. SECURITIES ELIGIBLE FOR DEPOSIT. (1) All such deposits required under sections 41-316~~,~~ and 41-316A, ~~and 41-317,~~ Idaho Code, for authority to transact insurance in this state shall consist of certificates of deposit issued by solvent banks, or any combination of securities the market value of which is readily ascertainable and, if negotiable by delivery or assignment, of the kinds described in the following sections:

(a) Section 41-707 (public obligations);

(b) Section 41-708 (securities of certain federal agencies);

(c) Section 41-709 (irrigation district obligations);

(d) Section 41-710 (international bank);

(e) Section 41-711 (corporate obligations);

(f) Section 41-717 (equipment trust obligations); and

(g) Section 41-720 (savings and share accounts).

(2) Except that the director shall accept as a security eligible for deposit and recognize as part of the deposit any particular valid and enforceable real estate mortgage already lawfully so on deposit at the effective date of this code, so long as the mortgage continues to qualify for investment of the insurer's funds therein as under chapter 7 of this code and is not in default in any particular.

(3) All such deposits required of a domestic insurer pursuant to the laws of another state, province or country shall be comprised of securities, if negotiable by delivery or assignment, of the kind or kinds required or permitted by the laws of such state, province or country, except stocks, mortgages of any kind and real estate.

(4) Deposits of foreign insurers made in this state under the retaliatory provision, section 41-340, Idaho Code, shall consist of such securities or assets as are required by the director pursuant to such provision.

SECTION 6. That Section 41-804, Idaho Code, be, and the same is hereby amended to read as follows:

41-804. CUSTODIAL ARRANGEMENTS FOR DEPOSITS. (1) All deposits of insurers made in this state under this code shall be made through the director.

(2) The deposits shall be made with and held by the trust department of an established bank located in Idaho, approved by the director for the purpose, and under custodial arrangements likewise approved by him. All such custodial arrangements shall comply in substance with the requirements of this code as to the amount, purposes, maintenance, initial amounts, release and withdrawal of such a deposit, and as to the rights of the insurer therein.

(3) The securities qualified for deposit under this chapter may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements set forth in this chapter shall be under the control of the director of the department of insurance and shall not be withdrawn by the insurer without the approval of the director. Any insurer holding securities in such manner shall provide evidence satisfactory to the director, issued by its custodian or member bank through which such insurer has deposited such securities in a clearing corporation or through which such securities are held in the federal reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank, and that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the director. Definitions contained in section 41-2870, Idaho Code, shall apply to this subsection (3).

(4) The cost of any such custodial arrangements shall be borne by the insurer. The state of Idaho shall have no responsibility for the safekeeping of the deposit.

~~(5)--This-section-does-not-apply-to-the-deposit-of-a-workmen's--compensation--insurer--made--with--the--state-treasurer-pursuant-to-section 41-317,-Idaho-Code-(special-deposit,-workmen's-compensation-insurers).~~

SECTION 7. That Section 41-810, Idaho Code, be, and the same is hereby amended to read as follows:

41-810. LEVY UPON DEPOSIT. (1) No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities of the insurer held on deposit in this state pursuant to section 41-316 or 41-316A, Idaho Code.

(2) As to deposits made in this state pursuant to the retaliatory provision, section 41-340, Idaho Code, levy thereupon shall be permitted only if expressly so provided in the director's order under which the deposit is required.

(3) As to the special deposit of a ~~workmen's-compensation-insurer or-the-deposit-of-a~~ title insurer, if upon expiration of thirty (30) days after the judgment became final the insurer has failed to satisfy in full any final judgment rendered against it by a court of this state and arising out of any contract of insurance or guaranty issued by it, ~~if-a-title-insurer,-or-out-of-any--contract--of--workmen's--compensation insurance-issued-by-it-if-a-workmen's-compensation-insurer,~~ the judgment may be enforced against the insurer's deposit. For the purposes of this provision a judgment shall be deemed to have become final upon expiration of the period permitted by law for an appeal, or, if an appeal is taken, upon dismissal of the appeal or affirmance of the judgment.

(4) To obtain the enforcement referred to in subsection (3) of this section, the judgment creditor shall petition the court in the same cause in which the judgment was obtained, setting forth the facts referred to in subsection (3) of this section, and the court shall direct issuance of a special execution directed to the sheriff of Ada county of this state requiring the sheriff to sell the assets and securities of the insurer on deposit or so much thereof as may be necessary to satisfy the judgment. The court's order authorizing the special execution shall direct that a copy of the judgment, petition, and writ of execution shall be served upon the director~~,-and--also--upon--the--state treasurer--in--the-case-of-a-levy-upon-the-special-deposit-of-an-insurer made-pursuant-to-section-41-317,-Idaho-Code,~~ within five (5) days thereafter. Upon receipt of such service the director shall forthwith notify the insurer of the levy and~~,-in-all-cases-other-than-as-to-the-special deposit-of-an-insurer-under-section--41-317,--Idaho--Code,~~ require the insurer within such period as may be specified in the notice, which period shall be not less than ten (10) nor more than thirty (30) days after the date of the notice, to have its president or other duly authorized representative to attend with the insurer's key and the director to the opening of the box in which the insurer's deposit is kept. Upon the box being so opened the director shall extract therefrom and deliver to the sheriff for sale on execution deposited assets or securities of the insurer in amount, up to the full amount so on deposit, not less than as required for the satisfaction of the judgment. ~~In-case-of-a-levy upon--the-special-deposit-of-an-insurer-made-under-section-41-317,-Idaho Code,-and-failure-of-the-insurer-fully-to-pay-and-discharge--such--judgment--within--forty--(40)-days-after-the-date-of-notice-by-the-director, the-state-treasurer-shall-deliver-to-the-sheriff-for-sale--on--execution so--much--of--the-insurer's-securities-or-assets-so-on-deposit-as-may-be required-to-cover-the-judgment-and-attendant-costs.~~ All proceedings for the enforcement of the writ of execution against the deposit shall conform as nearly as may be to the practice in ordinary cases except as in

this subsection specially provided.

(5) If the insurer, after notice by the director as required under subsection (4) of this section, ~~wilfully~~ willfully fails to attend to the opening of the box in which its deposit is kept, or ~~wilfully~~ willfully fails to permit the director to extract therefrom assets or securities as in subsection (4) of this section provided, the director shall after hearing held thereon forthwith revoke the insurer's certificate of authority and institute proceedings for the rehabilitation or liquidation of the insurer under chapter 33 of this code. In any such proceedings the judgment with respect to which execution was issued and leading to the insurer's failure as herein referred to, shall have a first and prior right and claim as to the assets and securities of the insurer constituting its deposit as levied against, as of the date of service upon the director of the copy of the judgment, petition, and writ of execution as provided for in subsection (4) of this section.

Approved March 19, 2004.

CHAPTER 91
(H.B. No. 494)

AN ACT

RELATING TO INSURER REQUIREMENTS; AMENDING SECTION 41-311, IDAHO CODE, TO LIMIT THE ABILITY OF AN INSURER TO TRANSACT INSURANCE IN IDAHO BASED ON THE CHARACTERISTICS OF THE BUSINESS NAME OF THE INSURER AND TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO PERMIT OR REQUIRE AN INSURER TO SUPPLEMENT OR MODIFY A BUSINESS NAME IN THE CASE OF A CONFLICT OF NAMES.

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

SECTION 1. That Section 41-311, Idaho Code, be, and the same is hereby amended to read as follows:

41-311. NAME OF INSURER. (1) No insurer shall be formed, ~~or~~ authorized or otherwise allowed to transact insurance in this state which has or uses a name or principal identifying name factor which is the same as or deceptively similar to that of another insurer earlier ~~so~~ authorized or allowed to transact insurance in this state.

(2) No life insurer shall be ~~so~~ authorized or otherwise allowed to transact insurance in this state which has or uses a name deceptively similar to that of another insurer authorized or otherwise allowed to transact insurance in this state within the preceding ten (10) years if life insurance policies originally issued by such other insurer are still outstanding in this state.

(3) No insurer shall hereafter be formed, ~~or~~ newly authorized or otherwise allowed to transact insurance in this state which has or uses a name the same as or deceptively similar to the name of any foreign insurer doing business elsewhere than in this state if such foreign insurer has within the last preceding twelve (12) months signified its intention to secure incorporation in this state under such name, or do business as a foreign insurer in this state under such name by filing

notice of such intention with the director, unless the written consent to the use of such name or deceptively similar name has been given by such foreign insurer.

(4) No insurer shall be ~~so~~ authorized or otherwise allowed to transact insurance in this state which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

(5) In case of conflict of names hereafter between two (2) insurers, or a conflict otherwise prohibited under this section, the director may permit, or shall require as a condition to the issuance of an original certificate of authority or other approval to transact insurance in this state to an applicant insurer, the insurer to use in this state such supplementation or modification of its name or such business name as may reasonably be necessary to avoid the conflict. No such name, supplementation or modification shall contain the principal identifying factor of the name of any other insurer already authorized or otherwise allowed to transact insurance in this state.

Approved March 19, 2004.

CHAPTER 92
(H.B. No. 496)

AN ACT

RELATING TO INDIVIDUAL DEFERRED ANNUITIES; AMENDING SECTION 41-1927A, IDAHO CODE, TO REVISE MINIMUM NONFORFEITURE AMOUNTS APPLICABLE TO ANNUITY CONTRACTS ISSUED BY INSURERS, TO AUTHORIZE THE DIRECTOR TO ADOPT RULES AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING EFFECTIVE DATES FOR NONFORFEITURE AMOUNT PROVISIONS.

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 ~~i~~Internal ~~r~~Revenue ~~c~~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 con-

tains 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 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 accumu-~~

~~lated at a rate of interest of three 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 percent (65%) of the net consideration for the first contract year and eighty seven and one half 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 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 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 percent (65%) of the net consideration for the first contract year plus twenty two and one half 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 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 percent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy five dollars ($75.00)~~ 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 rates of interest as indicated in subsection (4)(b) of this section of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of subparagraphs (4)(a)(i) through (iv) below:

(i) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (4)(b) of this section;

(ii) An annual contract charge of fifty dollars ($50.00), accumulated at rates of interest as indicated in subsection (4)(b) of this section;

(iii) Any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in subsection (4)(b) of this section, provided that the premium tax credit is only permitted if the tax is actually paid by the insurer, and provided further that if the tax is paid and subsequently credited back to the insurer, such as upon early termination of the contract, the tax credit may not be taken; and

(iv) The amount of any indebtedness to the insurer on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.

(b) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(i) The five (5) year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent (.2%), specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under subsection (4)(b)(iv) of this section;

(ii) Reduced by one hundred twenty-five (125) basis points;

(iii) Where the resulting interest rate is not less than one percent (1%); and

(iv) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five (5) year constant maturity treasury rate to be used at each redetermination date.

(c) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (4)(b)(ii) of this section by up to an additional one hundred (100) basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The director may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the director, the director may disallow or limit the additional reduction.

(d) The director may adopt rules to implement the provisions of subsection (4)(c) of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the director determines adjustments are justified.

(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 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.

SECTION 2. Before January 1, 2006, an insurer may (1) issue an annuity policy under the provisions of Section 41-1927A(4), Idaho Code, as those provisions were in effect on July 1, 2003; or (2) issue an annuity policy under the provisions of Section 41-1927A(4), Idaho Code, as those provisions are in effect on July 1, 2004. On and after January 1, 2006, an annuity policy issued by an insurer must comply with the provisions of Section 41-1927A(4), Idaho Code, as those provisions, including any subsequent amendments thereto, are in effect on and after July 1, 2004.

Approved March 19, 2004.

CHAPTER 93
(H.B. No. 497)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-335, IDAHO CODE, TO PROVIDE THAT ANNUAL STATEMENTS SHALL BE PREPARED IN ACCORDANCE WITH SPECIFIED STANDARDS OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND REVISIONS TO SUCH STANDARDS AS ADOPTED BY THE DIRECTOR, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE GRAMMATICAL CORRECTIONS.

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

SECTION 1. That Section 41-335, Idaho Code, be, and the same is hereby amended to read as follows:

41-335. ANNUAL STATEMENT. (1) Each authorized insurer shall annually on or before March 1, or within any extension of time therefor, not to exceed thirty (30) days, which the director for good cause may have granted, file with the director a full and true statement of its financial condition, transactions and affairs as of the preceding December 31. Unless otherwise required by the director, the statement is to be prepared in accordance with the national association of insurance commissioners' (NAIC) annual statement instructions and the NAIC's accounting practices and procedures manual, ~~adopted by the national association of insurance commissioners (NAIC)~~ utilizing the version of the manual effective January 1, 2004, and any subsequent revisions that are adopted for use by the director by rule, administrative order or bulletin, and is to be submitted on the NAIC annual ~~convention~~ statement blank form, and any statement, form or other information relating to the compensation of any officer, director or employee will be deemed confidential. At the seasonable request of a domestic insurer the director shall furnish to the insurer the blank form of annual statement to be used by it. The statement shall be verified by the oath of the insurer's president or vice president, and secretary or actuary as applicable, or if a reciprocal insurer, by the oath of the attorney in fact or its like officers if a corporation.

(2) The statement of an alien insurer shall be verified by its United States manager or other officer duly authorized, and shall relate only to the insurer's transactions and affairs in the United States unless the director requires otherwise. If the director requires a statement as to the insurer's affairs throughout the world, the insurer shall file such statement with the director as soon as reasonably possible.

(3) An insurer which is subject to section 41-337, Idaho Code, (resident agent, countersignature law) shall attach to its annual statement the affidavit required under section 41-339, Idaho Code.

(4) Any insurance company licensed to do business in this state which neglects to file or fails to file in the time prescribed by statute its annual statement or supplemental summary statement requested by the director shall be subject to a penalty of twenty-five dollars ($25.00) per day for each day in default. This penalty will be in addition to any administrative penalty which may be assessed pursuant to sections 41-327 and 41-324, Idaho Code.

(5) Each domestic insurer authorized to do business in this state shall annually, on or before March 1 of each year, file with the NAIC its annual financial statement in a form prescribed by the director along with any additional filings prescribed by the director for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by this code. Any amendments or addenda to the annual statement shall also be filed with the NAIC.

(6) At time of filing, the insurer shall pay to the director the fee for filing its statement as prescribed by rule of the department of insurance.

(7) The financial statements filed with the director pursuant to

this section, with the exception of information relating to officer, director, or employee compensation referred to in subsection (1) of this section, are public records and available to the public, notwithstanding the exemptions from disclosure provided in chapter 3, title 9, Idaho Code.

Approved March 19, 2004.

CHAPTER 94
(H.B. No. 505)

AN ACT

RELATING TO PROPERTY TAX APPEALS; AMENDING SECTION 63-3811, IDAHO CODE, TO DELETE REFERENCE TO A STATUTE THAT IS NO LONGER APPLICABLE TO TAX APPEALS.

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

SECTION 1. That Section 63-3811, Idaho Code, be, and the same is hereby amended to read as follows:

63-3811. APPEAL FROM DETERMINATION OF TAX LIABILITY. Taxpayers may, within the period herein provided and by following the procedures herein required, appeal to the board of tax appeals from a final determination of any tax liability, including those pursuant to sections 63-501, 63-511~~,~~ and 63-3049, ~~and 63-3632,~~ Idaho Code.

Approved March 19, 2004.

CHAPTER 95
(H.B. No. 506)

AN ACT

RELATING TO PROPERTY TAX APPEALS; AMENDING SECTION 63-3812, IDAHO CODE, TO CLARIFY THE PROCEDURE TO FILE AN APPEAL TO DISTRICT COURT AND TO PROVIDE A TECHNICAL CORRECTION.

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

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

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

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

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

(c) Appeals may be based upon any issue presented by the appellant to the board of tax appeals and shall be heard and determined by the court without a jury in a trial de novo on the issues in the same manner as though it were an original proceeding in that court. The burden of proof shall fall upon the party seeking affirmative relief to establish that the decision made by the board of tax appeals is erroneous. A preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the ~~party~~ burden of going forward with the evidence shall shift as in other civil litigation. The court shall render its decision in writing, including therein a concise statement of the facts found by the court and conclusions of law reached by the court. The court may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.

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

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

Approved March 19, 2004.

CHAPTER 96
(H.B. No. 509)

AN ACT

RELATING TO THE IDAHO ENDOWMENT FUND INVESTMENT BOARD; AMENDING SECTION 57-720, IDAHO CODE, TO PROVIDE THAT PERMANENT ENDOWMENT FUNDS AND EARNINGS RESERVE FUNDS MAY BE COMBINED OR POOLED FOR INVESTMENT AND TO PROVIDE CORRECT TERMINOLOGY; DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

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

SECTION 1. That Section 57-720, Idaho Code, be, and the same is hereby amended to read as follows:

57-720. PERMANENT ENDOWMENT FUNDS -- EARNINGS RESERVE FUNDS -- INCOME FUNDS -- INVESTMENT ~~POLICY-REGULATIONS~~ POLICIES -- ANNUAL AUDIT. (1) The investment board or its investment manager(s) may, and are hereby authorized to, invest the permanent endowment funds and the earnings reserve funds of the state of Idaho.

(2) The permanent endowment funds and the earnings reserve funds may be combined or pooled for investment.

(3) Earnings reserve funds shall be accounted for separately from permanent endowment funds.

(4) Gains and losses as defined in section 57-724, Idaho Code, shall be annually allocated between the permanent endowment funds and the earnings reserve funds at the end of each fiscal year. This allocation shall be made based upon the proportion that the market value of the permanent endowment funds and the market value of the earnings reserve funds bear to the combined market value of both sets of funds, at the end of the fiscal year.

(5) The investment board shall formulate investment ~~policy-regulations~~ policies governing the investment of permanent endowment funds and earnings reserve funds. The ~~regulations~~ policies shall pertain to the types, kinds or nature of investment of any of the funds, and any limitations, conditions or restrictions upon the methods, practices or procedures for investment, reinvestments, purchases, sales or exchange transactions, provided such ~~regulations~~ policies shall not conflict with nor be in derogation of any Idaho constitutional provision or of the provisions of this act.

(6) Annually, the investment board shall cause an audit to be conducted of the investment of permanent endowment funds and earnings reserve funds, such audit to be conducted by a recognized certified public accountant. The certified public accountant conducting the audit shall not be an employee of the state. The expense of such audit shall be paid from the appropriation to the investment board.

(7) The state treasurer shall invest the income funds of the respective endowments and distribute the moneys in the income funds according to legislative appropriation.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2004.

Approved March 19, 2004.

CHAPTER 97
(H.B. No. 518)

AN ACT

RELATING TO THE INTERSTATE COMPACT FOR JUVENILES; REPEALING CHAPTER 19, TITLE 16, IDAHO CODE; AMENDING TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 19, TITLE 16, IDAHO CODE, AUTHORIZING AND DIRECTING

THE GOVERNOR OF THE STATE OF IDAHO TO EXECUTE THE INTERSTATE COMPACT FOR JUVENILES ON BEHALF OF THE STATE, PROVIDING THE PURPOSE OF THE COMPACT, DEFINING TERMS, PROVIDING FOR THE INTERSTATE COMMISSION FOR JUVENILES, PROVIDING FOR THE POWERS AND DUTIES OF THE INTERSTATE COMMISSION, PROVIDING FOR THE ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION, PROVIDING FOR THE RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION, PROVIDING FOR OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION, PROVIDING FOR FINANCING OF THE INTERSTATE COMMISSION, PROVIDING FOR A STATE COUNCIL, PROVIDING FOR COMPACTING STATES, THE EFFECTIVE DATE OF THE COMPACT AND AMENDMENT OF THE COMPACT, PROVIDING FOR WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT, PROVIDING FOR SEVERABILITY AND CONSTRUCTION OF THE COMPACT, PROVIDING FOR THE BINDING EFFECT OF THE COMPACT AND OTHER LAWS AND PROVIDING A SHORT TITLE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 19, Title 16, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 16, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 19, Title 16, Idaho Code, and to read as follows:

CHAPTER 19
INTERSTATE COMPACT FOR JUVENILES

16-1901. COMPACTS WITH OTHER STATES AUTHORIZED. The governor of this state is hereby authorized and directed to execute a compact on behalf of the state of Idaho with any of the United States legally joining therein in the form substantially as follows:

ARTICLE I
PURPOSE

The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the crime control act, 4 U.S.C. section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and

receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II
DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Bylaws" means: those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

B. "Compact administrator" means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

C. "Compacting state" means: any state which has enacted the

enabling legislation for this compact.

D. "Commissioner" means: the voting representative of each compacting state appointed pursuant to article III of this compact.

E. "Court" means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. "Deputy compact administrator" means: the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

G. "Interstate Commission" means: the interstate commission for juveniles created by article III of this compact.

H. "Juvenile" means: any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(1) Accused delinquent - a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated delinquent - a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused status offender - a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated status offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Nonoffender - a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. "Noncompacting state" means: any state which has not enacted the enabling legislation for this compact.

J. "Probation or parole" means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. "Rule" means: a written statement by the interstate commission promulgated pursuant to article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. "State" means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III
INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The interstate commission shall consist of commissioners

appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the interstate commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be ex officio (nonvoting) members. The interstate commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one (1) vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff; administer enforcement and compliance with the provisions of the compact, its bylaws and rules; and perform such other duties as directed by the interstate commission or set forth in the bylaws.

G. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any

information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds (2/3) vote that an open meeting would be likely to:

1. Relate solely to the interstate commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing any person of a crime, or formally censuring any person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes;
7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
9. Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.

2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

4. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means including, but not limited to, the use of judicial process.

5. To establish and maintain offices which shall be located within one (1) or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III of this compact which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and bylaws governing the management and operation of the interstate commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

ARTICLE V
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

1. The interstate commission shall, by a majority of the members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the interstate commission;

b. Establishing an executive committee and such other committees as may be necessary;

c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;

d. Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the interstate commission;

f. Providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations.

g. Providing "start-up" rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

1. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

2. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the interstate commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the

scope of commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI
RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States supreme court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

C. When promulgating a rule, the interstate commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

3. Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. The interstate commission shall allow, not later than sixty (60) days after a rule is promulgated, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the model state administrative procedures act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the interstate compact on juveniles superseded by this act shall be null and void twelve (12) months after the first meeting of the interstate commission created hereunder.

G. Upon determination by the interstate commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII
OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

1. The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting

state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in article XI of this compact.

ARTICLE VIII
FINANCE

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE IX
THE STATE COUNCIL

Each member state shall create a state council for interstate juvenile supervision. While each state may determine the membership of its

own state council, its membership must include at least one (1) representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X
COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five (35) of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI
WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extends beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the interstate commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the interstate commission;

b. Alternative dispute resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty (60) days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement

The interstate commission may, by majority vote of the members, ini-

tiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one (1) compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII
BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

2. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

16-1902. SHORT TITLE. This act may be cited as the "Interstate Compact for Juveniles."

SECTION 3. This act shall become effective upon the enactment of the Interstate Compact for Juveniles into law by thirty-five states or July 1, 2004, whichever is later.

Approved March 19, 2004.

CHAPTER 98
(H.B. No. 522)

AN ACT

RELATING TO THE FEDERAL CONSUMER CREDIT PROTECTION ACT; AMENDING SECTION 28-41-302, IDAHO CODE, TO REVISE DATES APPLICABLE TO THE FEDERAL CONSUMER CREDIT PROTECTION ACT AND REGULATIONS ISSUED UNDER THE 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, 2003~~3~~4, 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, 2003~~3~~4, or a subsequent date if so defined by administrative rule.

Approved March 19, 2004.

CHAPTER 99
(H.B. No. 523)

AN ACT

RELATING TO RESIDENTIAL MORTGAGE PRACTICES; AMENDING SECTION 26-3102, IDAHO CODE, TO REVISE DATES APPLICABLE TO AMENDED ACTS AND REGULATIONS.

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 (17) and (18) of this section are conducted.

(4) "Department" means the department of finance of the state of Idaho.

(5) "Director" means the director of the department of finance.

(6) "Licensee" means a person licensed pursuant to this chapter to engage in the activities regulated by this act.

(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 (17) of this section.

(8) "Mortgage broker" means any person, other than an exempt person, who performs the activities described in subsection (18) 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.

(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.

(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~~4~~, 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~~4~~, 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~~4~~, or a subsequent date if so defined by administrative rule.

(14) "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.

(15) "Residential real property" means real property located in this state improved by a one (1) to four (4) family dwelling.

(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~~4~~, or a subsequent date if so defined by administrative rule.

(17) "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.

(18) "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.

Approved March 19, 2004.

CHAPTER 100
(H.B. No. 533)

AN ACT

RELATING TO THE INDUSTRIAL SPECIAL INDEMNITY FUND; AMENDING SECTION 2, CHAPTER 303, LAWS OF 1997, AS AMENDED BY SECTION 1, CHAPTER 197, LAWS OF 1999, TO CONTINUE SECTION 72-334, IDAHO CODE, IN EFFECT UNTIL JUNE 30, 2008; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 2, Chapter 303, Laws of 1997, as amended by Section 1, Chapter 197, Laws of 1999, be, and the same is hereby amended to read as follows:

SECTION 2. Section 1 of this act shall be in full force and effect on and after July 1, 1997, and shall be null, void, and of no force and effect on and after June 30, 20048.

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

Approved March 19, 2004.

CHAPTER 101
(H.B. No. 534)

AN ACT

RELATING TO OPEN PUBLIC MEETINGS OF GOVERNING BODIES; AMENDING SECTION 67-2342, IDAHO CODE, TO REVISE REQUIREMENTS RELATING TO MEETINGS CONDUCTED USING TELECOMMUNICATIONS DEVICES.

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

SECTION 1. That Section 67-2342, Idaho Code, be, and the same is hereby amended to read as follows:

67-2342. GOVERNING BODIES -- REQUIREMENT FOR OPEN PUBLIC MEETINGS. (1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty asso-

ciation established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section 67-2343, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

Approved March 19, 2004.

CHAPTER 102
(H.B. No. 535)

AN ACT

RELATING TO TELEPHONE SOLICITATION; AMENDING SECTION 48-1002, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION 48-1003A, IDAHO CODE, TO REVISE PROVISIONS AND PROCEDURES RELATING TO TELEPHONE SUBSCRIBER LISTINGS ON IDAHO'S NO TELEPHONE SOLICITATION CONTACT LIST, TO PROVIDE THAT A NATIONAL DO-NOT-CALL REGISTRY ESTABLISHED BY THE FEDERAL TRADE COMMISSION MAY SERVE AS IDAHO'S NO TELEPHONE SOLICITATION CONTACT LIST, TO AUTHORIZE THE ATTORNEY GENERAL TO PROVIDE CERTAIN TELEPHONE NUMBERS TO THE FEDERAL TRADE COMMISSION, TO STRIKE REFERENCE TO THE DEPOSIT AND USE OF CERTAIN FEES, TO REVISE PROVISIONS RELATING TO VIOLATIONS, TO REVISE A CODE REFERENCE AND TO CLARIFY AN EXCEPTION RELATING TO ESTABLISHED BUSINESS RELATIONSHIPS; AND AMENDING SECTION 48-1003B, IDAHO CODE, TO REVISE CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 48-1002, Idaho Code, be, and the same is hereby amended to read as follows:

48-1002. DEFINITIONS. In this chapter:

(1) "Business days" means all days of the week except Saturdays and Sundays and all other legal holidays as defined in section 73-108, Idaho Code.

(2) "Conducting business" means making telephone solicitations either to or from locations within the state of Idaho.

(3) "Established business relationship" means a relationship that:

(a) Was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor;

(b) Has not been previously terminated by either party; and

(c) Currently exists or has existed within the immediately preceding eighteen (18) months.

(4) "Goods" means any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value.

(~~4~~5) "Minor" means any person less than eighteen (18) years of age.

(~~5~~6) "Newspaper of general circulation" means a newspaper which holds a second class mailing permit from the United States postal service, has at least two hundred (200) subscribers, is made up of at least four (4) pages of at least five (5) columns, is not produced through any type of mimeographing process, and has been published or distributed within the state of Idaho on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a daily basis, which is defined to be no less than five (5) days of any one (1) week, at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper.

(~~6~~7) "Person" means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

(~~7~~8) "Purchaser" means a person who is solicited to become or does become obligated to a telephone solicitor.

(~~8~~9) "Services" means any work, labor, help, assistance or instruction wherever provided or performed.

(~~9~~10) "Telephone directory of general circulation" means a directory containing telephone numbers of individual residents and/or businesses which is published on a community-wide or regional basis and which is widely available to persons residing in such community or region through free distribution or direct purchase of said directory without the requirement of other purchases or affiliations.

(~~10~~11) "Telephone solicitation" means:

(a) Any unsolicited telephone call to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services during the course of a telephone call; or

(b) Any communication in which:

(i) A free gift, award, or prize is offered, or in which it is represented or implied that goods or services are offered below the regular price of the goods or services; and

(ii) A return telephone call is invited or the communication is followed up by a call to the purchaser by the telephone solicitor; and

(iii) It is intended during the course of the return or follow-

up call with the purchaser that an agreement to purchase, or a purchase be made.

(c) For purposes of this subsection, "communication" means a written or oral statement or notification or advertisement transmitted to the purchaser through any means.

(1~~1~~2) "Telephone solicitor" means any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation.

(1~~2~~3) "Unsolicited advertisement" means any advertisement offering goods or services which is transmitted to any person without that person's prior express invitation or permission unless an established business relationship exists between the sender and recipient which has not been terminated by either party.

(1~~3~~4) "Written confirmation" means a writing that includes the following information: the date of purchase, the telephone solicitor's complete address and registration number, a listing of all goods and/or services purchased, a listing of the price of each good and/or service purchased, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in subsection (2) of section 48-1004, Idaho Code.

SECTION 2. That Section 48-1003A, Idaho Code, be, and the same is hereby amended to read as follows:

48-1003A. NO TELEPHONE SOLICITATION CONTACT LIST.

(1) (a) Any Idaho residential, mobile or telephonic paging device telephone subscriber desiring to be placed on ~~a~~ the Idaho "no telephone sol~~icitation~~ contact" list, indicating that the subscriber does not wish to receive telephone solicitations, may be placed upon such list ~~by notifying the attorney general in writing and paying the attorney general an initial list fee, which the attorney general may assess in an amount up to ten dollars ($10.00) per subscriber. The subscriber's notice shall be in a form~~ through a procedure approved by the attorney general. ~~The subscriber's listing shall be for a period of up to three (3) years, and may be renewed by the attorney general for additional periods of up to three (3) years each, if the subscriber requests renewal and pays a renewal list fee, which the attorney general may assess in an amount up to five dollars ($5.00) per renewal.~~

(b) ~~The first "no telephone solicitation contact" list shall be published on or before June 30, 2001. The attorney general shall thereafter update his "no telephone solicitation contact" list quarterly and provide this list to telephone solicitors upon request and receipt of a list distribution fee, which the attorney general may charge in an amount up to twenty five dollars ($25.00) per list~~ Notwithstanding any other provision of this chapter, a national "do-not-call" registry established and maintained by the federal trade commission, pursuant to 16 CFR 310.4(b)(1)(iii)(B), may serve as the Idaho "no telephone solicitation contact" list provided by this chapter. The attorney general may provide to the federal trade commission, for inclusion in the national "do-not-call" registry, the telephone numbers of Idaho residents that are on the Idaho "no telephone solicitation contact" list.

~~(c) All fees imposed pursuant to this section shall be deposited in~~

~~the--consumer--protection-account-and-shall-be-used-for-the-furtherance-of-the-attorney-general's-duties-and-activities-under-this-section.~~

(2) ~~Within-thirty-(30)-days-after-a-new-"no-telephone--solicitation contact"--list--has--been--published-by-the-attorney-general,-no~~ It is a violation of this chapter for a telephone solicitor ~~shall~~ to make or cause to be made any telephone solicitation, as defined by section 48-1002(~~10~~1)(a), Idaho Code, to any telephone number which is assigned by a telephone company to ~~a-person~~ an Idaho resident listed on the Idaho "no telephone solicitation contact" list ~~as-appears-in-the-then-current quarterly-listing-published-by-the-attorney-general~~ when that telephone number has been on such list for at least three (3) months prior to the date the telephone solicitation is made.

(3) Section 48-1006, Idaho Code, notwithstanding, any violation of this section shall subject the person violating the terms of this section to a civil penalty, to be imposed by the district court, as follows: for the first violation, not to exceed five hundred dollars ($500); for the second violation, not to exceed two thousand five hundred dollars ($2,500); for the third and subsequent violations, not to exceed five thousand dollars ($5,000) per violation. Penalties received under this section shall be expended pursuant to legislative appropriation.

(4) This section is not applicable to telephone solicitations:

(a) To a telephone subscriber's commercial or business telephone number;

(b) (i) Where an established business relationship exists, as defined in subsection (3) of section 48-1002, Idaho Code, between the telephone solicitor and the telephone subscriber; provided however, the established and existing business relationship exception shall not apply between a telephone company and a telephone subscriber under this section unless the telephone subscriber shall have previously consented to receive a telephone solicitation from such company or its agent;

(ii) For purposes of this section, "telephone company" means a person providing telecommunications services to the public, or any segment thereof, for compensation, by wire, cable, radio, lightwaves, cellular signal or other means. "Telecommunications services" means the conveyance of voice, data, sign, signal, writing, sound, messages or other information at any frequency over any part of the electromagnetic spectrum;

(c) By a minor seeking to sell a good or service, pursuant to a telephone solicitation, for a charitable purpose or organization.

(5) The attorney general shall advise telephone subscribers who register with his office under this section of all self-help measures available to them to reduce unwanted telephone solicitations.

SECTION 3. That Section 48-1003B, Idaho Code, be, and the same is hereby amended to read as follows:

48-1003B. CONSENT REQUIRED FOR TELEMARKETING CHARGES TO PREVIOUSLY OBTAINED ACCOUNTS. (1) As used in this section:

(a) "Account" means a credit card, debit card, checking account, savings account, loan account, telephone service account, utility account or other similar account.

(b) "Account holder" means a consumer who owns an account, or a consumer who has authority to cause a charge or debit to an account.

(c) "Authorization" means an account holder providing express consent to a telemarketer or person acting on behalf of the telemarketer, to charge or cause to be charged the account holder's account for the purchase of goods or services. Authorization is not effective until the account holder has been advised, clearly and conspicuously:

(i) That the telemarketer has the account holder's account number;

(ii) That the telemarketer is going to charge the account holder's account;

(iii) The specific account that will be charged;

(iv) The specific amount that the account holder's account will be charged; and

(v) The name, address and telephone number of the person who will be charging the account holder's account.

(d) "Charge" means a charge or debit, or an attempt to charge or debit, an account, if that account can be charged without the express written authorization of the account holder to each specific charge or debit. Charge does not include a charge or debit, or an attempt to charge or debit, a telephone service account for local or long distance telecommunications services. A charge can occur by electronic or any other means.

(e) "Goods" or "services" has the meaning given to them in section 48-1002(~~3~~4) and (~~8~~9), Idaho Code, except that for purposes of this section these terms are limited to goods or services which are normally used for personal, household or family purposes.

(f) "Previously obtained account number telemarketing call" means a telephone call in which the telemarketer attempts to obtain account holder authorization for a current or future charge without obtaining the account number from the account holder during the call; provided however, that "previously obtained account number telemarketing call" does not include the sale of securities through a telephone call, if the telemarketer is a licensed securities agent or broker in the state of Idaho; provided further, that "previously obtained account number telemarketing call" does not include a telephone call initiated by an account holder during which the person receiving the telephone call attempts to sell, offer for sale, or otherwise induce the account holder to purchase goods or services. A "previously obtained account number telemarketing call" does not include a call to or from a current customer of the telemarketer to renew or extend, inquire about or add goods or services if the customer has previously provided account information for billing purposes to the telemarketer and the telemarketer clearly and conspicuously discloses that such renewal or extension, or additional goods or services, will be debited to the same account.

(g) "Telemarketer" means any person who regularly engages in a previously obtained account number telemarketing call.

(2) A telemarketer shall not charge or cause a charge to an account holder's account as a result of a previously obtained account number telemarketing call unless the telemarketer has first obtained authorization from the account holder for the specific charge discussed during the call.

(3) An account holder's authorization can be in writing or given verbally. If the telemarketer uses written authorization, the telemarketer cannot charge the account holder's account until the account holder's written authorization is received by the telemarketer. If the telemarketer uses verbal authorization, either (i) the authorization must be audio taped by the telemarketer and the telemarketer must advise the account holder that his or her authorization is being recorded or (ii) the account holder must disclose the last four (4) digits of the account holder's account number if the telemarketer has reasonable procedures in effect to verify that such digits as provided by the account holder match the last four digits of the account to be charged. Authorizations must be kept and maintained for a period of two (2) years and must also be made available to the account holder upon written request.

(4) (a) In the case where a telemarketer utilizes a voice response unit, whether inbound or outbound, an account holder may give authorization by providing the last four (4) digits of the account holder's account number, an account number previously assigned to the account holder by the telemarketer, or an alternate unique identifier which enables the telemarketer to verify or confirm the account holder's authorization; provided however, that the information set forth in subsection (1)(c) of this section must first be clearly and conspicuously disclosed to the account holder.

(b) For purposes of this subsection, "voice response unit" means a device which allows a user to provide or obtain information from a computer system using touch-tone input or speech input.

Approved March 19, 2004.

CHAPTER 103
(H.B. No. 537)

AN ACT

RELATING TO INCOME TAX WITHHOLDING; AMENDING SECTION 63-3035, IDAHO CODE, TO PROVIDE THAT WHEN AN EMPLOYER FAILS TO MAKE A PAYMENT AS REQUIRED THE STATE TAX COMMISSION MAY TREAT SUCH FAILURE AS A FAILURE TO FILE A RETURN AND MAY TAKE AUTHORIZED ADMINISTRATIVE AND JUDICIAL ACTIONS, TO PROVIDE CLARIFYING LANGUAGE, TO PROVIDE THAT THE WITHHOLDING TAX RETURN SHALL BE FILED ANNUALLY UNLESS A SHORTER FILING PERIOD AND DUE DATE ARE PRESCRIBED BY THE STATE TAX COMMISSION AND TO SPECIFY WHEN THE RETURN IS DUE; AMENDING SECTION 63-3035, IDAHO CODE, AS AMENDED IN SECTION 1, CHAPTER 296, LAWS OF 2003, TO PROVIDE THAT WHEN AN EMPLOYER FAILS TO MAKE A PAYMENT AS REQUIRED THE STATE TAX COMMISSION MAY TREAT SUCH FAILURE AS A FAILURE TO FILE A RETURN AND MAY TAKE AUTHORIZED ADMINISTRATIVE AND JUDICIAL ACTIONS, TO PROVIDE CLARIFYING LANGUAGE, TO PROVIDE THAT THE WITHHOLDING TAX RETURN SHALL BE FILED ANNUALLY UNLESS A SHORTER FILING PERIOD AND DUE DATE ARE PRESCRIBED BY THE STATE TAX COMMISSION AND TO SPECIFY WHEN THE RETURN IS DUE; AND DECLARING AN EMERGENCY, PROVIDING FOR RETROACTIVITY AND PROVIDING AN EFFECTIVE DATE.

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

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

63-3035. STATE WITHHOLDING TAX ON PERCENTAGE BASIS -- WITHHOLDING, COLLECTION AND PAYMENT OF TAX. (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section. In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

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

(2) must pay to the state tax commission monthly on or before the 20th day of the succeeding month, or at such other times as the state tax commission may allow, an amount of tax which, under the provisions of this chapter, he is required to deduct and withhold;

(3) shall register with the state tax commission, in the manner prescribed by it, to establish an employer's withholding account number. The account number will be used to report all amounts withheld, for the annual reconciliation required in this section, and for such other purposes relating to withholding as the state tax commission may require; and

(4) must, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, if the amount of withholding of such employer for the preceding twelve (12) month period equals or exceeds sixty thousand dollars ($60,000) per annum or an average of five thousand dollars ($5,000) per month per annum, pay to the state tax commission on the basis of withholding periods which begin on the 16th day of the month and end on the 15th day of the following month, and payment shall be made not later than five (5) days after the end of the withholding period.

(5) If ~~the~~ a payment~~s made~~ required pursuant to subsections (a)(2) ~~and~~ or (a)(4) of this section ~~are~~ is not made or is made delinquently or if made is not equal to the withholding required under this section ~~shown or required to be shown on the return required by subsection (b)(1) of this section, no penalty shall apply to the underpayment for the period between the due date of the payment and the due date of the return~~ the state tax commission may treat the failure as a failure to file a return and may take administrative and judicial actions as authorized by this chapter in the

case of a failure to file a return. Interest, at the rate provided by section 63-3045, Idaho Code, shall apply to any such underpayment.

(6) Commencing in 1994, the state tax commission shall determine whether the threshold amounts established by subsection (a)(4) of this section must be adjusted to reflect fluctuations in the cost of living. The commission shall base its determination on the cumulative effect of the annual cost-of-living percentage modifications determined by the United States secretary of health and human services pursuant to 42 USC 415(i). When the cumulative percentage applied to the monthly threshold amount equals or exceeds one thousand dollars ($1,000), the commission shall promulgate a rule adjusting the monthly threshold amount by one thousand dollars ($1,000) and making the necessary proportional adjustment to the annual threshold amount. The rule shall be effective for the next succeeding calendar year and each year thereafter until again adjusted by the commission. The tax commission shall determine subsequent adjustments in the same manner, in each case using the year of the last adjustment as the base year.

(b) (1) In addition to the payments required pursuant to subsections (a)(2) and (a)(4) of this section, every employer shall file a return upon such form as shall be prescribed by the state tax commission, but not more frequently than ~~quarterly~~ annually, or as required pursuant to any agreement between the state tax commission and the department of labor under section 63-3035B, Idaho Code, unless a shorter filing period and due date are prescribed by the state tax commission. The return shall be due on the last day of the month following the end of the period to which the return relates. The return shall show, for the period to which it relates, the total amount of wages, salary, bonus or other emolument paid to his employees, the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code, the amount deducted therefrom in accordance with the provisions of this section, the amount of any previous payments made pursuant to this section, and such pertinent and necessary information as the state tax commission may require.

(2) Every employer making a declaration of withholding as provided herein shall furnish to the employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and on or before the last day of February every employer shall file a copy thereof with the state tax commission. Every employer who is required, under Internal Revenue Code section 6011, to file returns on magnetic media or in other machine readable form may be required by rules of the state tax commission to file corresponding state returns on similar magnetic media or other machine readable form.

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

tax liability, may be required to post a surety bond in such sum as the state tax commission shall deem adequate to protect the state.

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

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted.

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

(g) An employee receiving wages shall on any day be entitled to not more than, but may claim fewer than, the number of withholding exemptions to which he is entitled under the Internal Revenue Code for federal income tax withholding purposes.

(h) An employer shall use the exemption certificate filed by the employee with the employer under the withholding exemption provisions of the Internal Revenue Code in determining the amount of tax to be withheld from the employee's wages or salary under this chapter. The tax commission may redetermine the number of withholding exemptions to which an employee is entitled under subsection (g) of this section, and the state tax commission may require such exemption certificate to be filed on a form prescribed by the commission in any circumstance where the commission finds that the exemption certificate filed for Internal Revenue Code purposes does not properly reflect the number of withholding exemptions to which the employee is entitled under this chapter. In no event shall any employee give an exemption certificate which claims a higher number of withholding exemptions than the number to which the employee is entitled by subsection (g) of this section.

SECTION 2. That Section 63-3035, Idaho Code, as amended in Section 1, Chapter 296, Laws of 2003, be, and the same is hereby amended to read as follows:

63-3035. STATE WITHHOLDING TAX ON PERCENTAGE BASIS -- WITHHOLDING, COLLECTION AND PAYMENT OF TAX. (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee

(other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section. In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

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

(2) must pay to the state tax commission monthly on or before the 20th day of the succeeding month, or at such other times as the state tax commission may allow, an amount of tax which, under the provisions of this chapter, he is required to deduct and withhold;

(3) shall register with the state tax commission, in the manner prescribed by it, to establish an employer's withholding account number. The account number will be used to report all amounts withheld, for the annual reconciliation required in this section, and for such other purposes relating to withholding as the state tax commission may require; and

(4) must, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, if the amount of withholding of such employer for the preceding twelve (12) month period equals or exceeds two hundred forty thousand dollars ($240,000) per annum or an average of twenty thousand dollars ($20,000) per month per annum, pay to the state tax commission on the basis of withholding periods which begin on the 16th day of the month and end on the 15th day of the following month, and payment shall be made not later than five (5) days after the end of the withholding period.

(5) If ~~the~~ a payments~~made~~ required pursuant to subsections (a)(2) ~~and~~ or (a)(4) of this section ~~are~~ is not made or is made delinquently or if made is not equal to the withholding required under this section ~~shown--or--required--to-be-shown-on-the-return required-by-subsection-(b)(1)-of--this--section;--no--penalty--shall apply-to-the-underpayment-for-the-period-between-the-due-date-of-the payment--and-the-due-date-of-the-return~~ the state tax commission may treat the failure as a failure to file a return and may take administrative and judicial actions as authorized by this chapter in the case of a failure to file a return. Interest, at the rate provided by section 63-3045, Idaho Code, shall apply to any such underpayment.

(6) Commencing in 2006, the state tax commission shall determine whether the threshold amounts established by subsection (a)(4) of this section must be adjusted to reflect fluctuations in the cost of living. The commission shall base its determination on the cumula-

tive effect of the annual cost-of-living percentage modifications determined by the United States secretary of health and human services pursuant to 42 USC 415(i). When the cumulative percentage applied to the monthly threshold amount equals or exceeds five thousand dollars ($5,000), the commission shall promulgate a rule adjusting the monthly threshold amount by five thousand dollars ($5,000) and making the necessary proportional adjustment to the annual threshold amount. The rule shall be effective for the next succeeding calendar year and each year thereafter until again adjusted by the commission. The tax commission shall determine subsequent adjustments in the same manner, in each case using the year of the last adjustment as the base year.

(b) (1) In addition to the payments required pursuant to subsections (a)(2) and (a)(4) of this section, e~~E~~very employer shall file a return upon such form as shall be prescribed by the state tax commission, but not more frequently than ~~quarterly~~ annually, or as required pursuant to any agreement between the state tax commission and the department of labor under section 63-3035B, Idaho Code, unless a shorter filing period and due date is prescribed by the state tax commission. The return shall be due on the last day of the month following the end of the period to which the return relates. The return shall show, for the period to which it relates, the total amount of wages, salary, bonus or other emolument paid to his employees, the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code, the amount deducted therefrom in accordance with the provisions of this section, the amount of any previous payments made pursuant to this section, and such pertinent and necessary information as the state tax commission may require.

(2) Every employer making a declaration of withholding as provided herein shall furnish to the employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and on or before the last day of February every employer shall file a copy thereof with the state tax commission. Every employer who is required, under Internal Revenue Code section 6011, to file returns on magnetic media or in other machine readable form may be required by rules of the state tax commission to file corresponding state returns on similar magnetic media or other machine readable form.

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

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

employer and with respect to such amount he shall be considered the taxpayer.

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted.

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

(g) An employee receiving wages shall on any day be entitled to not more than, but may claim fewer than, the number of withholding exemptions to which he is entitled under the Internal Revenue Code for federal income tax withholding purposes.

(h) An employer shall use the exemption certificate filed by the employee with the employer under the withholding exemption provisions of the Internal Revenue Code in determining the amount of tax to be withheld from the employee's wages or salary under this chapter. The tax commission may redetermine the number of withholding exemptions to which an employee is entitled under subsection (g) of this section, and the state tax commission may require such exemption certificate to be filed on a form prescribed by the commission in any circumstance where the commission finds that the exemption certificate filed for Internal Revenue Code purposes does not properly reflect the number of withholding exemptions to which the employee is entitled under this chapter. In no event shall any employee give an exemption certificate which claims a higher number of withholding exemptions than the number to which the employee is entitled by subsection (g) of this section.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2004. Section 2 of this act shall be in full force and effect on and after July 1, 2005.

Approved March 19, 2004.

CHAPTER 104
(H.B. No. 538)

AN ACT

RELATING TO STATE REPLACEMENT OF PROPERTY TAX REVENUES ON AGRICULTURAL EQUIPMENT; AMENDING SECTION 63-3067, IDAHO CODE, TO DELETE THE DISTRIBUTION OF REPLACEMENT REVENUE FROM THE STATE REFUND ACCOUNT;

AMENDING SECTION 63-3638, IDAHO CODE, AS AMENDED BY SECTION 4, CHAPTER 318, LAWS OF 2003, TO PROVIDE FOR DISTRIBUTION OF REPLACEMENT REVENUES FROM SALES TAX REVENUE; AMENDING SECTION 63-3638, IDAHO CODE, AS ADDED BY SECTION 9, CHAPTER 318, LAWS OF 2003, TO PROVIDE FOR DISTRIBUTION OF REPLACEMENT REVENUES FROM SALES TAX REVENUE; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Section 63-3067, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067. REVENUE RECEIVED -- STATE REFUND ACCOUNT. (1) A sum equal to the amount withheld under section 63-3035A, Idaho Code, shall be distributed fifty percent (50%) to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system, and fifty percent (50%) shall be distributed to the counties to be utilized for county juvenile probation services. These funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole.

(2) All moneys except as provided in subsection (1) of this section, and except as hereinafter provided, received by the state of Idaho under this act shall be deposited by the state tax commission, as received by it, with the state treasurer and shall be placed in and become a part of the general account under the custody of the state treasurer. Providing however, that an amount equal to twenty percent (20%) of the amount deposited with the state treasurer shall be placed in the "state refund account" which is hereby created for the purpose of repaying overpayments, for the purpose of remitting to counties and taxing districts for personal property exempt from taxation pursuant to section 63-602EE, Idaho Code, as provided in subsection (3) of this section, for the purpose of depositing in the trust accounts specified in section 63-3067A, Idaho Code, such amounts as may be designated by individuals for the purpose of depositing in the Idaho ag in the classroom account an amount as may be designated by the individual receiving a refund for such overpayment, and for the purpose of paying any other erroneous receipts illegally assessed or collected, penalties collected without authority and taxes and licenses unjustly assessed, collected or which are excessive in amount. Whenever necessary for the purpose of making prompt payment of refunds, the board of examiners, upon request from the state tax commission, and after review, may authorize the state tax commission to transfer any additional specific amount from income tax collections to the "state refund account." There is appropriated out of the state refund account so much thereof as may be necessary for the payment of the refunds herein provided. Claims for, and payment of refunds under the provisions of this section shall be made in the same manner as other claims against the state of Idaho.

(3) ~~The--state--tax-commission-shall-calculate-the-amount-that-each county-assessed-in-taxes-in-tax-year-2000-on--property--that--is--exempt from--taxation-pursuant-to-section-63-602EE,-Idaho-Code,-and-shall-remit to-the-county-treasurer-for-distribution-to-each-taxing-district-in--the county--one--hundred-six-percent-(106%)-of-the-amount-calculated-as-follows:~~

~~The county commissioners in each county shall certify to the state tax commission by July 1, 2001, the year 2000 tax charge, applicable to the property exempt from taxation pursuant to section 63-602EE, Idaho Code, provided that such property was categorized in year 2000 as farm machinery, tools and equipment pursuant to rules of the state tax commission, for the portion of each taxing district or unit within the county. For nonschool districts the state tax commission shall distribute one fourth (1/4) of this amount certified quarterly to each county beginning in October 2001. For school districts the state tax commission shall distribute one fourth (1/4) of the amount certified quarterly to each school district beginning in October 2001. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy plus .001 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code. For school districts, beginning January 1, 2002, only the portion of property tax replacement received to replace property exempt from taxation pursuant to section 63-602EE, Idaho Code, based on the year 2000 tax charges for maintenance and operation as limited by sections 33-802-2. and 33-1002D, Idaho Code, on property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall not be subtracted from maximum school district maintenance and operation property taxes permitted in accordance with section 33-802-2., Idaho Code. For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.~~

~~(4)~~ Any unencumbered balance remaining in the state refund account on June 30 of each and every year in excess of the sum of one million five hundred thousand dollars ($1,500,000) shall be transferred to the general fund and the state controller is hereby authorized and directed on such dates to make such transfers unless the board of examiners, which is hereby authorized to do so, changes the date of transfer or sum to be transferred.

SECTION 2. That Section 63-3638, Idaho Code, as amended by Section 4, Chapter 318, Laws of 2003, be, and the same is hereby amended to read as follows:

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

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

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

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

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

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

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

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

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

(9) Eleven and five-tenths percent (11.5%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in

the proportion that the population of that city bears to the population of all cities within the state; and

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

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

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

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

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(d) in any quarter does not equal the amount paid in

the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (9)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (9)(d).

(vii) For purposes of this subsection (9)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(10) Amounts calculated in accordance with section 2, chapter 356, Laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or disincorporated, the state tax commission shall continu-

ously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy plus .001 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code. For school districts, beginning January 1, 2002, only the portion of property tax replacement received to replace property exempt from taxation pursuant to section 63-602EE, Idaho Code, based on the tax year 2000 tax charges for maintenance and operation as limited by sections 33-802 2. and 33-1002D, Idaho Code, shall not be subtracted from the maximum school district maintenance and operation property taxes permitted in accordance with section 33-802 2., Idaho Code. For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.

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

SECTION 3. That Section 63-3638, Idaho Code, be, as added by Section 9, Chapter 318, Laws of 2003, and the same is hereby amended to read as follows:

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

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

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

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

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

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

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

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

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

(9) Thirteen and three-quarters percent (13.75%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

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

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

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

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

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

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this sub-

section (9)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(d) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (9)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (9)(d).

(vii) For purposes of this subsection (9)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(10) Amounts calculated in accordance with section 2, chapter 356, Laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts. the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy plus .001 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code. For school districts, beginning January 1, 2002, only the portion of property tax replacement received to replace property exempt from taxation pursuant to section 63-602EE, Idaho Code, based on the tax year 2000 tax charges for maintenance and operation as limited by sections 33-802 2. and 33-1002D, Idaho Code, shall not be subtracted from the maximum school district maintenance and operation property taxes permitted in accordance with section 33-802 2., Idaho Code. For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.

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

SECTION 4. Sections 1 and 2 of this act shall be in full force and effect on and after July 1, 2004. Section 3 of this act shall be in full force and effect on and after August 1, 2005.

Approved March 19, 2004.

CHAPTER 105
(H.B. No. 542)

AN ACT

RELATING TO ASSESSMENT AND TAXATION OF OPERATING PROPERTY; AMENDING SECTION 63-405, IDAHO CODE, TO PROVIDE THAT ON AND AFTER JANUARY 1, 2004, ANY NEWLY INSTALLED OR CONSTRUCTED EQUIPMENT LOCATED WITHIN A CITY CORPORATE LIMIT OR WITHIN FIVE MILES OF A CITY CORPORATE LIMIT AND USED FOR AND IN CONJUNCTION WITH THE THERMAL GENERATION OF ELECTRICITY SHALL BE APPORTIONED BASED ON PHYSICAL LOCATION AND TO PROVIDE THAT NEWLY INSTALLED OR CONSTRUCTED EQUIPMENT USED FOR AND IN CONJUNCTION WITH THE THERMAL GENERATION OF ELECTRICITY SHALL NOT INCLUDE THE REMODELING, RETROFITTING, REHABILITATION, REFURBISHING OR MODIFICATION OF AN EXISTING ELECTRICAL GENERATION FACILITY, OR INTEGRATION OR TRANSFORMATION FACILITIES SUCH AS SUBSTATIONS OR TRANSMISSION LINES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-405, Idaho Code, be, and the same is hereby amended to read as follows:

63-405. ASSESSMENT OF OPERATING PROPERTY. (1) The state tax commission must assess all operating property at a meeting of the commission convening on the second Monday of August in each year, and must complete the assessment of such property on the fourth Monday in August.

(2) The state tax commission shall determine the system value and calculate the allocation and apportionment of the system value for all operating property and specifically determine:

(a) The number of miles and the value per mile of each railroad in the state and for each taxing district in which such railroad may exist.

(b) The number of miles and the value per mile of each telephone corporation in the state and for each taxing district in which such telephone corporation may exist.

(c) The number of miles and the value per mile of each pipeline in the state and for each taxing district in which such pipeline may exist.

(d) The number of miles and the value per mile of each water company under the jurisdiction of the public utilities commission in the state, and for each taxing district in which such water company may exist. The value per mile of any line included in this subsection, except railroads, shall be determined by dividing the total value of such line within the state by the number of miles of such line within the state. The value per mile of railroad line shall be

determined by apportionment of the total value of line within the state. The apportionment shall be based twenty percent (20%) on the ratio of line miles in the state to line miles in the county; forty percent (40%) on the ratio of net ton miles in the state to net ton miles in the county; and forty percent (40%) on the ratio of station revenues in the state to station revenues in the county. All operating property of railroads shall be apportioned to the counties as part of the railroad line in the county. The apportionment for taxing districts shall be the same as the apportionment among counties.

(e) The system value, the number of miles and the value per mile of each electric current transmission line and each electric current distribution line in each county separately, and for each taxing district within said county in which such transmission and distribution lines may exist. The value per mile of any line included in this subsection shall be determined by dividing the apportioned value of such line within each county by the number of miles of such line within said county.

(f) The system value of private railcar fleets entering or standing in Idaho in the year preceding the constituted lien as provided in section 63-411(3), Idaho Code.

(g) The system value and calculate the allocation and apportionment of the system value for all other operating property.

(3) On and after January 1, 2004, any newly installed or constructed equipment located within a city corporate limit or within five (5) miles of a city corporate limit and used for and in conjunction with the thermal generation of electricity shall be apportioned based on physical location. For purposes of this subsection newly installed or constructed equipment used for and in conjunction with the thermal generation of electricity shall not include the remodeling, retrofitting, rehabilitation, refurbishing or modification of an existing electrical generation facility, or integration or transformation facilities such as substations or transmission lines.

(4) If the value of property of any company assessable under this section is of such a nature that it cannot reasonably be apportioned on the basis of rail, wire, pipeline mileage, such as microwave and radio relay stations, the tax commission may adopt such other method or basis of apportionment to the county and taxing districts in which the property is situate as may be feasible and proper.

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, 2004.

Approved March 19, 2004.

CHAPTER 106
(H.B. No. 546)

AN ACT

RELATING TO COOPERATIVE MARKETING ASSOCIATIONS; AMENDING SECTION 22-2608, IDAHO CODE, TO ELIMINATE THE REQUIREMENT OF FILING A CERTI-

FIED COPY OF ARTICLES OF INCORPORATION WITH THE DEPARTMENT OF AGRICULTURE AND TO MAKE TECHNICAL CORRECTIONS; AND REPEALING SECTION 22-2619, IDAHO CODE, RELATING TO THE ISSUANCE OF ANNUAL REPORTS.

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

SECTION 1. That Section 22-2608, Idaho Code, be, and the same is hereby amended to read as follows:

22-2608. ARTICLES OF INCORPORATION -- CONTENTS -- SUBSCRIBING AND FILING. Each association formed under this chapter must prepare and file articles of incorporation, setting forth:

~~a.~~(1) The name of the association.

~~b.~~(2) The purpose for which it is formed.

~~c.~~(3) The address of its initial registered office and the name of its initial registered agent at such address.

~~d.~~(4) The term for which it is to exist, which may be perpetual.

~~e.~~(5) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended or repealed except by the written consent or the vote of a majority of the members.

~~f.~~(6) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each.

~~g.~~(7) The names and addresses of the persons who are to serve as directors until the first annual meeting of the members or stockholders or until their successors be elected and qualify.

The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of the state; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. ~~A--certified copy--of--the--articles--of-incorporation-shall,-also,-be-filed-with-the department-of-agriculture.~~

SECTION 2. That Section 22-2619, Idaho Code, be, and the same is hereby repealed.

Approved March 19, 2004.

CHAPTER 107
(H.B. No. 547)

AN ACT

RELATING TO THE PRUNE COMMISSION; REPEALING CHAPTER 30, TITLE 22, IDAHO CODE.

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

SECTION 1. That Chapter 30, Title 22, Idaho Code, be, and the same is hereby repealed.

Approved March 19, 2004.

CHAPTER 108
(H.B. No. 548)

AN ACT

RELATING TO COMMERCIAL FERTILIZERS; AMENDING SECTION 22-611, IDAHO CODE, TO PROVIDE FOR PENALTIES FOR SPECIALTY FERTILIZER THAT DEVIATES FROM THE GUARANTEED ANALYSIS; AMENDING SECTION 22-612, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF AGRICULTURE SHALL DETERMINE AND PUBLISH ANNUALLY THE VALUES PER UNIT OF NITROGEN, AVAILABLE PHOSPHATE, SOLUBLE POTASH, SECONDARY ELEMENTS AND MICRO-ELEMENTS USED IN IDAHO AND TO PROVIDE THAT THESE VALUES SHALL BE USED IN DETERMINING AND ASSESSING PENALTIES.

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

SECTION 1. That Section 22-611, Idaho Code, be, and the same is hereby amended to read as follows:

22-611. PENALTIES. (1) If the analysis shows that any fertilizer deviates from the guaranteed analysis in any plant nutrient, micronutrient, or in total nutrients, a penalty shall be assessed in favor of the department at the rate of three (3) times the value of the deficiency or twenty-five dollars ($25.00), whichever is greater, when the deviation exceeds the tolerances established by rules promulgated under this chapter. Provided, that penalties for any specialty fertilizer that deviates from the guaranteed analysis in any plant nutrient, micronutrient, or in total nutrients shall be determined as authorized under section 22-619, Idaho Code, and rules promulgated pursuant to this chapter.

(2) All penalties assessed under this section or any rule hereunder on any one (1) fertilizer, represented by the sample analyzed, shall be paid to the department within three (3) months after the date of notice from the department to the registrant. The department shall deposit the amount of the penalty into the "commercial feed and fertilizer fund."

(3) Nothing contained in this section or any rule hereunder shall prevent any person from appealing to a court of competent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) of this section.

(4) Penalties payable as provided for in subsections (1) and (2) of this section or any rule hereunder shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying the penalties.

(5) Penalties for short weights, both packaged and bulk, shall be assessed at the rate of three (3) times the invoiced value if the deficiency exceeds the tolerances established by rule.

SECTION 2. That Section 22-612, Idaho Code, be, and the same is hereby amended to read as follows:

22-612. ASSESSMENT OF PENALTIES. For the purpose of initially determining the commercial values to be applied under the provisions of section 22-611, Idaho Code, the department shall determine ~~from the registrant's sales invoices~~ and publish annually the values per ~~pound, charged for total~~ unit of nitrogen, available ~~phosphoric acid~~ phosphate, soluble potash, secondary elements and ~~other plant nutrients~~ micro-elements used in this state. The values so determined and published shall be used in determining and assessing penalties as authorized under section 22-611, Idaho Code.

Approved March 19, 2004.

CHAPTER 109
(H.B. No. 551)

AN ACT
RELATING TO LICENSURE BY THE BOARD OF PSYCHOLOGIST EXAMINERS; AMENDING SECTION 54-2309, IDAHO CODE, TO CLARIFY CONDITIONS FOR NONISSUANCE AND REVOCATION OF LICENSES.

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

SECTION 1. That Section 54-2309, Idaho Code, be, and the same is hereby amended to read as follows:

54-2309. NONISSUANCE AND REVOCATION OF LICENSE. No license may be issued, and a license previously issued may be revoked or suspended, if the person applying, or the person licensed be:

(a) Found guilty by a court of competent jurisdiction of a felony;

(b) Found by the board to be a repeated and excessive abuser of a controlled substance;

(c) Found by the board to be a repeated and excessive abuser of alcohol;

(d) Found by the board to be in violation of any provision of this ~~act~~ chapter or any of the rules adopted pursuant to this chapter; or

(e) Found by the board to have been unethical as detailed by the current, and future amended, ethical standards of the American Psychological Association.

Approved March 19, 2004.

CHAPTER 110
(H.B. No. 553)

AN ACT
RELATING TO THE BOARD OF SOCIAL WORK EXAMINERS; AMENDING SECTION 54-3203, IDAHO CODE, TO INCREASE THE BOARD MEMBERSHIP BY THE ADDITION OF A LAY MEMBER, AND TO REVISE THE NOMINATION PROCESS.

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

SECTION 1. That Section 54-3203, Idaho Code, be, and the same is hereby amended to read as follows:

54-3203. STATE BOARD OF SOCIAL WORK EXAMINERS -- CREATED -- APPOINTMENTS -- TERMS. (1) A state board of social work examiners is hereby created and made a part of the department of self-governing agencies. It shall be the duty of the board to administer the provisions of this chapter pursuant to the provisions of chapters 26 and 52, title 67, Idaho Code. The board shall consist of ~~five~~ six (~~5~~6) members, three (3) of which shall be masters social workers, and two (2) of which shall be social workers, and one (1) of which shall be a lay member. Board members shall be appointed by the governor after reviewing and considering ~~a list of three (3) nominees~~ nominations for each position to be filled~~,~~ that have been submitted to him. ~~by the joint committee of the Idaho chapter of the National Association of Social Workers and the Idaho Society for Clinical Social Work.~~ All terms shall be for a period of five (5) years. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired term after reviewing and considering ~~a list of three (3) nominees supplied by the joint committee of the Idaho chapter of the National Association of Social Workers and the Idaho Society for Clinical Social Work~~ nominations that have been submitted to him.

(2) Each social work member of the board shall:

(a) Be a resident of this state;

(b) Be currently licensed and in good standing to engage in the practice of social work in this state;

(c) At the time of appointment, have been actively engaged in the practice of social work for at least one (1) out of the last five (5) years; and

(d) Have at least three (3) years of experience in the practice of social work.

(3) Each fiscal year, the chairmanship will rotate to the person who is in the fourth year of their five (5) year term. The chairman shall preside at all meetings of the board. If this person is unable to serve, an election by a majority vote of the board shall determine the person who will serve as chair for that fiscal year. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum.

(4) Each member of the board shall be compensated as provided by section 59-509(b), Idaho Code.

Approved March 19, 2004.

CHAPTER 111
(H.B. No. 554)

AN ACT

RELATING TO NOTICE INVITING BIDS FOR COUNTIES; AMENDING SECTION 31-4004, IDAHO CODE, TO REVISE PUBLICATION REQUIREMENTS BEFORE THE DATE FOR OPENING BIDS BY A COUNTY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 31-4004, Idaho Code, be, and the same is hereby amended to read as follows:

31-4004. NOTICE INVITING BIDS -- CONTENTS -- PUBLICATION. The notice inviting bids shall set a date and place for the opening of bids. The first publication of the notice shall be at least ~~thirty (30) days~~ two (2) weeks before the date for opening bids. Notice shall be published at least twice, not less than ~~three (3)~~ one (1) weeks apart, in a newspaper of general circulation, printed and published in the county, or if there is none, it shall be published in a newspaper having general circulation in the county. The notice shall succinctly set forth the project to be done. The following documents shall be made available by the county commissioners, free of charge, to any interested bidder: bid form, bidder's instructions, contract documents with general and special instructions, when appropriate, drawings and specifications, when appropriate.

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

Approved March 19, 2004.

CHAPTER 112
(H.B. No. 561)

AN ACT

RELATING TO NOTICES FOR ELECTIONS; AMENDING SECTION 34-602, IDAHO CODE, TO SPECIFY INFORMATION TO BE CONTAINED IN NOTICES.

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

SECTION 1. That Section 34-602, Idaho Code, be, and the same is hereby amended to read as follows:

34-602. PUBLICATION OF NOTICES FOR PRIMARY, GENERAL OR SPECIAL ELECTIONS -- CONTENTS. The several county clerks shall publish at least two (2) times, the notices for any primary, general or special election. The notice shall state the date of the election, the polling place in each precinct and the hours during which the polls shall be open for the purpose of voting, and information about the accessibility of the polling places.

The first notice shall be published at least twelve (12) days prior to any election and the second notice shall be published not later than five (5) days prior to the election. The notice of election shall be published in at least two (2) newspapers published within the county, but if this is not possible, the notice shall be published in one (1) newspaper published within the county or a newspaper which has general circulation within the county.

Approved March 19, 2004.

CHAPTER 113
(H.B. No. 562)

AN ACT

RELATING TO CONDUCT OF ELECTIONS; AMENDING SECTION 34-303, IDAHO CODE, TO AUTHORIZE APPOINTMENT OF STUDENTS TO ELECTION BOARDS UNDER CONDITIONS SPECIFIED.

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

SECTION 1. 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. 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.

In order to provide for a greater awareness of the election process, the rights and responsibilities of voters and the importance of participating in the electoral process, as well as to provide additional members of precinct boards, a county clerk may appoint not more than two (2) students per precinct to serve under the direct supervision of election board members designated by the county clerk. A student may be appointed, notwithstanding lack of eligibility to vote, if the student possesses the following qualifications:

(1) Is at least seventeen (17) years of age at the time of the election for which he or she is serving as a member of an election board.
(2) Is a citizen of the United States.

Approved March 19, 2004.

CHAPTER 114
(H.B. No. 588)

AN ACT
RELATING TO ARCHAIC STATUTES PERTAINING TO COUNTY SHERIFFS; REPEALING SECTIONS 8-124, 8-125, 20-608 AND 20-611, IDAHO CODE, RELATING TO ESCAPE LIABILITY FOR SHERIFFS, RELATING TO ESCAPE JUDGMENT AGAINST SHERIFFS, RELATING TO REMOVAL OF PRISONERS IN CASE OF FIRE AND RELATING TO EMPLOYMENT OF TEMPORARY GUARDS AT THE JAIL.

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

SECTION 1. That Sections 8-124, 8-125, 20-608 and 20-611, Idaho Code, be, and the same are hereby repealed.

Approved March 19, 2004.

CHAPTER 115
(H.B. No. 601)

AN ACT
RELATING TO EXEMPTIONS FROM THE SALES AND USE TAX; AMENDING SECTION 63-3622O, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM SALES AND USE TAXES FOR SALES TO OR PURCHASES BY THE BLIND SERVICES FOUNDATION, INC.

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

SECTION 1. That Section 63-3622O, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622O. EXEMPT PRIVATE AND PUBLIC ORGANIZATIONS. (1) There are exempted from the taxes imposed by this chapter:
(a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest protective associations and canal companies which are nonprofit organizations; and
(b) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and
(c) Donations to, sales to, and purchases by food banks or soup kitchens of food or other tangible personal property used by food banks or soup kitchens in the growing, storage, preparation or service of food, but not including 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~~
(h) Sales to or purchases by a qualifying senior citizen center; and
(i) Sales to or purchases by the Blind Services Foundation, Inc.

(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.

(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.

Approved March 19, 2004.

CHAPTER 116
(H.B. No. 605)

AN ACT

RELATING TO THE BOARD OF SOCIAL WORK EXAMINERS; AMENDING SECTION 54-3209, IDAHO CODE, TO CLARIFY THAT THE APPLICATION FEE INCLUDES THE ORIGINAL LICENSE FEE.

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

SECTION 1. That Section 54-3209, Idaho Code, be, and the same is hereby amended to read as follows:

54-3209. FEES -- LICENSING -- DURATION OF LICENSES. Each person submitting an application for licensure to practice social work shall pay an application fee, as determined by the rules of the board, which shall not exceed seventy-five dollars ($75.00) and which shall include the original license fee. Each person licensed to practice social work shall pay a license renewal fee, not to exceed seventy-five dollars ($75.00) as determined by the rules of the board. 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 shall be in accordance with the requirements of section 67-2614, Idaho Code.

Approved March 19, 2004.

CHAPTER 117
(H.B. No. 611)

AN ACT

RELATING TO COMMERCIAL HAZARDOUS WASTE DISPOSAL FEES; AMENDING SECTION 39-4427, IDAHO CODE, TO PROVIDE FEES FOR CERTAIN MANIFESTED REMEDIATION WASTES, TO REVISE FEES FOR DISPOSAL OF CERTAIN HAZARDOUS WASTES, PCBS AND HAZARDOUS DEBRIS AT COMMERCIAL HAZARDOUS WASTE DISPOSAL FACILITIES OR PERMITTED SITES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-4427, Idaho Code, be, and the same is hereby amended to read as follows:

39-4427. COMMERCIAL DISPOSAL FEES. (1) There is imposed on the owner or operator of every commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the lowest applicable fee for each ton of waste or fraction thereof, as follows:

(a) Thirty dollars ($30.00) per gate ton or fraction thereof for all hazardous wastes as defined by RCRA or section 39-4407, Idaho Code;

(b) Twenty-five dollars ($25.00) per gate ton or fraction thereof for all manifested wastes not otherwise defined in this subsection;

(c) Two dollars ($2.00) per gate ton or fraction thereof for all manifested remediation wastes not otherwise defined in this subsection;

(d) Twenty dollars ($20.00) per gate ton or fraction thereof for the first two thousand five hundred (2,500) gate tons or less of wastes received by a facility or site ~~in a calendar year~~ from the same ~~initial generator~~ site, property or hazardous waste management unit if the wastes: (i) are PCBs regulated under Idaho or federal law and are in concentrations greater than fifty (50) parts per million; (ii) are hazardous debris; (iii) are hazardous wastes that become subject to regulation solely as a result of a removal or remedial action taken in response to environmental contamination; or (iv) are hazardous wastes that result from corrective action or closure of a regulated or nonregulated hazardous waste management unit;

(~~d~~e) Ten dollars ($10.00) per gate ton or fraction thereof for all wastes contained in paragraph (~~c~~d) of this subsection, if the wastes are received by the same facility or site and are from the same ~~initial generator~~ site, property or hazardous waste management unit in an amount greater than two thousand five hundred (2,500) gate tons ~~in the same calendar year~~ up to twelve thousand five hundred (12,500) gate tons;

(f) Five dollars ($5.00) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsection, if the wastes are received by the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than twelve thousand five hundred (12,500) gate tons up to twenty-five thousand (25,000) gate tons;

(g) Two dollars and fifty cents ($2.50) per gate ton or fraction thereof for all wastes contained in paragraph (d) of this subsec-

tion, if the wastes are received by the same facility or site and are from the same site, property or hazardous waste management unit in an amount greater than twenty-five thousand (25,000) gate tons;

(~~e~~h) Five dollars ($5.00) per gate ton or fraction thereof for all hazardous wastes that: (i) are delisted or treated so that the wastes are no longer hazardous wastes; or (ii) are nonhazardous radiologically contaminated wastes including materials from the "Formerly Utilized Sites Remedial Action Program (FUSRAP)" sites administered by the government of the United States; or (iii) are PCBs in concentrations less than fifty (50) parts per million and not otherwise regulated by Idaho or federal law; or (iv) are wastes not otherwise defined in this subsection.

(2) The fees set forth in subsection (1) of this section shall not apply to any of the following types of wastes:

(a) Wastes generated or disposed of by a public agency or other person operating a household hazardous waste collection program;

(b) Wastes generated or disposed of by any agency of the state of Idaho.

Any waste for which the fees are waived under the provisions of this section must be noted as fee-waived waste on the return required in section 39-4428, Idaho Code, and is subject to all audit provisions of section 39-4429, Idaho Code.

(3) For wastes disposed of by any agency of the state of Idaho at any commercial hazardous waste disposal facility or site permitted under section 39-4409, Idaho Code, the director, pursuant to a written agreement with the director, the owner or operator of any such facility or site, may credit on the return required in section 39-4428, Idaho Code, and in the fee remitted, an amount equal to the actual cost charged by such owner or operator per gate ton or fraction thereof for the characterization, collection, identification, transportation, treatment, storage and disposal of wastes at such facility or site.

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

Approved March 19, 2004.

CHAPTER 118
(S.B. No. 1234, As Amended)

AN ACT

RELATING TO DOMESTIC VIOLENCE; AMENDING SECTION 18-918, IDAHO CODE, TO MAKE TECHNICAL CHANGES, TO PROVIDE CLARIFYING LANGUAGE, TO SET FORTH PUNISHMENT FOR PERSONS WHO PLEAD GUILTY TO OR HAVE BEEN FOUND GUILTY OF MISDEMEANOR DOMESTIC VIOLENCE WHO HAVE PREVIOUSLY PLED GUILTY TO OR BEEN FOUND GUILTY OF MISDEMEANOR DOMESTIC VIOLENCE OR SUBSTANTIALLY CONFORMING FOREIGN CRIMINAL VIOLATIONS NOTWITHSTANDING THE FORM OF THE JUDGMENT OR WITHHELD JUDGMENT, TO SET FORTH PUNISHMENT FOR PERSONS WHO PREVIOUSLY HAVE PLED GUILTY OR BEEN FOUND GUILTY OF A FELONY DOMESTIC VIOLENCE VIOLATION OR OF ANY SUBSTANTIALLY CONFORMING FOREIGN CRIMINAL FELONY VIOLATION NOTWITHSTANDING THE FORM

OF THE JUDGMENT OR WITHHELD JUDGMENT AND WHO PLEAD GUILTY OR ARE FOUND GUILTY OF A FURTHER VIOLATION WITHIN FIFTEEN YEARS, TO DEFINE "SUBSTANTIALLY CONFORMING FOREIGN CRIMINAL VIOLATION" AND TO PROVIDE FOR A DETERMINATION BY THE COURT.

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

SECTION 1. That Section 18-918, Idaho Code, be, and the same is hereby amended to read as follows:

18-918. DOMESTIC VIOLENCE. (1) For the purpose of this section~~,~~:

(a) "~~H~~household member" means a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife.

(~~2~~b) ~~As used in this section, "t~~"Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.

(~~3~~2) (a) Any household member who commits a battery, as defined in section 18-903, Idaho Code, and willfully and unlawfully inflicts a traumatic injury upon any other household member is guilty of a felony.

(b) A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000) or by both fine and imprisonment.

(~~4~~3) (a) A household member who commits an assault, as defined in section 18-901, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic assault.

(~~5~~b) A household member who commits a battery, as defined in section 18-903, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic battery.

~~(6) A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000) or by both fine and imprisonment.~~

(~~7~~c) ~~(a) Upon a~~ A first conviction~~, the crime of misdemeanor domestic assault or battery~~ under this subsection (3) is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. ~~Upon a second conviction,~~ Any person who pleads guilty to or is found guilty of a violation of this subsection (3) who previously has pled guilty to or been found guilty of a violation of this subsection (3), or of any substantially conforming foreign criminal violation, notwithstanding the form of the judgment or withheld judgment, within ten (10) years of the first conviction, ~~the person so convicted~~ shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars ($2,000) or by both fine and imprisonment. ~~Upon a third or subsequent conviction~~ Any person who pleads guilty to or is found guilty of a violation of this subsection (3)

who previously has pled guilty to or been found guilty of two (2) violations of this subsection (3), or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within fifteen (15) years of the first conviction, ~~the person so convicted~~ shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000) or by both fine and imprisonment.

(~~b~~4) The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.

(5) Notwithstanding any other provisions of this section, any person who previously has pled guilty to or been found guilty of a felony violation of the provisions of this section or of any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment or withheld judgment, and who within fifteen (15) years pleads guilty to or is found guilty of any further violation of this section, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000), or by both such fine and imprisonment.

(6) For the purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(~~8~~7) (a) Any person who pleads guilty to or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, agency or organization approved by the court in accordance with subsection (c) of this section to determine whether the defendant should be required to obtain aggression counseling or other appropriate treatment. Such evaluation shall be completed prior to the sentencing date if the court's list of approved evaluators, in accordance with subsection (c) of this section, contains evaluators who are able to perform the evaluation prior to the sentencing dates. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that counseling is required unless the defendant makes a show-

ing by a preponderance of evidence that counseling is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code.

(b) If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.

(c) Each judicial district shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section 31-3201A(q), Idaho Code.

(d) Counseling or treatment ordered pursuant to this section shall be conducted according to standards established or approved by the Idaho council on domestic violence.

Approved March 19, 2004.

CHAPTER 119
(S.B. No. 1240)

AN ACT

RELATING TO REAL ESTATE BROKERS AND SALESPERSONS; AMENDING SECTION 54-2083, IDAHO CODE, TO DEFINE ADDITIONAL TERMS; AMENDING SECTION 54-2084, IDAHO CODE, TO DEFINE TYPES OF BROKERAGE RELATIONSHIPS; AMENDING SECTION 54-2085, IDAHO CODE, TO SPECIFY TERMS OF DISCLOSURE REQUIRED IN SPECIFIC BROKERAGE RELATIONSHIPS; AMENDING SECTION 54-2087, IDAHO CODE, TO ADOPT CONSISTENT TERMINOLOGY; AMENDING SECTION 54-2088, IDAHO CODE, TO SPECIFY TERMS OF EXPRESS WRITTEN CONSENT TO DUAL REPRESENTATION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-2090, IDAHO CODE, TO ADOPT CONSISTENT TERMINOLOGY.

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

SECTION 1. That Section 54-2083, Idaho Code, be, and the same is hereby amended to read as follows:

54-2083. DEFINITIONS. As used in sections 54-2082 through 54-2097, Idaho Code:

(1) "Adverse material fact" means a fact that would significantly affect the desirability or value of the property to a reasonable person or which establishes a reasonable belief that a party to the transaction is not able to or does not intend to complete that party's obligations under a real estate contract.

(2) "Agency representation" or "representation" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties defined in section 54-2087, Idaho Code, are applicable. See also "representation."

(3) "Assigned agent" means, where a brokerage is representing more than one (1) party to the transaction as a limited dual agent as provided in section 54-2088. Idaho Code. the sales associate assigned by the brokerage to act on behalf of one (1) client and to represent solely that client consistent with the applicable duties set forth in section 54-2087, Idaho Code. The designated broker shall not act as an assigned agent of the brokerage.

(4) "Brokerage" means a licensed designated broker, the licensed real estate business represented by that broker and its ~~affiliated~~ associated licensees.

(~~4~~5) "Client" means a buyer or seller, or a prospective buyer or seller, or both who have entered into an express written contract or agreement with a brokerage for agency representation in a regulated real estate transaction.

(~~5~~6) "Confidential client information" means information gained from or about a client that:

(a) Is not a matter of public record;

(b) The client has not disclosed or authorized to be disclosed to third parties;

(c) If disclosed, would be detrimental to the client; and

(d) The client would not be personally obligated to disclose to another party to the transaction. Information which is required to

be disclosed by statute or rule or where the failure to disclose would constitute fraudulent misrepresentation is not confidential client information within the provisions of this act. Information generally disseminated in the marketplace, including "sold" prices of property, is also not confidential client information within the provisions of this act.

(6~~7~~) "Customer" means a buyer or seller, or prospective buyer or seller, who is not represented in an agency relationship in a regulated real estate transaction.

(8) "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.

(~~7~~9) "Express agreement" or "express contract" means a written agreement by the parties to undertake brokerage representation. An express agreement under this statute can only be made in writing, and cannot be made orally or by assumption or implication.

(~~8~~10) "Idaho real estate license law and rules" means chapter 20, title 54, Idaho Code, and all administrative rules promulgated thereunder.

(~~9~~11) "Limited ~~disclosed~~ dual agent" means ~~only that limited~~ a brokerage ~~representation--in which~~ that is representing both a buyer and a seller ~~are~~ as clients ~~for the purposes of~~ in a regulated real estate transaction, ~~and~~ as ~~specifically allowed in this act~~ provided in section 54-2088, Idaho Code.

(1~~0~~2) "Ministerial acts" means reasonably necessary and customary acts typic~~ally perform~~ed by real estate licensees in assisting a transaction to its closing or conclusion.

(1~~1~~3) "Nonagent" means a brokerage and its licensees working with or assisting a buyer or seller as a customer to which the duties provided in section 54-2086, Idaho Code, are applicable.

(1~~2~~4) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(1~~3~~5) "Representation" or "brokerage representation" or "represented" means the statutory agency relationship between a client and a brokerage in a regulated real estate transaction with respect to which the duties provided in section 54-2087, Idaho Code, are applicable.

(16) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

SECTION 2. That Section 54-2084, Idaho Code, be, and the same is hereby amended to read as follows:

54-2084. BROKERAGE AGENCY RELATIONSHIPS -- CREATION. (1) A buyer or seller is not represented by a brokerage in a regulated real estate transaction unless the buyer or seller and the brokerage agree, in a separate written document, to such representation. No type of agency representation may be assumed by a brokerage, buyer or seller or created orally or by implication.

(2) Types of brokerage relationships. The following types of brokerage relationships are recognized:

(a) Nonagency;
(b) Agency representation;
(c) Limited dual agency representation;
(d) Limited dual agency with assigned agents.

SECTION 3. That Section 54-2085, Idaho Code, be, and the same is hereby amended to read as follows:

54-2085. DISCLOSURE AND WRITING REQUIREMENTS -- AGENCY DISCLOSURE BROCHURE AND REPRESENTATION CONFIRMATION. (1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure adopted or approved by the Idaho real estate commission. The commission by motion shall establish the form and contents of the brochure in accordance with the provisions of this chapter. Each brokerage shall keep a signed and dated record of a buyer or seller's receipt of the agency disclosure brochure.

(2) The agency disclosure brochure shall list the types of representation available to a buyer or seller in a regulated real estate transaction, the legal duties and obligations owed to the buyer or seller in each type of representation and a conspicuous notice that no representation will exist absent a written agreement between the buyer or seller and the brokerage.

(3) A brokerage's relationship with a buyer ~~and~~ or seller as an agent, nonagent, ~~or~~ limited dual agent, or limited dual agent with assigned agents, must be determined and all necessary agreements executed no later than the preparation of a purchase and sale agreement. A brokerage must disclose its relationship to both buyer and seller in any transaction no later than the preparation or presentation of a purchase and sale agreement.

(4) In addition, a purchase and sale agreement, an attachment thereto, or other document drafted in connection with a regulated real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved:

REPRESENTATION CONFIRMATION AND ACKNOWLEDGMENT OF DISCLOSURE

Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

A. ☐ The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).

B. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.

C. ☐ The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).

D. ☐ The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

A. ☐ The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).

B. ☐ The brokerage working with the SELLER(S) is acting

as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.

C. ☐ The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).

D. ☐ The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing ~~this~~ document confirms that he ~~or she~~ has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has ~~elected~~ consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE ~~OR SHE~~ IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

(5) The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this chapter shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.

(6) Neither the commission brochure nor the representation confirmation shall create a brokerage relationship. A separate, signed, written agreement is required for that purpose.

SECTION 4. That Section 54-2087, Idaho Code, be, and the same is hereby amended to read as follows:

54-2087. DUTIES TO A CLIENT. If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

(1) To perform the terms of the written agreement with the client;

(2) To exercise reasonable skill and care;

(3) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:

(a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;

(b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or

(c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;

(d) For the benefit of a client/buyer: when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;

(e) For the benefit of a client/seller: upon written request by a client/seller, requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary

by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.

(4) To properly account for moneys or property placed in the care and responsibility of the brokerage; and

(5) To maintain the confidentiality of specific client information as defined by and to the extent required in this chapter, and as follows:

(a) The duty to a client continues beyond the termination of representation only so long as the information continues to be confidential client information as defined in this chapter, and only so long as the information does not become generally known in the marketing community from a source other than the brokerage or its ~~affiliated~~ associated licensees;

(b) A licensee who personally has gained confidential client information about a buyer or seller while associated with one (1) broker and who later ~~affiliates~~ associates with a different broker remains obligated to maintain the client confidentiality as required by this chapter;

(c) If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage shall inform the second client of the brokerage's prior representation of the former client and that confidential client information obtained during the first representation cannot be given to the second client. Nothing in this section shall prevent the brokerage from asking the former client for permission to release such information;

(d) Nothing in this section is intended to create a privileged communication between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal proceedings.

(6) Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to a client to conduct an independent inspection of the property and owe no duty to independently verify the accuracy or completeness of any statement or representation made regarding a property. Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to conduct an independent investigation of either party's financial ability to complete a real estate transaction.

SECTION 5. That Section 54-2088, Idaho Code, be, and the same is hereby amended to read as follows:

54-2088. LIMITED ~~DISCLOSED~~ DUAL AGENCY AND ASSIGNED AGENCY PERMITTED. (1) A brokerage may ~~act~~ represent both the buyer and the seller in the same transaction only as a limited ~~disclosed~~ dual agent and only with the express written consent of all ~~parties--to~~ other clients involved in the transaction. ~~Such~~

(2) A brokerage acting as a limited dual agent may, at the option of the brokerage and with the express written consent of the other clients involved in the transaction, assign separate sales associates to each client to act on behalf of and represent that client solely. The designated broker shall not act as an assigned agent of the brokerage.

(3) The express written consent to limited dual agency shall contain separate signatures of all ~~parties--to~~ clients involved in the transaction and shall contain the following language:

CONSENT TO LIMITED DUAL REPRESENTATION AND ASSIGNED AGENCY

The undersigned have received, read and understand the Agency Disclosure Brochure. The undersigned understand that the brokerage involved in this transaction ~~will be or~~ may be providing agency representation to both the buyer~~(s)~~ and the seller~~(s)~~. The undersigned each understands that, as an agent~~s~~ for both buyer/client and seller/client, ~~the~~ a brokerage~~(s)~~ will be a limited dual agent~~s~~ of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either ~~party~~ client certain confidential client information concerning price negotiations, terms or factors motivating the buyer/client to buy or the seller/client to sell without specific written permission of the ~~disclosing party~~ client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2085, Idaho Code. The undersigned each understands that a limited dual agent does not have a duty of undivided loyalty to either client.

The undersigned further acknowledge that, to the extent the brokerage firm offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

(~~2~~4) All duties and obligations owed to a buyer/client or a seller/client under section 54-2087, Idaho Code, apply to limited ~~disclosed~~ dual agency relationships to the extent they do not unreasonably conflict with duties and obligations owed to the other client, except that:

(a) A limited ~~disclosed~~ dual agent shall not disclose any of the following without express written consent of the client to whom the information pertains:

(i) That a buyer is willing to pay more than the listing price of the property;

(ii) That a seller is willing to accept less than the listing price for the property;

(iii) The factors motivating the buyer to buy or the seller to sell;

(iv) That a buyer or seller will agree to a price or financing terms other than those offered.

(b) A limited ~~disclosed~~ dual agent does not have a duty of undivided loyalty to either buyer/client or seller/client, and by consenting to limited dual agency, the buyer and seller agree to those limitations.

(5) The following apply whenever a brokerage acting as a limited dual agent assigns separate sales associates to act on behalf of the separate clients:

(a) Designated broker. The designated broker continues to act as limited dual agent of each client with the duty to:

(i) Supervise the assigned agents in the fulfillment of their duties to their respective clients;

(ii) Refrain from advocating on behalf of any one client over another; and

(iii) Refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

(b) Imputed knowledge. Knowledge of any fact known to the brokerage, its designated broker, or any other licensee associated with the brokerage, shall not be imputed to an assigned agent of the brokerage so as to create an impermissible conflict of interest. Nothing in this subsection shall diminish a licensee's duty with respect to facts actually known or that reasonably should have been known to the licensee.

(6) If a designated broker determines that confidential information of a client has been disclosed to another client in the transaction in violation of this section, the designated broker shall promptly provide written notice of the disclosure to the affected client.

(~~3~~7) No cause of action for any buyer or seller shall arise against a limited ~~disclosed~~ dual agent for making any required or permitted disclosure under this act, nor does making such disclosure terminate the limited ~~disclosed~~ dual agency.

(~~4~~8) Receipt of the agency disclosure brochure required by section 54-2085, Idaho Code, and the signed consent to dual representation by buyer and seller agreeing to limited ~~disclosed~~ dual agency representation shall be sufficient informed legal consent to dual representation under this act. A consent by the buyer and seller to possible dual representation in the future, such as may be contained in a written marketing or representation agreement between a brokerage and client, shall also be considered effective and informed legal consent to dual representation.

SECTION 6. That Section 54-2090, Idaho Code, be, and the same is hereby amended to read as follows:

54-2090. WRITTEN OFFICE POLICY REQUIRED. Each designated broker shall be responsible to adopt and maintain in each office, including branch offices, a written policy which identifies and describes the types of representation in which that brokerage and its ~~affiliated~~ associated licensees may engage with any buyer or seller, or both, as a part of that office's real estate brokerage services.

Approved March 19, 2004.

CHAPTER 120
(S.B. No. 1241)

AN ACT

RELATING TO LICENSURE OF REAL ESTATE BROKERS AND SALESPERSONS; AMENDING SECTION 54-2018, IDAHO CODE, TO SPECIFY REQUIREMENTS FOR LICENSE RENEWAL; AMENDING SECTION 54-2023, IDAHO CODE, TO SPECIFY CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTION 54-2026, IDAHO CODE, TO DEFINE ADDITIONAL GROUNDS FOR WITHDRAWAL OR CANCELLATION OF PROVIDER CERTIFICATION; AND AMENDING SECTION 54-2033, IDAHO CODE, TO DEFINE ADDITIONAL GROUNDS FOR WITHDRAWAL OR CANCELLATION OF INSTRUCTOR'S CERTIFICATION.

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

SECTION 1. 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~~ designated broker ~~establishing~~ for 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~~ Certification that the applicant has met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(ii) ~~Proof of meeting~~ Certification that the applicant has met 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~~ Obtaining and maintaining a policy of errors ~~or~~ and omissions insurance ~~in the manner~~ as required by section 54-2013, Idaho Code, and in accordance with the rules of the ~~commission~~ and certifying the same; and

(e) ~~Providing evidence of having s~~Successfully ~~completed--the~~ completing any continuing education requirements, as prescribed in section 54-2023, Idaho Code, and certifying the same for the current license period. ~~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 2. 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~~ meet 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~~ is as follows:

(a) Renewing ~~active~~ license on active status. A licensee renewing on active status ~~effective~~ prior to July 1, 2003, must successfully complete at least eight (8) classroom hours of continuing education, plus one (1) commission-approved core course, on or before the current 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, plus one (1) commission-approved core course, on or before the current license expiration date.

(b) Change from inactive to active. A licensee changing from inactive to active license status ~~effective-prior-to-July-1,-2003,~~ must ~~successfully~~ meet the continuing education requirements for an active license for the current licensing period. If the inactive licensee renewed his license on or after July 1, 2003, he shall complete sixteen (16) classroom hours of continuing education, plus one (1) commission-approved core course, before he can change to active license status. If the inactive licensee is within a license renewal period that began prior to July 1, 2003, he shall 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~~ plus one (1) commission-approved core course, before he can change to active license status. If the inactive licensee is within his initial licensing period, no continuing education is required to change to active license status.

(2) No duplicate credit. No licensee may obtain continuing educaion 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 education requirements, if within the approved topic areas established by the commission.

(f) If a certified course instructor, teach a live course for which continuing education credit may be obtained. Credits shall be granted for the number of classroom hours taught.

(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 3. 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. The failure of the provider to have in place a designated individual meeting the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the provider's certificate as provided in section 54-2025(3), Idaho Code;

(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)(j), Idaho Code. The commission, in its discretion, may make such additional investigation and inquiry relative to the applicant for provider certifica-

tion as it deems advisable and, if good cause exists, may deny or accept the application for certification.

SECTION 4. 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. The failure of a certified instructor to maintain the qualifications required by this subsection shall be grounds for the commission to withdraw or cancel the instructor's certificate as provided in section 54-2025(3), Idaho Code.

(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)(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 19, 2004.

CHAPTER 121
(S.B. No. 1242)

AN ACT
RELATING TO REAL ESTATE BROKERS AND SALESPERSONS; AMENDING SECTION 54-2059, IDAHO CODE, TO GOVERN THE USE OF AMOUNTS COLLECTED FROM CIVIL PENALTIES.

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

SECTION 1. That Section 54-2059, Idaho Code, be, and the same is hereby amended to read as follows:

54-2059. DISCIPLINARY POWERS -- REVOCATION, SUSPENSION OR OTHER DISCIPLINARY ACTION. (1) The commission may temporarily suspend or permanently revoke licenses issued under the provisions of this chapter, issue a formal reprimand and impose a civil penalty in an amount not to exceed five thousand dollars ($5,000), and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any licensee who is found to have violated any section of the Idaho Code, the commission's administrative rules or any order of the commission. The executive director may issue informal letters of reprimand to licensees without civil penalty or cost assessment.

The commission may impose a civil penalty in an amount not to exceed five thousand dollars ($5,000) and assess costs and attorney's fees for the cost of any investigation and administrative or other proceedings against any person who is found, through a court or administrative proceeding, to have acted without a license in violation of section 54-2002, Idaho Code. The civil penalty provisions of this section are in addition to and not in lieu of any other actions or criminal penalties for acting as a broker or salesperson without a license which might be imposed by other sections of this chapter or Idaho law.

The commission may also accept, on such conditions as it may prescribe, or reject any offer to voluntarily terminate the license of a person whose activity is under investigation or against whom a formal complaint has been filed.

(2) If the commission suspends or revokes a license, or imposes a civil penalty, or assesses costs and attorney's fees, the commission may withhold execution of the suspension, revocation or civil penalty, or costs and attorney's fees on such terms and for such time as it may prescribe.

(3) If any amounts assessed against a defendant by final order of the commission become otherwise uncollectible or payment is in default, and only if all the defendant's rights to appeal have passed, the commission may then proceed to district court and seek to enforce collection through judgment and execution.

(4) All civil penalties, costs, and attorney's fees collected by the commission under this chapter shall be deposited in the state treasury to the credit of the special real estate fund established by section 54-2021, Idaho Code. Any amounts of civil penalties so collected, deposited and credited shall be expended for exclusive use in developing and delivering real estate education to benefit Idaho real estate licensees.

Approved March 19, 2004.

CHAPTER 122
(S.B. No. 1243, As Amended)

AN ACT

RELATING TO VIDEO VOYEURISM; AMENDING CHAPTER 66, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-6609, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE CRIME OF VIDEO VOYEURISM AND TO PROVIDE A PENALTY; AMENDING SECTION 18-8304, IDAHO CODE, TO INCLUDE THE CRIME OF VIDEO VOYEURISM FOR PURPOSES OF THE SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY RIGHT-TO-KNOW ACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 66, 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 18-6609, Idaho Code, and to read as follows:

18-6609. CRIME OF VIDEO VOYEURISM. (1) As used in this section:

(a) "Broadcast" means the electronic transmittal of a visual image with the intent that it be viewed by a person or persons.

(b) "Disseminate" means to make available by any means to any person.

(c) "Imaging device" means any instrument capable of recording, storing, viewing or transmitting visual images.

(d) "Intimate areas" means the buttocks, genitals or genital areas of males or females, and the breast area of females.

(e) "Person" means any natural person, corporation, partnership, firm, association, joint venture or any other recognized legal entity or any agent or servant thereof.

(f) "Place where a person has a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he could undress, be undressed or engage in sexual activity in privacy, without concern that he is being viewed, photographed, filmed or otherwise recorded by an imaging device; or

(ii) A place where a person might reasonably expect to be safe from casual or hostile surveillance by an imaging device; or

(iii) Any public place where a person, by taking reasonable steps to conceal intimate areas, should be free from the viewing, recording, storing or transmitting of images obtained by imaging devices designed to overcome the barriers created by a person's covering of intimate areas.

(g) "Publish" means to:

(i) Disseminate with the intent that such image or images be made available by any means to any person; or

(ii) Disseminate with the intent that such images be sold by another person; or

(iii) Post, present, display, exhibit, circulate, advertise or allow access by any means so as to make an image or images available to the public; or

(iv) Disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means and to make such image or images available to the public.

(h) "Sell" means to disseminate to another person, or to publish, in exchange for something of value.

(2) A person is guilty of video voyeurism when, with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person:

(a) He uses, installs or permits the use or installation of an imaging device at a place where a person would have a reasonable expectation of privacy, without the knowledge or consent of the person using such place; or

(b) He intentionally disseminates, publishes or sells any image or images of the intimate areas of another person or persons without the consent of such other person or persons and with knowledge that such image or images were obtained with the intent set forth above.

(3) A violation of this section is a felony.

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), or upon a second or subsequent conviction under 18-6609, Idaho Code (video voyeurism);

(b) Enters the state on or after July 1, 1993, and who has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section.

(c) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(d) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(2) The provisions of this chapter shall not apply to any such person while the person is incarcerated in a correctional institution of the department of correction, a county jail facility or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

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

Approved March 19, 2004.

CHAPTER 123
(S.B. No. 1250)

AN ACT

RELATING TO HOMESTEAD ALLOWANCE DETERMINATIONS OF AN ESTATE; AMENDING SECTION 15-2-402, IDAHO CODE, TO FURTHER DEFINE THE RIGHT TO A HOMESTEAD ALLOWANCE; AMENDING SECTION 15-2-403, IDAHO CODE, TO FURTHER DEFINE THE VALUE OF EXEMPT PROPERTY; AMENDING SECTION 15-2-404, IDAHO CODE, TO FURTHER DEFINE A FAMILY ALLOWANCE; AMENDING SECTION 15-2-405, IDAHO CODE, TO PROVIDE PROCEDURES IN DETERMINATIONS OF HOMESTEAD ALLOWANCE, FAMILY ALLOWANCE AND EXEMPT PROPERTY; AND REPEALING SECTION 55-1010, IDAHO CODE.

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

SECTION 1. That Section 15-2-402, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-402. HOMESTEAD ALLOWANCE. ~~If a surviving spouse of a decedent is entitled to the homestead pursuant to section 55-1010, Idaho Code, then no person is entitled to a homestead allowance. If a surviving spouse of a decedent is not entitled to the homestead pursuant to section 55-1010, Idaho Code, then the surviving spouse of a decedent is entitled to a homestead allowance. If there is no surviving spouse, and if no homestead passes to the minor children and/or dependent children of the decedent as set forth in section 55-1010, Idaho Code, each minor child and each dependent child of the decedent is entitled to a homestead allowance in the amount determined hereafter divided by the number of minor and dependent children of the decedent.~~ The homestead allowance is exempt from and has priority over all claims against the estate except as hereinafter set forth. The homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided in the will, or by intestate succession, or by way of elective share. The amount of the homestead allowance shall be the sum set forth in the provisions of section 55-1003, Idaho Code, as those provisions are in effect on the date of the decedent's death. The homestead allowance is not a right to claim ownership of, or succession to, any homestead owned by the decedent at the time of the decedent's death but is only the right to claim the sum set forth above. The right to a homestead allowance is determined as follows:

(a) If there is a surviving spouse of the decedent, and the surviving spouse does not, at the time of the death of the decedent, have a homestead, which for purposes of this chapter shall have the same definition as set forth in section 63-701(2), Idaho Code, the surviving spouse shall be entitled to a homestead allowance unless the surviving spouse receives (by will or other dispositive instrument, by intestate succession, by survivorship, or by other means) such a homestead either from the decedent or due to the death of the decedent;

(b) If there is no surviving spouse, and there are one (1) or more minor and/or dependent children of the decedent, then each minor child and each dependent child of the decedent is entitled to a portion of the homestead allowance in the amount of the homestead allowance divided by the number of minor and dependent children of the decedent entitled to receive the homestead allowance, unless the minor child or dependent child receives (by will or other dispositive instrument, by intestate succession, by survivorship, or by other means) such a homestead either from the decedent or due to the death of the decedent.

SECTION 2. 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 prop-

erty 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, and except as otherwise provided. 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.

SECTION 3. That Section 15-2-404, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-404. FAMILY ALLOWANCE. (a) In addition to the right to a ~~homestead or~~ homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one (1) year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance, except as otherwise provided.

(b) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided in the will, or by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

SECTION 4. That Section 15-2-405, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-405. SOURCE -- DETERMINATION -- DOCUMENTATION -- MISCELLANEOUS PROVISIONS. If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to the homestead allowance, family allowance or, ~~and~~ exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance, family allowance, or ~~and~~ exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there is no guardian of a minor child. The personal representative may execute an instrument ~~or deed of distribution~~ to establish the ~~ownership of property taken as a~~ homestead allowance, family allowance, or exempt property. The personal representative may

determine the family allowance in a lump sum not exceeding eighteen thousand dollars ($18,000) or periodic installments not exceeding one thousand five hundred dollars ($1,500) per month for one (1) year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined. Despite any language to the contrary in this chapter, the homestead allowance, family allowance, and exempt property are not mandatory automatic allowances, but rather must be applied for by the surviving spouse and/or children, as appropriate, as set forth in this title. Even though these allowances and the right to apply for exempt property are not claims against estates, the manner of and time period for applying for these allowances or the exempt property shall be the same as set forth in sections 15-3-801, 15-3-803 and 15-3-804, Idaho Code; provided however, that the personal representative shall not be required to give actual notice to a surviving spouse or a minor or dependent child of the right to apply for these allowances or the exempt property, and provided further that any notice actually given by the personal representative does not need to make any additional or special reference to an application by the surviving spouse or dependent or minor children also being barred if not submitted within the time period set forth in the notice. Also, the personal representative shall not be liable to the surviving spouse, minor or dependent child, any creditor. or anv other successor to the estate in the same manner as provided in section 15-3-801(c), Idaho Code, as a result of giving or failing to give notice. The homestead allowance, family allowance, and exempt property may not be enforced or applied for on behalf of a surviving spouse or a minor or dependent or adult child of the decedent by a creditor of the surviving spouse or a minor or dependent or adult child of the decedent, or by any person or entity claiming by, through, or because of the surviving spouse or minor or dependent or adult child of the decedent. Despite any language to the contrary in other sections of this chapter, the homestead allowance, family allowance, and exempt property do not take precedence over reasonable administrative costs and expenses of the estate of the decedent.

SECTION 5. That Section 55-1010, Idaho Code, be, and the same is hereby repealed.

Approved March 19, 2004.

CHAPTER 124
(S.B. No. 1251)

AN ACT

RELATING TO PRESENTATION OF CLAIMS AGAINST AN ESTATE; AMENDING SECTION 15-3-804, IDAHO CODE, TO SPECIFY THE MANNER AND TIME FOR PRESENTATION OF CLAIMS AGAINST AN ESTATE.

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

SECTION 1. That Section 15-3-804, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-804. MANNER OF PRESENTATION OF CLAIMS. Claims against a decedent's estate may be presented as follows:

(a) The claimant shall deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, and file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the ~~first~~ last to occur ~~on receipt~~ of: (1) delivery or mailing of the written statement of claim ~~by~~ to the personal representative~~,~~; or, (2) the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(c) If a claim is presented under subsection (a) of this section, no proceeding thereon may be commenced more than sixty (60) days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty (60) day period, or to avoid injustice the court, on petition, may order an extension of the sixty (60) day period, but in no event shall the extension run beyond the applicable statute of limitations.

Approved March 19, 2004.

CHAPTER 125
(S.B. No. 1263)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION AND NOTIFICATION ACT; AMENDING SECTION 18-8303, IDAHO CODE, TO FURTHER DEFINE THE TERM "VIOLENT SEXUAL PREDATOR"; AMENDING SECTION 18-8314, IDAHO CODE, TO PROVIDE THAT THE SEXUAL OFFENDER CLASSIFICATION BOARD MAY CONSIDER REVIEWING REFERRED OFFENDERS FOR VIOLENT SEXUAL PREDATOR DESIGNATION AND TO PROVIDE FOR FEDERAL AND TRIBAL COURTS TO MAKE REFERRALS TO THE BOARD; AMENDING SECTION 18-8315, IDAHO CODE, TO CLARIFY THAT PUBLIC RECORDS REQUESTS REGARDING VIOLENT SEXUAL PREDATOR DETERMINATIONS SHALL BE MADE TO THE SEXUAL OFFENDER CLASSIFICATION BOARD AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 18-8317, IDAHO

CODE, TO PROVIDE THAT A REFERRED OFFENDER WHOM THE BOARD DEEMS IS APPROPRIATE FOR REVIEW FOR VIOLENT SEXUAL PREDATOR DESIGNATION SHALL SUBMIT TO PSYCHOSEXUAL EVALUATION AND TO REVISE CRITERIA AND PROCEDURES; AMENDING SECTION 18-8319, IDAHO CODE, TO REVISE CRITERIA TO DETERMINE WHICH COURT IS APPROPRIATE TO HEAR CHALLENGES TO VIOLENT SEXUAL PREDATOR DESIGNATIONS, AND TO PROVIDE FOR A DISTRICT COURT TO HEAR CHALLENGES TO VIOLENT SEXUAL PREDATOR DESIGNATIONS IN CASES WHERE THE OFFENDER INTENDS TO RESIDE IN ANOTHER STATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-8303, Idaho Code, be, and the same is hereby amended to read as follows:

18-8303. DEFINITIONS. As used in this chapter:

(1) "Aggravated offense" means any of the following crimes as set forth in section 18-8304, Idaho Code: 18-1508 (lewd conduct, when the victim is less than twelve (12) years of age); 18-4003(d) (murder committed in the perpetration of rape); 18-6101 (rape, but excluding section 18-6101(1) where the victim is at least twelve (12) years of age or the defendant is eighteen (18) years of age or younger); 18-6108 (male rape); and 18-6608 (forcible sexual penetration by use of a foreign object).

(2) "Board" means the sexual offender classification board described in section 18-8312, Idaho Code.

(3) "Central registry" means the registry of convicted sexual offenders maintained by the Idaho state police pursuant to this chapter.

(4) "Certified evaluator" means either a psychiatrist licensed by this state pursuant to chapter 18, title 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to chapter 23, chapter 32, or chapter 34, title 54, Idaho Code. Such person shall have by education, experience and training, expertise in the assessment and treatment of sexual offenders, and such person shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in section 18-8314, Idaho Code.

(5) "Department" means the Idaho state police.

(6) "Employed" means full-time or part-time employment exceeding ten (10) consecutive working days or for an aggregate period exceeding thirty (30) days in any calendar year, or any employment which involves counseling, coaching, teaching, supervising or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit.

(7) "Incarceration" means committed to the custody of the Idaho department of correction, but excluding cases where the court has retained jurisdiction.

(8) "Offender" means an individual convicted of an offense listed and described in section 18-8304, Idaho Code, or a substantially similar offense under the laws of another state or in a federal, tribal or military court or the court of another country.

(9) "Offense" means a sexual offense listed in section 18-8304, Idaho Code.

(10) "Predatory" means actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior.

(11) "Psychosexual evaluation" means an evaluation which specifically addresses sexual development, sexual deviancy, sexual history and risk of reoffense as part of a comprehensive evaluation of an offender.

(12) "Recidivist" means an individual convicted two (2) or more times of any offense requiring registration under this chapter.

(13) "Residence" means the offender's present place of abode.

(14) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education.

(15) "Violent sexual predator" means a person who has been convicted of an offense listed in section 18-8314, Idaho Code, and who has been determined to pose a high risk of committing an offense or engaging in predatory sexual conduct.

SECTION 2. That Section 18-8314, Idaho Code, be, and the same is hereby amended to read as follows:

18-8314. POWERS AND DUTIES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD. (1) The board shall consider for review offenders scheduled for release from incarceration~~,~~ who are referred by the department of correction or parole commission to determine whether the offender should be designated as a violent sexual predator presenting a high risk of reoffense. Only offenders who were sentenced and convicted for one (1) or more of the crimes set forth in sections 18-1506, 18-1506A, 18-1508, 18-4003(d), 18-4502, 18-6101 (but excluding subsection 1. of such section when the offender is eighteen (18) years of age or younger), 18-6108, 18-6602, 18-6605 and 18-6608, Idaho Code, or are recidivists as defined in this chapter, ~~for the purpose of determining whether the offender should be designated as a violent sexual predator presenting a high risk of reoffense~~ are eligible for review by the board.

(2) The board shall consider for review offenders who were sentenced and convicted for one (1) or more crimes enumerated in subsection (1) of this section, ~~and recidivists as defined in this chapter,~~ who have been released under supervision, for the purpose of determining whether the offender should be designated as a violent sexual predator presenting a high risk of reoffense. Such review shall be undertaken upon request of the district court having jurisdiction over the offender on probation or of the parole commission if the offender has been released on parole regardless of whether the offender has been reviewed by the board prior to release from incarceration. For purposes of seeking a board review pursuant to this subsection, the court or parole commission may consider all relevant evidence including, but not limited to, the probation or parole official's observations and opinions of these offenders while under supervision, in light of the circumstances of the underlying offense.

(3) The board shall consider for review offenders living in Idaho who were sentenced and convicted for one (1) or more crimes enumerated in subsection (1) of this section, or substantially equivalent to those enumerated in subsection (1) of this section and committed in another state, territory, commonwealth or other jurisdiction of the United

States, including tribal courts and military courts, and who have been released under federal or tribal court supervision. Such review shall be for the purpose of determining whether the offender should be designated as a violent sexual predator presenting a high risk of reoffense, and shall be undertaken upon request of the federal or tribal court having jurisdiction over the offender. For purposes of seeking a board review pursuant to this subsection, the federal or tribal court may consider all relevant evidence including, but not limited to, the probation official's observations and opinions of these offenders while under supervision. in light of the circumstances of the underlying offense.

(4) The board shall by rule:

(a) Establish standards for psychosexual evaluations and the qualifications for certified evaluators performing evaluations pursuant to sections 18-8316 and 18-8317, Idaho Code.

(b) Set forth procedures for the approval, certification and quality assurance of evaluators pursuant to this section.

(c) Establish a nonrefundable initial certification processing fee not to exceed one hundred fifty dollars ($150) and a nonrefundable annual recertification processing fee not to exceed one hundred fifty dollars ($150).

(~~4~~5) The board shall establish guidelines to determine whether an offender ~~scheduled for release~~ who meets the criteria of this section is a violent sexual predator presenting a high risk of reoffense. The guidelines shall be established with the assistance of sexual offender treatment and law enforcement professionals who have, by education, experience or training, expertise in the assessment and treatment of sexual offenders.

(a) Factors to be used in establishment of the guidelines must be supported in the sexual offender assessment field as criteria reasonably related to the risk of reoffense and be objective criteria that can be gathered in a consistent and reliable manner.

(b) The guidelines shall include, but are not limited to, the following general categories for risk assessment: seriousness of the offense, offense history, whether the offense was predatory, characteristics of the offender, characteristics of the victim, the relationship of the offender to the victim, the number of victims and the number of violations of each victim.

(~~5~~6) If the offender has indicated an intention to reoffend if released into the community and the available record reveals credible evidence to support this finding, then the offender shall be deemed a violent sexual predator regardless of application of the guidelines.

(~~6~~7) Once the board has made its determination, it shall set forth written findings which shall include:

(a) The board's risk assessment and the reasons upon which the risk assessment was based; and

(b) The board's determination whether the offender should be designated as a violent sexual predator and the reasons upon which the determination was based.

(~~7~~8) The board shall have authority to promulgate rules to carry out the provisions of this chapter.

SECTION 3. That Section 18-8315, Idaho Code, be, and the same is hereby amended to read as follows:

18-8315. COMPLIANCE WITH OPEN MEETING LAW -- EXECUTIVE SESSIONS AUTHORIZED -- REPORT REQUIRED. (1) All meetings of the board shall be held in accordance with the open meeting law as provided in chapter 23, title 67, Idaho Code, except:

(a) Consideration of and discussions pertaining to documents not subject to public disclosure, such as the presentence investigation report, certain medical or psychological reports and any reports, orders or other documents sealed by court order;

(b) Deliberations and decisions concerning the classification of violent sexual predators; and

(c) Votes of individual members in arriving at the classification 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 classify an offender as a violent sexual predator by each board member in each case reviewed by that member shall be produced by the board. In accordance with section 9-340B, Idaho Code, the record produced by the board pursuant to this section shall be kept confidential and privileged from disclosure, provided the record shall be made available, upon request, to the governor and 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. Distribution of the report by a board member or an employee of the board to any person not specifically listed in this section shall be a misdemeanor.

(3) Nothing contained in this section shall prevent any person from obtaining the results of any classification action by the board without reference to the manner in which any member voted. This information can be obtained through a public records request made to the ~~sexual-offender registry-maintained-by-the-Idaho-state-police~~ board.

(4) Nothing contained herein shall prevent the governor and chairman of the senate judiciary and rules committee and the chairman of the house of representatives judiciary, rules and administration committee from attending any meeting including an executive session of the sexual offender classification board.

SECTION 4. That Section 18-8317, Idaho Code, be, and the same is hereby amended to read as follows:

18-8317. REQUIREMENT FOR PSYCHOSEXUAL EVALUATIONS UPON RELEASE. Every offender ~~convicted-and-incarcerated-for--any--offense--listed~~ who meets the criteria set forth in section 18-8314, Idaho Code, and ~~either referred-to-the-board-for-psychosexual-evaluation-by-the department--of correction--or~~ has been considered by the board and deemed appropriate for review for violent sexual predator designation, shall submit to psychosexual evaluation. Every incarcerated offender whose evaluation under section 18-8316, Idaho Code, states that the offender is a probable violent sexual predator, shall submit to a psychosexual evaluation and shall be reviewed by the board. The purpose of the evaluation is for assessing risk of reoffense and to determine whether the offender should be designated as a violent sexual predator. If the offender is incarcerated, ~~,--T~~the evaluation is to be performed prior to release from incarceration. ~~for-the-purpose-of-assessing-risk--of--reoffense--and--to determine--whether-the-offender-should-be-designated-as-a-violent-sexual~~

~~predator.~~ These evaluations shall be performed either by a certified evaluator as defined in section 18-8303, Idaho Code, or a mental health professional employed by the department of correction. The individual performing an evaluation under this section shall not be a member of the sexual offender classification board at the time the evaluation is performed. The individual performing the evaluation shall be disqualified from providing any treatment ordered or attached as a condition of parole, unless waived by the department of correction. An evaluation conducted pursuant to this section shall be done in accordance with the standards established by rule of the board pursuant to section 18-8314, Idaho Code.

SECTION 5. That Section 18-8319, Idaho Code, be, and the same is hereby amended to read as follows:

18-8319. NOTICE OF THE BOARD'S DETERMINATION. (1) Subject to the exception identified in section 18-8320, Idaho Code, the offender and the sheriff of the county in which the offender resides or intends to reside upon release shall be notified by the board that an offender has been designated as a violent sexual predator. This notice shall be in the form of the board's written findings.

(2) The board shall serve a copy of its written findings to the offender within ten (10) working days of the date that designation has been made. Service of the written findings will be made upon the sheriff in accordance with the offender's status.

(a) Notice shall be served upon the sheriff of the county in which the offender resides within ten (10) working days of the date that designation has been made, if the offender is not incarcerated.

(b) If the offender is awaiting release from incarceration, notice shall be made upon the sheriff of the county in which the offender intends to reside no less than seven (7) days prior to the offender's release.

(c) In the event the offender has not specified a residence plan prior to his release, notice shall be made upon the sheriff of the county in which the offender is released from incarceration, and upon the sheriff of the county in which the offender initially resides and registers after release.

(3) The board's notice to the offender shall also inform the offender:

(a) That the offender may challenge the designation as a violent sexual predator by judicial review;

(b) That unless application is made to the applicable district court ~~of the county in which the offender resides if the offender has been released from incarceration, or the county where the offender intends to reside if the offender has not been released from incarceration,~~ on or before the date set forth in the notice, which shall be no more than fourteen (14) calendar days after the notice is given, the offender shall be deemed to have waived the right to challenge the designation;

(c) The applicable district court shall be determined as:

(i) The county in which the offender resides if the offender has been released from incarceration; or

(ii) The county in which the offender intends to reside if the offender has not been released from incarceration; or

(iii) If the offender intends to reside in another state, territory, commonwealth or other jurisdiction of the United States immediately upon release from incarceration, the county in which the offender was most recently convicted of an offense as listed in section 18-8314, Idaho Code;

(d) That the offender has the right to retain counsel and that counsel will be provided by the court if the offender cannot afford counsel; and

(~~d~~e) How such application should be made if counsel is not retained. If counsel is not retained, ~~a simple letter delivered to the courthouse in the county of the offender's residence~~ notice filed with the district court in the applicable county, which encloses a copy of the board's written findings and indicates the offender's objection or ~~disagr~~eement with it, shall suffice.

(4) Upon determining that the offender has not received the board's notice pursuant to this section, the board shall notify the sheriff of the county in which the offender resides. This notice shall be in writing and shall be delivered in a manner which will ensure receipt by the sheriff. Upon request of the board, the sheriff may personally serve the offender with the board's notice, or the sheriff may verify the offender's address and advise the board in order that notice may once again be served. If, after the second attempt to serve the offender, the board or sheriff determines that the offender has evaded service or attempted to evade service, the matter shall be referred for prosecution pursuant to section 18-8311(3), Idaho Code.

SECTION 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 19, 2004.

CHAPTER 126
(S.B. No. 1274)

AN ACT

RELATING TO DRIVER'S LICENSES; AMENDING SECTION 18-8002A, IDAHO CODE, TO PROVIDE THAT PEACE OFFICERS SHALL FORWARD TO THE IDAHO TRANSPORTATION DEPARTMENT ALL TEST RESULTS OF ALCOHOL CONCENTRATION ADMINISTERED BY THE OFFICER WITHIN FIVE BUSINESS DAYS FOLLOWING NOTICE OF SUSPENSION SERVED ON A DRIVER BY THE PEACE OFFICER; AMENDING SECTION 18-8306, IDAHO CODE, TO REQUIRE SHERIFFS TO PROVIDE WRITTEN NOTIFICATION OF SEX OFFENDER REGISTRATION REQUIREMENTS TO SEX OFFENDERS WHO APPLY FOR AN IDENTIFICATION CARD ISSUED BY THE IDAHO TRANSPORTATION DEPARTMENT; AMENDING SECTION 49-301, IDAHO CODE, TO REQUIRE THAT MOTOR VEHICLE OPERATORS POSSESS A CURRENT AND VALID IDAHO DRIVER'S LICENSE; AMENDING SECTION 49-319, IDAHO CODE, TO AUTHORIZE LICENSED PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE PROFESSIONAL NURSES TO VERIFY A DRIVER'S PERMANENT DISABILITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-324, IDAHO CODE, TO AUTHORIZE THE IDAHO TRANSPORTATION DEPARTMENT TO ACT UPON NOTICES OF DRIVING OFFENSES SUBMITTED BY JURISDICTIONS OTHER THAN STATES; AND AMENDING

SECTION 49-326, IDAHO CODE, TO AUTHORIZE THE IDAHO TRANSPORTATION DEPARTMENT TO ACT UPON NOTICES OF DRIVING OFFENSES SUBMITTED BY JURISDICTIONS OTHER THAN STATES AND TO CLARIFY TERMINOLOGY AND PROCEDURAL DUTIES OF THE DEPARTMENT WITH REGARD TO DRIVERS UNDER SEVENTEEN YEARS OF AGE CONVICTED FOR THE FIRST TIME OF A MOVING TRAFFIC VIOLATION.

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

SECTION 1. That Section 18-8002A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8002A. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF DRUGS OR OTHER INTOXICATING SUBSTANCES -- SUSPENSION UPON FAILURE OF TESTS. (1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(c) "Department" means the Idaho transportation department and, as the context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(g) "Hearing request" means a request for an administrative hearing

on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) The peace officer will seize your driver's license and issue a notice of suspension and a temporary driving permit to you, but no peace officer will issue you a temporary driving permit if your driver's license or permit has already been and is suspended or revoked. No peace officer shall issue a temporary driving permit to a driver of a commercial vehicle who refuses to submit to or fails to complete and pass an evidentiary test;

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended. The suspension will be for one hundred eighty (180) days if this is your first refusal. The suspension will be for one (1) year if this is your second refusal within five (5) years. You will not be able to obtain a temporary restricted license during that period; and

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) After submitting to evidentiary testing you may, when practicable, at your own expense, have additional tests made by a person of your own choosing.

(3) Rulemaking authority of the Idaho state police. The Idaho state police may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

(a) What testing is required to complete evidentiary testing under this section; and

(b) What calibration or checking of testing equipment must be performed to comply with the department's requirements. Any rules of the Idaho state police shall be in accordance with the following: a test for alcohol concentration in breath as defined in section 18-8004, Idaho Code, and subsection (1)(e) of this section will be valid for the purposes of this section if the breath alcohol testing instrument was approved for testing by the Idaho state police in

accordance with section 18-8004, Idaho Code, at any time within ninety (90) days before the evidentiary testing. A test for alcohol concentration in blood or urine as defined in section 18-8004, Idaho Code, that is reported by the Idaho state police or by any laboratory approved by the Idaho state police to perform this test will be valid for the purposes of this section.

(4) Suspension.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall suspend the person's driver's license, driver's permit, driving privileges or nonresident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely no driving privileges of any kind. Restricted driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (9) of this section.

(ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subsection.

The person may request an administrative hearing on the suspension as provided in subsection (7) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension. The notice shall be in a form provided by the department and shall state:

(i) The reason and statutory grounds for the suspension;

(ii) The effective date of the suspension;

(iii) The suspension periods to which the person may be subject as provided in subsection (4)(a) of this section;

(iv) The procedures for obtaining restricted driving privileges;

(v) The rights of the person to request an administrative hearing on the suspension and that if an administrative hearing is not requested within seven (7) days of service of the notice of suspension the right to contest the suspension shall be waived;

(vi) The procedures for obtaining an administrative hearing on the suspension;

(vii) The right to judicial review of the hearing officer's decision on the suspension and the procedures for seeking such review.

(5) Service of suspension by peace officer or the department. If the driver submits to evidentiary testing after the information in sub-

section (2) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) The peace officer shall take possession of the person's driver's license, shall issue a temporary permit which shall be valid for a period not to exceed thirty (30) days from the date of issuance, and, acting on behalf of the department, will serve the person with a notice of suspension in the form and containing the information required under subsection (4) of this section. The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4)(b) of this section.

(b) Within five (5) business days following service of a notice of suspension the peace officer shall forward to the department a copy of the completed notice of suspension form upon which the date of service upon the driver shall be clearly indicated, a copy of any completed temporary permit form along with any confiscated driver's license, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

(i) The identity of the person;

(ii) Stating the officer's legal cause to stop the person;

(iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;

(iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (2) of this section;

(v) That the person was lawfully arrested;

(vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code.

~~A certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer shall accompany the sworn statement of the officer.~~ If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(c) The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4)(b) of this section.

(6) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense, have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(7) Administrative hearing on suspension. A person who has been served with a notice of suspension after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension, and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request.

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for one ten (10) day period. Such extension shall not operate as a stay of the suspension and any temporary permit shall expire thirty (30) days after service of the notice of suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date and time of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all hearings by telephone if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension and any temporary permit issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to participate unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

(a) The peace officer did not have legal cause to stop the person; or

(b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or

(c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or

(d) The tests for alcohol concentration, drugs or other intoxicat-

ing substances administered at the direction of the peace officer were not conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or

(e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law on each issue and shall enter an order vacating or sustaining the suspension. If the suspension is vacated, the person's driver's license, unless unavailable by reason of an existing suspension, revocation, cancellation, disqualification or denial shall be returned to him. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

(8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code.

(9) Restricted driving privileges. A person served with a notice of suspension for ninety (90) days pursuant to this section may apply to the department for restricted driving privileges, to become effective after the thirty (30) day absolute suspension has been completed. The request may be made at any time after service of the notice of suspension. Restricted driving privileges will be issued for the person to travel to and from work and for work purposes, to attend an alternative high school, work on a GED, for postsecondary education, or to meet the medical needs of the person or his family if the person is eligible for restricted driving privileges.

(10) Rules. The department may adopt rules under the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this section.

SECTION 2. That Section 18-8306, Idaho Code, be, and the same is hereby amended to read as follows:

18-8306. NOTICE OF DUTY TO REGISTER AND INITIAL REGISTRATION. (1) When a person is sentenced for an offense identified in section 18-8304, Idaho Code, the prosecuting attorney shall seek and the court shall order a designated law enforcement agency to immediately fingerprint that person unless the person has been fingerprinted and photographed previously for the same offense. Fingerprints and photographs may be taken at the jail or correctional facility to which the person is remanded or sentenced. The fingerprints and photographs taken pursuant to this subsection shall be submitted to the department as provided in section 67-3005, Idaho Code.

(2) A person convicted of an offense identified in section 18-8304, Idaho Code, and released on probation without a sentence of incarceration in a county jail or correctional facility, including release pursuant to a withheld judgment or release from any mental institution, shall be notified by the sentencing court of the duty to register pursuant to the provisions of this chapter. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the defendant. The court shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(3) With respect to an offender convicted of a sexual offense identified in section 18-8304, Idaho Code, and sentenced to a period of incarceration in a jail or correctional facility and subsequently released, placed on probation, or paroled, the department of correction or jail shall provide, prior to release from confinement, written notification of the duty to register. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the offender. The department of correction or jail shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(4) The sheriff of each county shall provide written notification, on a form provided by the Idaho transportation department ~~of transportation~~ and approved by the attorney general, of the registration requirements of this chapter to any person who enters this state from another jurisdiction and makes an application for an identification card or a license to operate a motor vehicle in this state. The written notice shall be signed by the person and one (1) copy shall be retained by the sheriff's office and one (1) copy shall be provided to the person.

(5) Notification of the duty to register as set forth in subsections (2) and (3) of this section shall constitute an initial registration for the purpose of establishing a record in the central registry.

(6) The notification form provided by the department and approved by the attorney general shall:

(a) Explain the duty to register, the procedure for registration and penalty for failure to comply with registration requirements;

(b) Inform the offender of the requirement to provide notice of any change of address within Idaho or to another state within five (5) working days of such change;

(c) Inform the offender of the requirement to register in a new state within ten (10) days of changing residence to that state; and

(d) Obtain from the offender and agency or court, information required for initial registration in the central registry, as prescribed by rules promulgated by the department.

(7) The official conducting the notice and initial registration shall ensure that the notification form is complete, that the offender has read and signed the form, and that a copy is forwarded to the central repository within the required time period.

(8) Information required for initial registration in the central registry shall include, but is not limited to: name and aliases of the offender; social security number; physical descriptors; current address or physical description of current residence; offense for which convicted, sentence and conditions of release; treatment or counseling received; and risk assessment or special category of offender.

(9) No person subject to registration shall willfully furnish false or misleading information when complying with registration and notification requirements of this chapter.

SECTION 3. That Section 49-301, Idaho Code, be, and the same is hereby amended to read as follows:

49-301. DRIVERS TO BE LICENSED. (1) No person, except those expressly exempted by the provisions of this chapter, shall drive any motor vehicle upon a highway unless the person has a current and valid Idaho driver's license. Provided however, that those persons holding a restricted school attendance driving permit may drive upon a highway pursuant to the restrictions set forth in section 49-307A, Idaho Code. No person shall operate a motorcycle upon a highway unless he has a motorcycle endorsement on his valid driver's license. No person shall operate a commercial motor vehicle as defined in section 49-123, Idaho Code, upon a highway unless he has a seasonal or class A, B or C driver's license with required endorsements. No person shall operate a motor vehicle in violation of any valid restriction identified on or attached to, his valid driver's license. No person shall receive a class D driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction for use within the United States, or any identification cards issued by any other jurisdiction within the United States, or until he executes an affidavit that he does not possess a driver's license or any identification cards. No person shall be permitted to have more than one (1) driver's license issued for use within the United States at any time.

(2) Any holder of a class A, B or C commercial driver's license issued by a jurisdiction other than Idaho shall apply for an Idaho-issued commercial driver's license within thirty (30) days of establishing a domicile in Idaho. In accordance with the federal motor carrier safety regulations, no person shall receive a class A, B or C driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction.

Except as provided in section 49-304, Idaho Code, a violation of this section is a misdemeanor.

SECTION 4. That Section 49-319, Idaho Code, be, and the same is hereby amended to read as follows:

49-319. EXPIRATION AND RENEWAL OF DRIVER'S LICENSE. (1) Every non-commercial Idaho driver's license issued to a driver shall expire and be renewable as follows:

(a) Twenty-one (21) years of age or older shall expire on the licensee's birthday in the fourth year following the issuance of the driver's license.

(b) At the option of the applicant, for drivers twenty-one (21) years of age through sixty-two (62) years of age, the driver's license shall expire either on the licensee's birthday in the fourth year or the eighth year following the issuance of the driver's license.

(c) Every driver's license issued to a driver under eighteen (18) years of age shall expire five (5) days after the licensee's eighteenth birthday.

(d) Every driver's license issued to a driver eighteen (18) years of age but under twenty-one (21) years of age shall expire five (5) days after the licensee's twenty-first birthday.

(e) Except licenses issued to drivers under twenty-one (21) years of age, every driver's license that is not, as provided by law, suspended, revoked or disqualified in this state or any other jurisdiction shall be renewable on or before its expiration, but not more than twelve (12) months before, upon application, payment of the required fee, and satisfactory completion of the required eyesight examination.

(2) Every commercial driver's license issued to a person twenty-one (21) years of age or older shall expire on the licensee's birthday in the fourth year following issuance of the license, and any ~~C~~class A, B or C license issued to a person eighteen (18), nineteen (19) or twenty (20) years of age shall expire five (5) days after the licensee's twenty-first birthday. There shall be no option for an eight-year ~~C~~class A, B or C license.

(3) An applicant who is issued a driver's license in another jurisdiction after an Idaho driver's license has been issued is not eligible for renewal or a duplicate of the Idaho driver's license. The applicant may apply for a new Idaho driver's license as provided in section 49-306, Idaho Code.

(4) No knowledge test shall be required for renewal of a driver's license, except for renewal of a hazardous material endorsement. Appropriate knowledge and skill tests shall be required for an upgrade in a driver's license class or an endorsement addition. In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

(5) Except for drivers under twenty-one (21) years of age, when a driver's license has been expired for fewer than twelve (12) months, the renewal of the driver's license shall start from the original date of expiration regardless of the year in which the application for renewal is made. If the driver's license is expired for twelve (12) months or more, the applicant shall be required to take the knowledge, skills for the class of license or endorsement being applied for, and vision tests and the application shall expire on the licensee's birthday in the fourth year following issuance of the driver's license for drivers twenty-one (21) years of age or older. At the option of the applicant, for drivers twenty-one (21) years of age through sixty-two (62) years of

age, the renewed license shall expire either on the licensee's birthday in the fourth year or the eighth year following issuance.

(6) (a) If a driver's license has expired or will expire and the licensee is temporarily out-of-state except on active military duty, and the driver's license has not, as provided by law, been suspended, revoked, canceled, denied, refused or disqualified, the licensee may request in writing on a form prescribed by the department an extension of the driver's license. The request shall be accompanied by the fee fixed in section 49-306, Idaho Code, and the extension shall be less than a twelve (12) month period. If the department determines that an extension of the driver's license is necessary, it may issue a certificate of extension showing the date to which the expired driver's license is extended, and this certificate shall be attached to the expired driver's license. Certificates of extension are limited to two (2) per licensee.

(b) Upon returning to the state of Idaho, the licensee shall within ten (10) days, apply for a renewal of the expired driver's license and surrender the certificate of extension and the expired driver's license.

(c) A hazardous material endorsement cannot be extended.

(7) An Idaho driver's license issued to any person prior to serving on active duty in the armed forces of the United States, or a member of the immediate family accompanying such a person, if valid and in full force and effect upon entering active duty, shall remain in full force and effect and shall, upon application, be extended for a period of four (4) years so long as active duty continues, if the driver's license is not suspended, denied, disqualified, canceled or revoked, as provided by law, during the active duty, and the driver's license shall remain in full force and effect sixty (60) days following the date the holder is released from active duty.

(8) The department may use a mail renewal process for four-year class D licenses based on criteria established by rule.

(9) A seasonal driver's license is only valid for a one hundred eighty (180) day period from the date of issuance. Only one (1) seasonal driver's license may be obtained in any twelve (12) month period, and may only be obtained twice in a driver's lifetime.

(10) A person who applies for renewal of a license may request that the notation "permanently disabled" be imprinted on the license and the department shall imprint "permanently disabled" on the license if:

(a) The person has a permanent disability; and

(b) The person presents written certification from a licensed physician, <u>licensed physician assistant, or licensed advanced practice professional nurse</u> verifying that the person's stated impairment qualifies as a permanent disability as provided in section 49-117, Idaho Code; and

(c) The department determines that the person meets the requirements for issuance of a license as specified in section 49-313, Idaho Code.

SECTION 5. That Section 49-324, Idaho Code, be, and the same is hereby amended to read as follows:

49-324. SUSPENDING RESIDENT'S LICENSE AND PRIVILEGES UPON CONVICTION, ADMINISTRATIVE ACTION OR COURT ORDER IN ANOTHER STATE OR JURISDICTION. The department shall suspend, disqualify or revoke the driver's license or privilege of any resident of this state or the privilege of a ~~nonresi~~dent to operate a motor vehicle in this state upon receiving notice of the conviction, administrative action or court order of that person in another state or jurisdiction of an offense which, if committed in this state, would be grounds for the suspension, disqualification or revocation of the driver's license and privileges of the driver. The department shall forward a certified copy or electronic transfer to the national driver register.

SECTION 6. That Section 49-326, Idaho Code, be, and the same is hereby amended to read as follows:

49-326. AUTHORITY OF DEPARTMENT TO SUSPEND, DISQUALIFY OR REVOKE DRIVER'S LICENSE AND PRIVILEGES. (1) If the court has not ordered the suspension of a license or privileges, the department is authorized to suspend, disqualify or revoke the license or privileges of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the driver:

(a) Has committed an offense for which mandatory revocation, suspension or disqualification of license or privileges is required upon conviction, court order or administrative action;

(b) Has been convicted in any court in this state of an offense against a municipal ordinance which would have been grounds for suspension, revocation or disqualification of his driver's license or privileges had the charge been prosecuted under a state law;

(c) Is incompetent to drive a motor vehicle;

1. Any person who in the opinion of the department, based upon recommendation of the person's personal physician, is afflicted with or subject to any condition which brings about momentary or prolonged lapses of consciousness or control, which is or may become chronic, or when the person is suffering from a physical or mental disability or disease serving to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the streets and highways, or any person who is unable to understand highway signs, warning, regulating or directing traffic, is incompetent to drive a motor vehicle.

2. Any person who shall not have minimum visual acuity with or without corrective lenses of 20/40 in at least one (1) eye as determined by the Snellen system or other available systems is incompetent to operate a motor vehicle, however, the department shall have the authority to license such person upon the recommendation of an ophthalmologist or qualified physician and upon passage of a skills test. At 20/70 or more in both eyes with or without corrective lenses the department may suspend the driver's license and privileges. Any person who applies for or receives any type of tax, welfare or other benefits or exemptions for the blind shall be conclusively presumed incompetent to operate a motor vehicle.

3. Any person, department, or political subdivision of the state of Idaho who receives an application for any type of tax, welfare, aid or other benefits or exemptions for the blind shall immediately forward the name, address, sex, date of birth, and date of application of the applicant to the department;

(d) Has permitted an unlawful or fraudulent use of a driver's license;

(e) Has committed an offense in another state or jurisdiction as evidenced by a conviction, court order or administrative action, which if committed in Idaho would be grounds for suspension, disqualification or revocation;

(f) Has been convicted of the offense of reckless driving, or fleeing or attempting to elude a peace officer, and providing that the operating privilege shall be suspended for a period of thirty (30) days upon conviction and providing further, that if a second conviction occurs within a two (2) year period of time from the time of the first conviction, the suspension shall be for ninety (90) days, and if a third conviction shall occur within a three (3) year period of time from the time of the first conviction, the period of suspension shall be for one (1) year;

(g) Has failed to satisfy a judgment as set forth in chapter 12, title 49, Idaho Code;

(h) Has failed to maintain proof of financial responsibility as set forth in chapter 12, title 49, Idaho Code;

(i) Has a driving record which shows a violation point count of twelve (12) or more points in any consecutive twelve (12) month period;

(j) Is an habitual violator of traffic laws;

(k) Has been convicted of the offense of violation of a restricted license and providing the driver's license and privileges be suspended for a period of thirty (30) days;

(l) Has been convicted for the offense of leaving the scene of an accident involving damages to a vehicle, the period of revocation shall be one (1) year;

(m) Has been convicted for the offense of leaving the scene of an accident resulting in injury or death, the period of revocation shall be one (1) year;

(n) Is under the age of eighteen (18) years and is not satisfactorily enrolled in school, has not received a waiver pursuant to or has not completed school as provided in section 49-303A, Idaho Code;

(o) Was cited under the age of seventeen (17) years and subsequently received a conviction involving a moving traffic violation arising out of the operation of a motor vehicle, and providing the driver shall ~~receive~~ be sent a written warning from the Idaho transportation department for a first conviction; the driver's license shall be suspended for a period of thirty (30) days for a second conviction; and the driver's license shall be suspended for a period of sixty (60) days for a third or subsequent conviction; and providing further that no restricted driving privileges shall be issued during any period of suspension hereunder.

(2) A violation point is assessed for conviction of any charge or with proof of any infraction involving a moving traffic violation. A value of one (1) point shall be given for a less serious violation and

up to four (4) points for a more serious violation. Conviction or proof of infraction for only one (1) violation arising from one (1) occasion of arrest or citation shall be counted in determining the violation point count.

(3) The department is authorized and directed to establish a violation point count system for various moving traffic violations and infractions occurring either within or without the state of Idaho, affecting all holders of driver's licenses issued by the department.

(4) Notification of suspension, revocation, cancellation or disqualification. Upon suspending, revoking, canceling or disqualifying the driver's license or driving privileges of any person, the department shall immediately notify the applicant or licensee in writing, at the licensee's address on file with the department pursuant to section 49-320, Idaho Code. Upon his request the department shall afford him an opportunity for a hearing before a hearing officer appointed by the director. The hearing may be held by telephone within twenty (20) days after receipt of the request, unless this period is for good cause shown, extended by the hearing officer for one ten-day period. The notice and hearing shall be required prior to the imposition of additional suspension or disqualification periods beyond the periods as set forth in this section. Upon a hearing the hearing officer may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon the hearing the department shall either rescind its order or, with good cause, may affirm or extend the suspension or disqualification of the driver's license or revoke the driver's license.

Whenever a driver's license, permit or driving privilege has been suspended or revoked by the department as provided in this section, other than as set forth in subsection (1)(c), (d), (g), (h), (m), (n) or (o), the department may issue a temporary restricted permit restricting the time, area and purpose of use. The application, eligibility requirements and form of the temporary restricted permit shall be provided by administrative rule.

(5) The department shall not suspend or revoke a driver's license or privileges for a period of more than one (1) year, unless otherwise provided by law. The provisions of this subsection shall not be applicable with respect to the issuance of temporary restricted permits as provided in section 49-325, Idaho Code, nor shall it be applicable to those suspensions placed on an individual's record for the purpose of administering suspensions ordered to take effect after an individual's release from confinement or imprisonment pursuant to chapter 80, title 18, Idaho Code.

(6) The department shall not disqualify a driver for a period longer than specified by 49 CFR part 383.

Approved March 19, 2004.

CHAPTER 127
(S.B. No. 1281)

AN ACT

RELATING TO TATTOOING, BRANDING AND BODY PIERCING OF MINORS; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-1523, IDAHO CODE, TO DEFINE TERMS, TO PROHIBIT CERTAIN ACTIONS ON MINORS UNDER THE AGE OF FOURTEEN YEARS, TO REQUIRE THE WRITTEN INFORMED CONSENT OF A MINOR'S PARENT OR LEGAL GUARDIAN PRIOR TO THE TATTOOING, BRANDING OR BODY PIERCING OF MINORS AGED FOURTEEN TO EIGHTEEN YEARS, TO REQUIRE SUCH CONSENT TO BE EXECUTED IN THE PRESENCE OF CERTAIN PERSONS AND TO PROVIDE PENALTIES.

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 18-1523, Idaho Code, and to read as follows:

18-1523. TATTOOING, BRANDING AND BODY PIERCING OF MINORS. (1) As used in this section:

(a) "Body piercing" means the perforation of any human body part other than an earlobe for the purpose of inserting jewelry or other decoration or for some other nonmedical purpose;

(b) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument for the purpose of decoration or for some other nonmedical purpose;

(c) "Minor" means a person under the age of eighteen (18) years but does not include a person who is an emancipated minor; and

(d) "Tattoo" means one (1) or more of the following but does not include any mark or design done for a medical purpose:

(i) An indelible mark made on the body of another person by the insertion of a pigment under the skin; or

(ii) An indelible design made on the body of another person by production of scars other than by branding.

(2) No person shall knowingly tattoo, brand or perform body piercing on any minor under the age of fourteen (14) years.

(3) No person shall knowingly tattoo, brand or perform body piercing on a minor between the ages of fourteen (14) and eighteen (18) years unless such person obtains the prior written informed consent of the minor's parent or legal guardian. The minor's parent or legal guardian shall execute the written informed consent required pursuant to this subsection in the presence of the person performing the tattooing, branding or body piercing on the minor, or in the presence of an employee or agent of such person.

(4) A person who violates this section is guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500). If there is a subsequent violation of this section within one (1) year of the initial violation, such person shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

Approved March 19, 2004.

CHAPTER 128
(S.B. No. 1291)

AN ACT

RELATING TO THE CREATION OF THE IDAHO CONRAD J-1 VISA WAIVER PROGRAM; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 61, TITLE 39, IDAHO CODE, TO ADOPT THE IDAHO CONRAD J-1 VISA WAIVER PROGRAM, TO PROVIDE A SHORT TITLE, TO PROVIDE THE PURPOSE OF THE CHAPTER, TO PROVIDE SEVERABILITY, TO PROVIDE FOR INCORPORATION OF FEDERAL LAW, RULES AND REGULATIONS BY REFERENCE, TO DEFINE TERMS, TO DESCRIBE GENERAL REQUIREMENTS AND LIMITATIONS, TO PROVIDE GUIDING PRINCIPLES, TO DEFINE CRITERIA FOR APPLICANTS, TO DEFINE CONTRACT REQUIREMENTS, TO DEFINE CRITERIA FOR THE PRACTICE LOCATION, TO DEFINE CRITERIA FOR PHYSICIANS, TO DESCRIBE REPORTING REQUIREMENTS, TO REQUIRE AN APPLICATION FEE, TO DESCRIBE APPLICATION CRITERIA AND ACCOMPANYING DOCUMENTS, TO DEFINE CRITERIA FOR FEDERALLY DESIGNATED FACILITIES, TO PROVIDE FOR DEPARTMENT REVIEW AND TO DESCRIBE DEPARTMENT ACTIONS, TO DESCRIBE LIMITATIONS TO PROGRAM PARTICIPATION AND TO DEFINE DEPARTMENT REPORTING REQUIREMENTS.

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

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 61, Title 39, Idaho Code, and to read as follows:

CHAPTER 61
IDAHO CONRAD J-1 VISA WAIVER PROGRAM

39-6101. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Conrad J-1 Visa Waiver Program."

39-6102. PURPOSE. The "Idaho Conrad J-1 Visa Waiver Program" would authorize the state of Idaho department of health and welfare to recommend up to thirty (30) foreign trained physicians per federal fiscal year to locate in communities that are federally designated as having a health workforce shortage. Final approval of J-1 visa waiver requests are made by the U.S. department of state and the bureau of citizenship and immigration services. Under this chapter, rural and underserved communities in Idaho would be able to apply for the placement of a foreign trained physician after demonstrating that they are unable to recruit an American physician, and all other recruitment/placement possibilities have proven to be inaccessible.

39-6103. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

39-6104. INCORPORATION BY REFERENCE. P.L. 103-416, amended by P.L. 107-273, November 2, 2002, 8 U.S.C. 1184(l) and 22 CFR sec. 514.44(e), F.R. volume 60, No. 197, and 18 U.S.C. 1001 are incorporated by reference.

39-6105. DEFINITIONS. As used in this chapter:

(1) "Applicant" means a health care facility that seeks to employ a physician and is requesting state support of a visa waiver.

(2) "Area of underservice" means a health professional shortage area in primary care or mental health, a medically underserved area, or a medically underserved population, federally designated by the secretary of health and human services.

(3) "Department" means the Idaho department of health and welfare.

(4) "De-designation threshold" means the number of full-time equivalent primary care physicians necessary to remove the federal designation as an area of underservice.

(5) "Employment contract" means a legally binding agreement between the applicant and the physician named in the visa waiver application which contains all terms and conditions of employment, including, but not limited to, the salary, benefits, length of employment and any other consideration owing under the agreement. The employment contract must meet all state and federal criteria, including labor and immigration rules.

(6) "Federal fiscal year" means the twelve (12) months which commence the first day of October in each year and close on the thirtieth day of September of the following year.

(7) "Full time" means a working week of a minimum of forty (40) hours at a health care facility.

(8) "Health care facility" means an entity with an active Idaho taxpayer identification number doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of primary medical or mental health care.

(9) "Interested government agency" means an agency that has the authority from the United States department of state to submit requests for J-1 visa waivers of foreign physician petitioners on behalf of public interest.

(10) "J-1 visa" means an entrance permit into the United States for a foreign trained physician who is a nonimmigrant admitted under section 101(a)(15)(J) of the United States information and education exchange act or who acquired such status or who acquired exchange visitor status under the act.

(11) "New start" means a health care facility as defined in subsection (8) of this section, that has been in existence for twelve (12) months or less.

(12) "Physician" means the foreign physician, named in the visa waiver application, who requires a waiver to remain in the United States to practice medicine.

(13) "Primary care" means a medical doctor or doctor of osteopathy licensed in pediatrics, family medicine, internal medicine, obstetrics, gynecology, or psychiatry.

(14) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon financial hardship and federal poverty guidelines.

(15) "Unmet need" means a vacancy or shortage of primary care health physicians experienced by a community or population, as defined by federally designated health professional shortage areas or medically underserved areas/populations.

(16) "Vacancy" means a full-time physician practice opportunity in the delivery of primary care services.

(17) "Visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his home country for a two (2) year period following medical residency training.

39-6106. GENERAL REQUIREMENTS AND LIMITATIONS. (1) Visa waiver request. The department may only submit a visa waiver request when:

(a) The application contains all of the required information and documentation; and

(b) The application meets all state and federal criteria; and

(c) Foreign exchange physicians having a J-1 case number assigned by the United States department of state have paid all federal processing fees; and

(d) The applicant has paid the state of Idaho application processing fee.

(2) Limitations of department actions.

(a) Prior to submission of an application, the department may provide information to the applicant on preparing a complete application.

(b) The department will not be responsible for adding any information to incomplete application packets.

(c) For applicants who have benefitted from department waiver requests previously, the applicant's history of compliance will be a consideration in future decisions for waiver requests.

(d) In any single program year, a health care facility in any one (1) area of underservice:

(i) Will not be allotted more than two (2) waiver request applications; and

(ii) Will not exceed by more than one and nine-tenths (1.9) full-time equivalents, the number of physicians needed to eliminate the physician shortage as defined by the current dedesignation threshold in any single program year.

(e) The shortage area designation must be current on the date the United States department of state reviews and recommends the application and on the date the immigration agency approves the J-1 visa waiver. Any application that is being submitted to the department at the end of the three (3) year health professional shortage area designation cycle may be summarily denied if the renewal is not obtained.

(i) Participation by the department in the Idaho conrad J-1 visa waiver program is completely discretionary and voluntary. The department may elect not to participate in the program at any time. The submission of a complete waiver package does not ensure the department will recommend a waiver. The department reserves the right to recommend or decline any request for a waiver.

(ii) The department, its employees or agents are held harmless of any perceived consequence for the denial of a waiver petitioner, or the approved placement of one that is not favorable.

(iii) Application procedures for Idaho conrad J-1 visa waiver physician placements were developed by the department in compliance with P.L. 103-416 and subsequent revisions. They are

subject to updates and changes at any time. Interpretation of these procedures rests solely with the department in consultation with the appropriate federal agencies.

39-6107. APPLIED PRINCIPLES. (1) Option of last resort. The visa waiver program is considered a final source for recruiting qualified physicians. It is not a substitute for broad recruiting efforts for graduates from United States medical schools, but an option of last resort. Any application that qualifies for consideration under any other interested government agency or federal program, such as the one administered by the department of health and human services, must be submitted under that program in lieu of the Idaho conrad J-1 visa waiver program.

(2) Waiver request applications will only be considered for health care facilities that can provide evidence of sustained active recruitment over a period of at least six (6) months for the primary care vacancy in the practice location.

(3) The visa waiver program will be used to assist health care facilities that can document the provision of primary health care services to all residents of the federally designated underserved area. When a federal designation is for an underserved population, the health care facility must document the provision of care to, and assure access by, the underserved population.

39-6108. CRITERIA FOR APPLICANTS. (1) Applicants must be existing health care facilities that:

(a) Have an active taxpayer identification number in Idaho; and

(b) Have provided medical or mental health care in Idaho for a minimum of twelve (12) months prior to submitting the application, or meet the requirements for a new start as defined in this chapter.

(2) The waiver request to the department must come from a U.S. health care facility on behalf of the physician and not directly from the physician or his representative.

(3) J-1 visa waiver petitioners with fellowship training must contract with employers to provide primary care services full time.

(4) Applicants must not be former J-1 visa waiver physicians who are currently fulfilling their required three (3) year obligation.

(5) Applicants may not submit waiver requests for a relative.

(6) Applicants must accept all patients regardless of their ability to pay.

(7) Except for state institutional and correctional facilities designated as federal shortage areas, the applicant must:

(a) Serve medicare clients, medicaid clients, low-income clients, uninsured clients, and the population of the federal designation.

(b) Agree to implement a sliding fee discount schedule. The schedule must be:

(i) Available in Spanish (where applicable) and English; and

(ii) Posted conspicuously; and

(iii) Distributed in hard copy on request to individuals making or keeping appointments with that physician.

(8) Applicants must have a signed employment contract with the physician, and guarantee wages for the three (3) years of the contract.

(9) Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in

any investigation of the applicant's financial status and payer mix.

(10) Applicants must first apply through any organization with federal or interested governmental agency authority which submits waiver requests for Idaho's underserved rural areas. Documentation which fully explains why this route was not taken for placement is required as part of the application.

(11) The physician's name and practice location will be made available to the public as a provider of primary health who accepts medicare, medicaid and utilizes a sliding fee schedule for the low-income population.

(12) An assurance letter that the health care facility, its principals, and the J-1 petitioning physician are not under investigation for, under probation for, or under restriction for medicare or medicaid fraud, or other violations of law or licensure restrictions that may indicate that it may not be in the public interest that a waiver of the two (2) year home residency requirement be granted, must be provided.

(13) The applicant and its principals must be free of default on any federal or state scholarship or loan repayment program such as the national health service corps or by the state.

39-6109. CONTRACT REQUIREMENTS. Throughout the period of obligation, regardless of physician's visa status, the employment contract must:

(1) Meet state and federal requirements;

(2) Not prevent the physician from providing medical services in the designated shortage area after the term of employment. A noncompetition clause or any provision that purports to limit the J-1 visa waiver physician's ability to remain in the area upon completion of the contract term is prohibited by regulation;

(3) State that the physician must serve medicare clients, medicaid clients, low-income clients, uninsured clients, and the population of the federal designation for the area of underservice full time;

(4) Include a notarized statement by the physician that he agrees to meet the requirements set forth in section 214(1) of the immigration and nationality act;

(5) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II of the local prevailing wage for the field of practice in the area to be served;

(6) Specify that benefits offered are not included as part of base salary;

(7) Include leave (annual, sick, continuing medical education and holiday);

(8) State that amendments shall adhere to state and federal J-1 visa waiver requirements;

(9) Acknowledge that the contract may be terminated only with cause and cannot be terminated by mutual agreement until the statutorily required three (3) years have expired;

(10) Be assignable only by the employer to a successor with concurrence of the department;

(11) Include the practice site address, the days and hours of practice, field of medicine, and a statement that on-call and travel times are not included in the minimum hours;

(12) Not commence until after the physician's J-1 waiver and appropriate work authorization are approved and his residency program has

been successfully completed. The contract shall affirm that no transfer or other modification regarding the duration of contract dates will be approved unless extenuating circumstances are shown to exist, as determined by the department and approved by the United States attorney general in accordance with applicable federal rules and regulations;

(13) Not be subject to changes which result in termination of contract, change in practice scope, or relocation from a site approved in the application. Any proposed changes must be presented in writing to the department for consideration and approval at least thirty (30) days prior to the proposed change. Moving or placement of a physician to a location that was not approved by the department will result in the physician and applicant being in noncompliance with the program and will be reported as such to the immigration agency. It will also limit the applicant's future participation in the program;

(14) Be signed by both the J-1 visa waiver petitioning physician and the applicant employer, and the date it is signed must be clear.

39-6110. CRITERIA FOR PROPOSED PRACTICE LOCATION. (1) The proposed practice location must be located in:

(a) A federally designated primary care health professional shortage area; or

(b) A federally designated mental health professional shortage area for psychiatrists; or

(c) An area having a federal designation as a medically underserved area or a medically underserved population; or

(d) A combination of federally designated areas.

(2) If a new practice location is planned, additional criteria apply. New practice locations must:

(a) Have the legal, financial, and organizational structure necessary to provide a stable practice environment, and must provide a business plan that supports this information;

(b) Support a full-time physician practice;

(c) Have written referral plans that describe how patients using the new primary care location will be connected to existing secondary and tertiary care if needed.

39-6111. CRITERIA FOR THE PHYSICIAN. (1) The physician must not have a J-1 visa waiver pending for any other employment offer, and must provide a notarized statement testifying to this fact.

(2) The physician must have the qualifications described in recruitment efforts for a specific vacancy.

(3) Physicians must:

(a) Provide direct patient care full time; and

(b) Be trained in:

(i) Family medicine; or

(ii) Internal medicine; or

(iii) Pediatrics; or

(iv) Obstetrics and gynecology; or

(v) Psychiatry and its subspecialties.

(4) Physicians must have an active Idaho medical license. The physician may be participating in an accredited residency program for this application, but must have successfully completed the third year of their residency training program for their employment contract to be activated. The physician must have an unrestricted license to practice

in the state of Idaho and be board certified or eligible in his respective medical specialty. A copy of the license must be included in the waiver request.

(5) Physicians must have at least one (1) recommendation from their residency program that:

(a) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income persons in the United States; and

(b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and

(c) Documents the level of specialty training, if any; and

(d) Is prepared on residency program letterhead and is signed by residency program staff or faculty; and

(e) Includes name, title, relationship to physician, address, and telephone number of signatory.

(6) The physician must agree with all provisions of the employment contract as described herein. Other negotiable terms of the contract are between the physician and the hiring agency.

(7) The physician must:

(a) Agree to work full time for no less than three (3) years in an area of underservice in the state of Idaho; and

(b) Provide health care to medicare and medicaid beneficiaries; and

(c) Post and implement a sliding fee discount schedule; and

(d) Serve the low-income population; and

(e) Serve the uninsured population; and

(f) Serve the shortage designation population; or

(g) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.

39-6112. JOINT REPORTING REQUIREMENT UPON COMMENCEMENT OF PRACTICE. (1) Notification of waiver status and commencement of employment must be submitted to the department upon receipt of written notification of approval from the immigration agency. This notification must include the date the three (3) year obligation commences, and a copy of the notification of approval from the immigration agency.

(2) The physician and the applicant must, on commencement of practice and annually thereafter or more frequently as determined by the department, and upon expiration of the first three (3) years of the contract, verify the physician's practice site address and field of practice. Further, for population-designated health professional shortage areas, documentation that the population the physician was to serve was indeed served must be submitted. This will include the facility's payer mix, the number of patients seen by the physician, and the payer mix of those patients. When submitting the final report, the physician must indicate whether he intends to remain in the shortage area to practice.

(3) Sites receiving waiver approval must agree to report to the department on the status of the physician's activities at the beginning of the physician's employment and every year thereafter during the three (3) year waiver service period. Failure to provide these reports within thirty (30) days of the annual anniversary date of approval of the J-1 visa in an accurate manner or failure to demonstrate good faith in utilizing a physician's services in accordance with these policies will

jeopardize future eligibility for placements and will be cause for reporting and referral to the United States department of state and immigration agency. This referral could ultimately lead to deportation proceedings against the J-1 physician.

(4) Any amendments made to the required elements of the employment contract during the first three (3) years for primary care physicians of contracted employment must be reported to the department for review. The department will complete review and provide notice of approval or declination of such amendments within thirty (30) calendar days of receipt.

39-6113. APPLICATION FEE. At the time the application is submitted to the department, an administrative fee must be paid to the department by the applicant. The fee amount will be determined by the director of the department, will not be less than one thousand dollars ($1,000), and may be revised at the beginning of the state fiscal year by the director based on costs to administer the program. The fee is nonrefundable.

39-6114. REQUIRED APPLICATION FORMS AND ACCOMPANYING DOCUMENTS. (1) Applications for the Idaho conrad J-1 visa waiver program must include, but not be limited to, the following:

(a) Evidence the applicant has no other mechanism through another process or interested government agency to apply for a J-1 visa waiver for the physician;

(b) Evidence of recruiting efforts over a minimum of six (6) months prior to when the physician applied for the vacancy; this must include regional and national print advertising stating the position available and the practice site location and at least six (6) certified letters to medical schools to advertise the vacancy. Copies of advertisements submitted must show the publication date. Advertisements run at the time of or after preparation of the employment contract are unusable. Online advertisements must show dates the advertisements were online. Contracts with recruitment firms are allowable as evidence in lieu of print advertisements or letters if the activities described in this section are provided under contract. Recruitment firm contracts must be included if applicable;

(c) Evidence the physician selected for the position visited the practice site;

(d) A mailing list of physicians who applied for the position and the reason they were not selected;

(e) Evidence the applicant has been providing medical or mental health care in Idaho for at least twelve (12) months or meets the requirements for a new start as defined in this chapter. This includes, but may not be limited to, the Idaho taxpayer identification number, facility address, fax and telephone numbers, and staffing list;

(f) A copy of an employment contract between the physician and the applicant for no less than three (3) years;

(g) Evidence the employment site is in a designated area of underservice;

(h) The request must be submitted by the applicant or applicant's representative. The letter must be written on the applicant's letterhead stationery, which includes address, telephone and fax numbers, if any. Letters, contracts and forms must contain original signatures;

(i) A copy of the sliding fee scale which the health care facility must agree to implement and post;
(j) A copy of the physician's license to practice medicine;
(k) Legible copies of all IAP-66/DS 2019 forms (certificate of eligibility for exchange visitor status), covering every period the physician was in J-1 status, submitted in chronological order;
(l) Legible copies (front and back) of all I-94 entry and departure cards for the physician and family members;
(m) The physician's curriculum vitae;
(n) A statement of "no objection from the government" of the physician's country of nationality, if applicable. The government of the country to which the physician is otherwise contractually obliged to return must furnish a letter to the director of the United States department of state with a statement in writing that there is no objection to such waiver in cases where the physician's medical education or training is funded by the government of the physician's home country. Whether or not there is foreign government funding can be determined from examining the physician's IAP-66 form. This letter must be in English and follow the procedures and format outlined in federal register volume 60, number 197, published October 12, 1995 (or subsequent revisions);
(o) Payment of the department's administrative application processing fee;
(p) Federal form G-28 or letterhead from the law office, if the physician is being represented by an attorney, with telephone and fax numbers, and a contact name and address;
(q) A copy of the United States department of state issued instruction sheet with case number.

(2) The state may require any other documentation or information for the support and approval process in the waiver application on the part of the physician or the applicant.

(3) These requirements are subject to change without notice.

(4) Idaho conrad J-1 visa waiver program application forms and instructions are available and may be requested from the department.

(5) The physician's case number must appear on each page. The case number is assigned by the United States department of state.

(6) All required information and documentation must be submitted in a single package with all documents presented per instructions that will be provided by the department upon request. One (1) single-sided, unbound original and one (1) single-sided, unbound copy must be included. Waiver requests that do not comply with these requirements and the instructions provided by the department will not be considered.

39-6115. CRITERIA APPLIED TO FEDERALLY DESIGNATED FACILITIES. Local, state, or federal institutions which offer primary care services and are federally designated as a shortage facility accompanied by a health professional shortage area score may submit an application. Physician services may be limited to the population of the institution. All other state and federal requirements must be met.

39-6116. DEPARTMENT REVIEW AND ACTION. (1) The department will review applications for completeness in date order received.

(2) Applications submitted for physicians with language skills appropriate to the community they wish to serve will be given priority.

(3) Selection preference will be given to applications received from HPSAs having the greatest unmet need for primary care physicians.

(4) Applications must be mailed, sent by commercial carrier, or delivered in person. Applications may not be sent electronically. The department is not responsible for applications or related materials lost in the mail.

(5) The department may limit the time period during which applications may be submitted including refusing to process applications after the department has submitted requests for all applications allowed in a given federal fiscal year.

(6) In the event an applicant for a J-1 visa waiver submits an application to the department, the department will acknowledge receipt of the copy of the application within five (5) business days of receipt.

(7) The department will review applications within fifteen (15) working days of receipt of the application to determine if the application is complete, and provide a written explanation of missing items.

(8) An additional fee will not be charged for incomplete applications if the missing items are provided within thirty (30) calendar days of the date on the letter of explanation from the department. If new information is not received within this time frame, the application will be returned to the applicant. The application fee will not be returned.

(9) The department will return applications and application fees to applicants having had two (2) approved J-1 visa waiver requests in the current federal fiscal year for the shortage area, applications received that exceed the de-designation threshold limit, and applications received after thirty (30) placements have been recommended.

(10) The department will review complete applications against the criteria specified in this chapter.

(11) The department may:

(a) Request additional clarifying information;

(b) Verify information presented;

(c) Investigate the financial status of the applicant;

(d) Request verification of the health care facility's payer mix for the previous twelve (12) to eighteen (18) months.

(e) Return the application as incomplete if the applicant does not supply the requested clarifying information in its entirety within thirty (30) days of request. The application fee is nonrefundable. Incomplete applications must be resubmitted with the application fee. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(12) The department may request the director of the United States department of state to recommend that the immigration agency grant the waiver.

(13) The department will notify the applicant in writing of action taken by the department. If the decision is to decline the J-1 visa waiver request, the department will provide an explanation of how the application failed to meet the stated criterion or criteria. The application fee is nonrefundable.

(14) The department may deny a visa waiver request or, prior to United States department of state approval, may withdraw a visa waiver recommendation for cause, which shall include the following:

(a) The application is not consistent with state or federal criteria;

(b) Fraud;

(c) Misrepresentation;
(d) False statements;
(e) Misleading statements;
(f) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials;
(g) Incomplete or insufficient information;
(h) Allowable number of recommendations for the area or year has been met.

(15) Applications denied may be resubmitted with concerns addressed, with the application fee. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(16) The department retains the authority to audit, monitor and conduct unannounced site visits.

39-6117. ELIGIBILITY FOR FUTURE PARTICIPATION. Health care facilities may be denied future participation in the Idaho conrad J-1 visa waiver program if:

(1) The required annual reports are not submitted in a complete and timely manner;

(2) A physician does not serve the designated shortage area or shortage population approved at the time of placement for the full three (3) years of employment. This does not apply only if the approved site is in a designated health professional shortage area that loses its designation after the physician begins employment;

(3) A physician does not remain employed by the applicant for the full three (3) years of employment;

(4) The applicant or physician is not in compliance with the terms defined in this chapter or any federal requirements.

39-6118. DEPARTMENT RESPONSIBILITY TO REPORT. The department shall report to the United States department of state and the immigration agency if the applicant or physician is determined to be out of compliance with any of the provisions of this chapter or if the physician is determined to have left employment in the federally designated area.

Approved March 19, 2004.

CHAPTER 129
(S.B. No. 1299)

AN ACT

RELATING TO IMMUNITY FOR THE USE OF DEFIBRILLATORS; AMENDING SECTION 5-337, IDAHO CODE, TO ENUMERATE WHICH PERSONS TO WHOM LIMITED LEGAL IMMUNITY APPLIES IN USING A DEFIBRILLATOR, TO PROVIDE A CORRECT CODE REFERENCE AND TO PROVIDE THAT NO CAUSE OF ACTION SHALL BE MAINTAINED AGAINST THE PHYSICIAN OR OSTEOPATH WHO WROTE THE PRESCRIPTION FOR THE DEFIBRILLATOR IF THE PRESCRIPTION WAS WRITTEN IN GOOD FAITH; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 5-337, Idaho Code, be, and the same is hereby amended to read as follows:

5-337. IMMUNITY FOR USE OF AUTOMATED EXTERNAL DEFIBRILLATOR (AED). (1) As used in this section, "defibrillator" means an "automated external defibrillator (AED)" which has been prescribed by a physician or osteopath licensed pursuant to chapter 18, title 54, Idaho Code.

(2) In order to promote public health and safety:

(a) A person or entity who acquires a defibrillator as a result of a prescription shall ensure that:

(i) Expected defibrillator users receive training in its use and care equivalent to the CPR and AED training of the American heart association, the American red cross or similar entities;

(ii) The defibrillator is maintained and tested according to the manufacturer's operational guidelines;

(iii) There is involvement of a licensed physician in the site's program to ensure compliance with requirements for training, notification, maintenance and guidelines for use;

(iv) Any person who renders emergency care or treatment to a person in cardiac arrest by using a defibrillator must activate the emergency medical services system as soon as possible, and must report any clinical use of the defibrillator to the prescribing physician.

(b) Any person or entity who acquires a defibrillator as a result of a prescription shall notify an agent of the emergency communications system or emergency vehicle dispatch center of the existence, location and type of defibrillator.

(3) No cause of action shall be maintained against a licensed physician, osteopath, physician assistant, nurse practitioner, or nurse, or against an emergency medical technician, fireman, peace officer, ambulance attendant or other person trained to use a defibrillator which arises from the good faith use of a defibrillator in an emergency setting and no cause of action shall be maintained against the physician or osteopath who wrote the prescription for the defibrillator if the prescription was written in good faith. This immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton misconduct.

(4) A defibrillator acquired pursuant to a prescription and possessed in compliance with subsection (2) of this section is exempt from the provisions of chapter 10, title ~~39~~56, Idaho Code.

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

Approved March 19, 2004.

CHAPTER 130
(S.B. No. 1303)

AN ACT

RELATING TO PROBATE OF WILLS AND FILING OF CLAIMS; AMENDING SECTION 15-3-803, IDAHO CODE, TO CHANGE THE TIME LIMIT FOR FILING OF CLAIMS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 15-3-803, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS. (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof (except claims for state taxes), whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates:

(1) ~~two~~ three (~~2~~3) years after the decedent's death; or

(2) within the time provided in section 15-3-801(b), Idaho Code, for ~~creditors~~ who are given actual notice, and within the time provided in section 15-3-801(a), Idaho Code, for all creditors barred by publication.

(b) All claims described in subsection (a) of this section barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(c) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof (except claims for state taxes), whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

(2) any other claim, within the later of four (4) months after it arises, or the time specified in subsection (a)(1) of this section.

(d) Claims relating to state taxes, whether due or to become due, absolute or contingent, liquidated or unliquidated, are barred against the estate, the personal representative, and the heirs and devisees of the ~~decendent~~ decedent, unless presented within the earlier of the following dates:

(1) three (3) years from the latest of:

(i) the date of the decedent's death,

(ii) the due date of the return (without regard to extensions), or

(iii) the date the return was filed; or

(2) within the time provided in section 63-3068(e) or 63-3633(e), Idaho Code, if the state tax commission has been given written notice in accordance with the provisions of those sections.

(e) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance;

(3) collection of compensation for services rendered and reimburse-

ment for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate; or

(4) assessment or collection of state taxes arising from activities or transactions of the estate; or

(5) assessment or collection of state taxes if a return has not been filed with the state tax commission.

Approved March 19, 2004.

CHAPTER 131
(S.B. No. 1304)

AN ACT

RELATING TO HOMESTEAD RIGHTS; REPEALING SECTION 55-1010, IDAHO CODE; AND AMENDING CHAPTER 10, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-1010, IDAHO CODE, TO ESTABLISH LIMITS ON LIABILITY OF THE HOMESTEAD FOR DEBTS OF THE OWNER.

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

SECTION 1. That Section 55-1010, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 10, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-1010, Idaho Code, and to read as follows:

55-1010. LIABILITY FOR DEBTS OF OWNER. The homestead shall not be held liable for the debts of the owner, except as provided in this title or in section 56-218, Idaho Code.

Approved March 19, 2004.

CHAPTER 132
(S.B. No. 1306)

AN ACT

RELATING TO THE INVESTMENT OF PERMANENT FUNDS; AMENDING SECTION 57-720, IDAHO CODE, TO CLARIFY MARKET VALUE ALLOCATION BETWEEN THE PERMANENT ENDOWMENT FUNDS AND THE EARNINGS RESERVE FUNDS; AMENDING SECTION 57-724, IDAHO CODE, TO ESTABLISH BENCHMARK VALUES TO BE ANNUALLY MODIFIED FOR COMPARISON WITH THE CURRENT MARKET VALUE OF THE PERMANENT ENDOWMENT FUND, TO PROVIDE FOR MAKING UP LOSSES TO THE PUBLIC SCHOOL PERMANENT ENDOWMENT FUND AND TO PROVIDE FOR REDUCING TRANSFERS OR APPROPRIATIONS WHICH EXCEED A BENCHMARK VALUE; AMENDING SECTION 57-724A, IDAHO CODE, TO REVISE THE DEFINITION OF "EARNINGS"; DECLARING AN EMERGENCY FOR SECTIONS 1 AND 2 OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE FOR SECTION 3 OF THIS ACT.

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

SECTION 1. That Section 57-720, Idaho Code, be, and the same is hereby amended to read as follows:

57-720. PERMANENT ENDOWMENT FUNDS -- EARNINGS RESERVE FUNDS -- INCOME FUNDS -- INVESTMENT POLICY REGULATIONS -- ANNUAL AUDIT. The investment board or its investment manager(s) may, and are hereby authorized to, invest the permanent endowment funds and the earnings reserve funds of the state of Idaho. Earnings reserve funds shall be accounted for separately from permanent endowment funds. Prior to the annual calculation of g~~G~~ains and losses ~~as defined in~~ pursuant to section 57-724, Idaho Code, the investment board shall ~~be annually allocated~~ allocate the end of fiscal year market value between the permanent endowment funds and the earnings reserve funds. ~~at the end of each fiscal year.~~ This allocation shall be made based upon the proportion that the market value of the permanent endowment funds and the market value of the earnings reserve funds bear to the combined market value of both sets of funds, at the end of the fiscal year. The investment board shall formulate investment policy regulations governing the investment of permanent endowment funds and earnings reserve funds. The regulations shall pertain to the types, kinds or nature of investment of any of the funds, and any limitations, conditions or restrictions upon the methods, practices or procedures for investment, reinvestments, purchases, sales or exchange transactions, provided such regulations shall not conflict with nor be in derogation of any Idaho constitutional provision or of the provisions of this act.

Annually, the investment board shall cause an audit to be conducted of the investment of permanent endowment funds and earnings reserve funds, such audit to be conducted by a recognized certified public accountant. The certified public accountant conducting the audit shall not be an employee of the state. The expense of such audit shall be paid from the appropriation to the investment board.

The state treasurer shall invest the income funds of the respective endowments and distribute the moneys in the income funds according to legislative appropriation.

SECTION 2. That Section 57-724, Idaho Code, be, and the same is hereby amended to read as follows:

57-724. DETERMINATION OF GAINS AND LOSSES. (1) Gains. Gains ~~and losses~~ to permanent endowment funds shall be determined by ~~comparing~~ the investment board when the current market value of the permanent endowment fund as of the end of the fiscal year~~, excluding funds transferred to the permanent endowment fund from the earnings reserve fund or funds deposited as a result of land sales or mineral royalties, to~~ exceeds the gain benchmark market value of the permanent endowment fund. ~~at the end of the prior fiscal year~~ The gain benchmark market value shall begin with the market value of the permanent endowment fund calculated as it existed on June 30, 2000, and shall be modified on June 30 of each subsequent fiscal year by the percentage change in the average of the immediately preceding three (3) fiscal years of the unadjusted consumer price index for all urban consumers as issued by the United States department of labor, and by the addition of funds deposited as a result

of land sales and mineral royalty payments.

(2) Losses. Losses to permanent endowment funds shall be determined by the investment board when the market value of the permanent endowment fund as of the end of the fiscal year is less than the loss benchmark market value of the permanent endowment fund. The loss benchmark market value shall begin with the market value of the permanent endowment fund calculated as it existed on June 30, 2000, and shall be modified on June 30 of each subsequent fiscal year by the addition of funds deposited as a result of land sales and mineral royalty payments. Losses to permanent endowment funds other than the public school permanent endowment fund shall be made up from earnings reserve fund moneys that the state board of land commissioners determines will not be needed for administrative costs or scheduled distributions to each endowment's respective income fund. Losses to the public school permanent endowment fund shall be made up as follows:

(~~1~~a) The state board of land commissioners may annually transfer any funds in the public school earnings reserve fund that it determines will not be needed for administrative costs or scheduled distributions to the public school income fund in the following fiscal year to the public school permanent endowment fund, to make up for any prior losses in value.

(~~2~~b) If funds transferred from the earnings reserve fund are insufficient to make up any losses in value to the public school permanent endowment fund, and the market value of the public school permanent endowment fund at the end of each fiscal year remains below the loss benchmark market value of the preceding ten (10) consecutive fiscal years, then the ~~remaining~~ legislature shall make up the loss ~~shall be made up, within four (4) years,~~ by legislative transfer or appropriation~~. If subsequent gains, as determined pursuant to the provisions of this section, or transfers from the earnings reserve fund, make up for any remaining loss before this four (4) year period expires, then no legislative transfer or appropriation shall be necessary.~~

~~Losses to permanent endowment funds other than the public school permanent endowment fund shall be made up from earnings reserve fund moneys that the state board of land commissioners determines will not be needed for administrative costs or scheduled distributions to each endowment's respective income fund~~ authorized during one (1) or both of the next succeeding two (2) regular sessions of the legislature. Such loss to be made up shall be the lesser of the:

(i) Current cumulative loss; or

(ii) Annual loss determined in the first year of the preceding consecutive ten (10) years.

(c) Any transfers or appropriations authorized by the legislature for deposit into the public school permanent endowment fund shall take place at the end of the fiscal year, after the determination of gains and losses. If the market value of the public school permanent endowment fund exceeds the loss benchmark market value at the end of any fiscal year in which legislative transfers or appropriations are authorized to the public school permanent endowment fund, then such transfers or appropriations shall be reduced by the lesser of the:

(i) Amount that the market value of the public school permanent endowment fund would exceed the loss benchmark market value at the end of the fiscal year if all authorized legisla-

tive transfers or appropriations were to be made; or
(ii) Amount of the legislative transfers or appropriations authorized for deposit in the public school permanent endowment fund for the fiscal year.

SECTION 3. That Section 57-724A, Idaho Code, be, and the same is hereby amended to read as follows:

57-724A. EARNINGS DEFINED. "Earnings" shall mean all revenues generated from the management of endowment lands and their related endowment funds including, but not limited to, timber sale proceeds, lease fees~~,--interest,--dividends,~~ and gains as ~~defined~~ determined in section 57-724, Idaho Code. "Earnings" does not include mineral royalties or land sale proceeds.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 and 2 of this act shall be in full force and effect on and after passage and approval.

SECTION 5. Section 3 of this act shall be in full force and effect on and after July 1 of the year in which the Endowment Fund Investment Board certifies to the Secretary of State that gains, as determined by the provisions of Section 57-724, Idaho Code, have been paid from the Public School Permanent Endowment Fund to the Public School Earnings Reserve Fund for the fiscal year ending June 30 of the same year.

Approved March 19, 2004.

CHAPTER 133
(S.B. No. 1318)

AN ACT
RELATING TO THE PRACTICE OF PODIATRY; AMENDING SECTION 39-1395, IDAHO CODE, TO REMOVE CERTAIN MEDICAL STAFF MEMBERSHIP REQUIREMENTS.

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

SECTION 1. That Section 39-1395, Idaho Code, be, and the same is hereby amended to read as follows:

39-1395. PRACTICE OF PODIATRY -- MEDICAL STAFF MEMBERSHIP. Except as otherwise provided in this section, no provision or provisions of this section shall in any way change or modify the authority or power of the governing body of any hospital to make such rules, standards or qualifications for medical staff membership as they, in their discretion, may deem necessary or advisable, or to grant or refuse membership on a medical staff.

An applicant for medical staff membership may not be denied membership solely on the ground that the applicant holds a license to practice podiatry issued by the Idaho state board of podiatry. The criteria utilized for granting medical staff membership shall be reasonable and shall not discriminate against podiatry.

The process for considering applications for medical staff membership and privileges shall afford each applicant due process.

All applications for medical staff membership shall be acted upon within one hundred twenty (120) days from the date the required information is submitted.

The accordance and delineation of clinical privileges for podiatrists shall be determined on an individual basis and commensurate with the applicant's education, training, experience and demonstrated competence. In implementing these procedures, each hospital shall formulate and apply reasonable standards that do not discriminate in the evaluation of an applicant's credentials.

~~A podiatrist with medical staff privileges may initiate admission, but the admission is not complete until the history and physical is performed and signed by a physician licensed pursuant to chapter 18, title 54, Idaho Code.~~ A member of the medical staff licensed pursuant to chapter 18, title 54, Idaho Code, shall have responsibility for the overall medical care of the patient while in the hospital. Arrangements for the services of a member of the medical staff licensed pursuant to chapter 18, title 54, Idaho Code, for the purposes of this section shall be the sole responsibility of the admitting podiatrist and not that of the hospital or any other member of the medical staff.

Approved March 19, 2004.

CHAPTER 134
(S.B. No. 1320)

AN ACT

RELATING TO EMERGENCY MEDICAL SERVICES PERSONNEL; AMENDING SECTION 39-1392a, IDAHO CODE, TO REVISE DEFINITIONS AND TO DEFINE "EMERGENCY MEDICAL SERVICES PERSONNEL" AND "LICENSED EMERGENCY MEDICAL SERVICE"; AMENDING SECTION 39-1392b, IDAHO CODE, TO PROVIDE THAT NO DISCIPLINARY ORDER OF A CERTIFICATION FOR EMERGENCY MEDICAL SERVICES PERSONNEL SHALL BE ADMISSIBLE IN A CIVIL PROCEEDING SEEKING DAMAGES OR OTHER CIVIL RELIEF AGAINST THE EMERGENCY MEDICAL SERVICES PERSONNEL; AMENDING SECTION 39-1392e, IDAHO CODE, TO REVISE EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY TO INCLUDE REFERENCES TO EMERGENCY MEDICAL SERVICES PERSONNEL AND TO MAKE A GRAMMATICAL CORRECTION; AND AMENDING SECTION 39-1393, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE TO PROVIDE A REFERENCE TO EMERGENCY MEDICAL SERVICES PERSONNEL, TO PROVIDE FOR THE SUBMISSION OF CERTAIN REPORTS ON EMERGENCY MEDICAL SERVICES PERSONNEL TO THE DEPARTMENT OF HEALTH AND WELFARE, TO PROVIDE CLARIFYING LANGUAGE, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND WELFARE SHALL APPROVE FORMS FOR REPORTS CONCERNING EMERGENCY MEDICAL SERVICES PERSONNEL, TO REQUIRE THE REPORTING OF PROFESSIONAL REVIEW ACTION SANCTIONS AGAINST EMERGENCY MEDICAL SERVICES PERSONNEL TO THE DEPARTMENT OF HEALTH AND WELFARE AND TO REQUIRE THAT THE REPORT INCLUDE CERTAIN STATEMENTS.

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

SECTION 1. That Section 39-1392a, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392a. DEFINITIONS. The following terms shall have the following meanings when used in this section:

(1) "Emergency medical services personnel" means emergency medical services providers certified by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code, and ambulance-based clinicians as defined in the rules governing emergency medical services as promulgated by the department of health and welfare.

(2) "Group medical practice" means a partnership, corporation, limited liability company, or other association formed for the purpose of offering health care services through physicians and other licensed or otherwise authorized health care providers who are partners, shareholders, members, employees, or contractors of such group medical practice.

(~~2~~3) "Health care organization" means a hospital, in-hospital medical staff committee, medical society, managed care organization, licensed emergency medical service or group medical practice.

(~~3~~4) "Hospital" means a facility in Idaho licensed under sections 39-1301 through 39-1314, Idaho Code, and defined in section 39-1301(a)(1), Idaho Code.

(~~4~~5) "In-hospital medical staff committees" means any individual doctor who is a hospital staff member, or any hospital employee, or any group of such doctors and/or hospital employees, who are duly designated a committee by hospital staff bylaws, by action of an organized hospital staff, or by action of the board of directors of a hospital, and which committee is authorized by said bylaws, staff or board of directors, to conduct research or study of hospital patient cases, or of medical questions or problems using data and information from hospital patient cases.

(6) "Licensed emergency medical service" means an ambulance service or a non-transport service licensed by the department of health and welfare pursuant to section 56-1011 et seq., Idaho Code.

(~~5~~7) "Managed care organization" means a public or private person or organization which offers a managed care plan.

(~~6~~8) "Managed care plan" means a contract of coverage given to an individual, family or group of covered individuals pursuant to which a member is entitled to receive a defined set of health care benefits through an organized system of health care providers in exchange for defined consideration and which requires the member to use, or creates financial incentives for the member to use, health care providers owned, managed, employed by or under contract with the managed care organization.

(~~7~~9) "Medical society" means any duly constituted, authorized and recognized professional society or entity made up of physicians licensed to practice medicine in Idaho, having as its purpose the maintenance of high quality in the standards of health care provided in Idaho or any region or segment of the state, operating with the approval of the Idaho state board of medicine, or any official committee appointed by the Idaho state board of medicine.

(~~8~~10) "Patient care records" means written or otherwise recorded, preserved and maintained records of the medical or surgical diagnostic, clinical, or therapeutic care of any patient treated by or under the direction of licensed professional personnel, including emergency medical services personnel, in every health care organization subject to this act, whether as an in-patient or out-patient of the health care organization.

(~~9~~11) "Peer review" means the collection, interpretation and analysis of data by a health care organization for the purpose of bettering the system of delivery of health care or to improve the provision of health care or to otherwise reduce patient morbidity and mortality and improve the quality of patient care. Peer review activities by a health care organization include, without limitation:

(a) Credentialing, privileging or affiliating of health care providers as members of, or providers for, a health care organization;

(b) Quality assurance and improvement, patient safety investigations and analysis, patient adverse outcome reviews, and root-cause analysis and investigation activities by a health care organization; and

(c) Professional review action, meaning an action or recommendation of a health care organization which is taken or made in the conduct of peer review, that is based on the competence or professional conduct of an individual physician or emergency medical services personnel where such conduct adversely affects or could adversely affect the health or welfare of a patient or the physician's privileges, employment or membership in the health care organization or in the case of emergency medical services personnel, the emergency medical services personnel's scope of practice, employment or membership in the health care organization.

(~~10~~12) "Peer review records" means all evidence of interviews, reports, statements, minutes, memoranda, notes, investigative graphs and compilations and the contents thereof, and all physical materials relating to peer review of any health care organization. "Peer review records" does not mean or include patient care records; provided however, that the records relating to the identification of which particular patient care records were selected for, or reviewed, examined or discussed in peer review by a health care organization and the methodology used for selecting such records shall be considered peer review records.

SECTION 2. That Section 39-1392b, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392b. RECORDS CONFIDENTIAL AND PRIVILEGED. Except as provided in section 39-1392e, Idaho Code, all peer review records shall be confidential and privileged, and shall not be directly or indirectly subject to subpoena or discovery proceedings or be admitted as evidence, nor shall testimony relating thereto be admitted in evidence, or in any action of any kind in any court or before any administrative body, agency or person for any purpose whatsoever. No order of censure, suspension or revocation of licensure, or of a certification in the case of emergency medical services personnel, or health care organization privilege of any physician licensed to practice medicine in Idaho shall be

admissible in any civil proceeding seeking damages or other civil relief against the physician, emergency medical services personnel, or health care organization which may be a defendant in said cause. However, this section shall not prohibit or otherwise affect the use of documents, materials or testimony in health care organization proceedings, nor shall it prohibit or otherwise affect the dissemination, for medical purposes, of information contained in such documents or materials or the conclusions and findings of such health care organization. This section shall not affect the admissibility in evidence in any action or proceeding of the patient care records of any patient.

SECTION 3. That Section 39-1392e, Idaho Code, be, and the same is hereby amended to read as follows:

39-1392e. LIMITED EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY. (a) In the event of a claim or civil action against a physician, emergency medical services personnel, or a hospital arising out of a particular physician-patient, emergency medical services personnel-patient, or hospital-patient relationship, or which concerns the sufficiency of the delivery of particular health care to a specific patient, any health care organization having information of the kind covered by section 39-1392b, Idaho Code, shall, when interrogated as hereinafter provided, advise any such claimant who is or was such a patient or who, in a representative capacity, acts on behalf of such patient or his heirs, as follows:

(1) Whether it has conducted or has in progress an inquiry, proceeding or disciplinary matter regarding the quality ~~of~~ or propriety of the health care involved, which concerns the subject patient while he was under the care or responsibility of a member of such health care organization or while he was a patient in such hospital; and, if so,

(2) Whether disposition of any kind resulted or will result therefrom; and, if so,

(3) What the disposition was, or, if not yet determined, approximately when it will be determined.

Such disclosure of information shall be limited to the health care organization's actions in connection with the physician, emergency medical services personnel, or hospital against whom such claim is asserted.

(b) Such a claimant shall likewise be entitled to inquire of such health care organization respecting the names and addresses of persons who such health care organization knows to have direct knowledge of the provision of the health care in question, such inquiry to be limited, however, to the particular patient and the particular times and occasions germane to the specific occurrences on which the claim is based; provided, names shall not be disclosed respecting persons who have gained secondary knowledge or formed opinions respecting the matter solely by participating as witnesses, officials, investigators or otherwise on, for, or in connection with such a health care organization committee, staff, governing board or the state board of medicine.

(c) Such limited, conditional discovery and disclosure of information as provided above shall be allowed only in response to inquiries directed to such a health care organization, and then only if initially propounded by a claimant of the type above described. If the matter is in litigation, inquiry may be by customary means of discovery under the

Idaho rules of civil procedure, or, if pending in a United States court, then under discovery as allowed by its applicable rules; provided, pendency of the claim in the United States court or before any other tribunal shall not operate to broaden the exception to the rules of privilege, confidentiality and immunity set down in this act.

(d) Such disclosures may be voluntarily made without judicial order or formal discovery if all disciplined, accused or investigated physicians or emergency medical services personnel consent thereto, and if privileged or confidential information regarding any other patient, physician, emergency medical services personnel, or person will not be disclosed thereby. When the terms of this paragraph are complied with, such voluntary disclosures may be made without civil liability therefor as if in due response to valid judicial process or order.

(e) If any claimant makes such inquiry of any such health care organization, he shall be deemed to have consented to like inquiry and disclosure rights for the benefit of all parties against whom he asserts such claim or brings such suit or action, and all other persons who are parties to such action, and thereafter all such persons and parties may invoke the provisions of this section, seeking and securing specific information as herein provided for the benefit of such claimant, to the same extent as the same is allowed to such claimant.

(f) If any physician, emergency medical services personnel, patient, person, organization or entity whose conduct, care, chart, behavior, health or standards of ethics or professional practice is the subject of investigation, comment, testimony, dispositive order of any kind or other written or verbal utterance or publication or act of any such health care organization or any member or committee thereof in the course of research, study, disciplinary proceeding or investigation of the sort contemplated by this act, makes claim or brings suit on account of such health care organization activity, then, in the defense thereof, confidentiality and privilege shall be deemed waived by the making of such claim, and such health care organization and the members of their staffs and committees shall be allowed to use and resort to such otherwise protected information for the purpose of presenting proof of the facts surrounding such matter, and this provision shall apply whether such claim be for equitable or legal relief or for intentional or unintentional tort of any kind and whether pressed by a patient, physician, emergency medical services personnel, or any other person, but such waiver shall only be effective in connection with the disposition or litigation of such claim, and the court shall, in its discretion, enter appropriate orders protecting, and as fully as it reasonably can do so, preserving the confidentiality of such materials and information.

SECTION 4. That Section 39-1393, Idaho Code, be, and the same is hereby amended to read as follows:

39-1393. NOTIFICATION OF PROFESSIONAL REVIEW ACTION IMPOSED UPON PHYSICIAN OR EMERGENCY MEDICAL SERVICES PERSONNEL. (1) Any health care organization in this state that is by law required to conduct peer review or which voluntarily formally elects to conduct professional review actions shall notify the board of medicine of professional review actions taken against physicians licensed in Idaho required to be reported as provided in this section. Such reports shall be made to the board of medicine within fifteen (15) days of completion of the profes-

sional review action by the health care organization. For emergency medical services personnel, such reports shall be made to the department of health and welfare within fifteen (15) days of completion of the professional review action by the health care organization. Such required reports shall be made on forms approved by the board of medicine for reports concerning physicians, or the department of health and welfare for reports concerning emergency medical services personnel, consistent with the reporting requirements of this section. The reporting obligation shall not be stayed by the filing of any court proceeding unless otherwise ordered by the court.

(2) A health care organization in Idaho shall report to the board of medicine if it:

(a) Takes a professional review action against a physician licensed in Idaho and imposes a sanction of the type included in subsection (3) of this section which lasts longer than thirty (30) days; or

(b) Accepts a voluntary sanction by a physician licensed in Idaho of the type identified in subsection (3) of this section while the physician is under investigation or to avoid investigation by the health care organization relating to the professional competence or professional conduct of the physician or in exchange for the health care organization not conducting such an investigation or initiating a professional review action, if the sanction lasts longer than thirty (30) days.

(3) Professional review action sanctions against a physician which must be reported to the board of medicine pursuant to subsection (2) of this section, whether voluntary or involuntary, shall be:

(a) Restriction or limitation of privileges;

(b) Revocation of privileges;

(c) Suspension of privileges;

(d) Reduction of privileges;

(e) Denial of a request for initial privileges;

(f) Submission to monitoring of the physician's physical or mental condition;

(g) Submission to monitoring of the physician's delivery of medical services other than to assess and monitor the physician's qualifications for new or additional privileges;

(h) Surrender of privileges;

(i) Summary suspension or reduction of privileges lasting longer than thirty (30) days;

(j) Termination of employment;

(k) Suspension of employment lasting longer than thirty (30) days.

(4) The reporting requirements of this section shall not apply to:

(a) Actions based on compliance with medical records or confidentiality requirements of a health care organization;

(b) Voluntary requests for assistance or monitoring by a physician as part of an educational process to improve physician skills or enhance patient care when unrelated to a professional review action concerning the quality or necessity of patient medical care;

(c) Voluntary or involuntary revocation, nonrenewal, denial, reduction, restriction, resignation, or limitation of privileges or employment of a physician based upon factors not directly impacting the quality of patient care or safety of practice of the physician;

(d) Adverse actions taken against a physician by a health care organization that is not required by law to conduct peer review and that has not voluntarily formally elected to conduct professional review actions; and

(e) The denial of a physician's request for additional privileges or credentials with a health care organization.

(5) The report to the board of medicine required by this section shall include a statement of the quality of care concerns or professional conduct that is the basis of the professional review action or investigation and the reportable professional review action sanction voluntarily accepted or involuntarily imposed.

(6) A health care organization required to report a professional review action concerning a physician to the board of medicine pursuant to this section shall, if requested by the board of medicine, provide to the board the following:

(a) A statement of the specific quality of care concerns or professional conduct which resulted in the professional review action sanction;

(b) A statement of the specific professional review action sanction; and

(c) Any patient care records of the health care organization regarding the care provided by the reported physician. However, the board of medicine may not request or require production of any peer review records from any person or health care organization, including the identification of which particular patient care records were selected for, or reviewed, examined or discussed in any peer review activity of a health care organization, or the method used by the health care organization to select such patient care records for peer review.

(7) The records lawfully requested by the board of medicine pursuant to subsection (6) of this section shall be provided by the health care organization without a subpoena or court order. If the health care organization fails to comply with the board of medicine's lawful request, the board may petition the district court for an order compelling compliance with the board's request, which shall be granted if disclosure is required by law.

(8) Professional review action sanctions against emergency medical services personnel, whether voluntary or involuntary, which are the result of any action, conduct, or failure to act which is inconsistent with the professionalism and/or standards established in the rules governing emergency medical services personnel as promulgated by the department of health and welfare must be reported to the department of health and welfare.

(9) The report to the department of health and welfare required by this section shall include a statement of the quality of care concerns or professional conduct that is the basis of the professional review action or investigation and the reportable professional review action sanction voluntarily accepted or involuntarily imposed.

(10) Any person or health care organization that provides notification as required by law, or in a good faith belief that such notification is required by law, shall be immune from any civil or other liability arising from providing the notification. Such immunity shall likewise pertain to the provision of files, records and information a health care organization may in good faith provide to the board of medicine

pursuant to this section or other applicable law. Such materials provided to the board of medicine shall be subject to disclosure by the board according to chapter 3, title 9, Idaho Code, and available only to the board of medicine and its staff unless and until such matter becomes the subject of formal proceedings by or before the board of medicine or authorized by it.

Approved March 19, 2004.

CHAPTER 135
(S.B. No. 1331)

AN ACT

RELATING TO THE STATE BOARD OF EDUCATION; AMENDING SECTION 33-1511, IDAHO CODE, TO PROVIDE FOR THE BOARD'S POWER AND DUTY TO AUTHORIZE THE SUPERVISOR OF SCHOOL TRANSPORTATION TO CONDUCT CERTAIN REVIEWS AND AUDITS, TO SET PRIORITY FOR THE SELECTION OF DISTRICTS FOR REVIEWS AND AUDITS, TO PROVIDE FOR THE BOARD'S POWER AND DUTY TO AUTHORIZE THE SUPERVISOR TO PROVIDE LISTS OF REQUIRED CORRECTIVE ACTIONS TO SCHOOL DISTRICTS, TO PROVIDE FOR THE BOARD'S POWER AND DUTY TO REQUIRE SCHOOL DISTRICTS TO SUBMIT PROGRESS REPORTS ON CORRECTIVE ACTIONS TO THE STATE DEPARTMENT OF EDUCATION AND TO WITHHOLD ALL OR A PORTION OF A DISTRICT'S PUPIL TRANSPORTATION REIMBURSEMENT FUNDING IN CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR APPEALS.

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

SECTION 1. That Section 33-1511, Idaho Code, be, and the same is hereby amended to read as follows:

33-1511. STATE BOARD OF EDUCATION -- POWERS AND DUTIES RELATED TO TRANSPORTATION. In addition to powers and duties of the state board of education hereinbefore prescribed, the said state board shall:

(1) Designate a member of its staff as supervisor of school transportation responsible for a school bus driver training program and such program shall provide for a qualified driver trainer for each school district and with such duties as the board may prescribe;

(2) Adopt, publish and distribute, and from time to time as need therefor arises amend, minimum standards for the construction of school buses, the basis of which standards shall be those incorporated in the latest report of the National Conference on School Transportation, which report shall be filed with the Idaho state police;

(3) Approve the form(s) to be used for the inspection of school buses;

(4) Authorize the supervisor of school transportation to conduct any combination of in-depth program reviews, fiscal audits, and reviews of annual reimbursement claims supporting documentation of each school district pupil transportation program at a frequency adequate to ensure compliance with state law, accuracy of data and reimbursement claims, and safety of school buses. Priority for selecting districts for review and audit shall be given to those districts that exceed both the most recent annual state average reimbursable cost per mile and the state

average reimbursable cost per rider as calculated by the state department of education, unless the supervisor of school transportation determines otherwise;

(5) Authorize the supervisor of school transportation, based upon results of program reviews, fiscal audits, and spot inspections as set forth in section 33-1506, Idaho Code, to provide to school districts a list of required corrective actions, when necessary;

(6) Require school districts to submit progress reports on those corrective actions developed by the supervisor of school transportation to the state department of education at prescribed intervals until deficiencies are corrected or the corrective actions no longer apply;

(7) Withhold all or a portion of a district's pupil transportation reimbursement funding in instances of noncompliance with the requirements of subsection (6) of this section or section 33-1506, Idaho Code, provided that a district may appeal to the state board of education for reconsideration, in which case the state board of education may reinstate or adjust the withheld funds.

Approved March 19, 2004.

CHAPTER 136
(S.B. No. 1344)

AN ACT

RELATING TO PUPIL TRANSPORTATION; AMENDING SECTION 33-1510, IDAHO CODE, TO PROVIDE THAT THE CURRENT PUPIL TRANSPORTATION MODEL CONTRACT DEVELOPED BY THE STATE DEPARTMENT OF EDUCATION SHALL BE USED, TO ALLOW FOR ADDENDA TO MEET LOCAL REQUIREMENTS, TO REQUIRE THE SUBMISSION OF CONTRACTS PRIOR TO SIGNING FOR REVIEW AND APPROVAL, TO REQUIRE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION TO RESPOND WITHIN A STATED TIME PERIOD BY NOTIFYING SCHOOL DISTRICTS OF CONTRACT APPROVAL OR CHANGES, AND TO PROVIDE FOR APPEAL TO THE STATE BOARD OF EDUCATION.

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

SECTION 1. That Section 33-1510, Idaho Code, be, and the same is hereby amended to read as follows:

33-1510. CONTRACTS FOR TRANSPORTATION SERVICE. (1) All contracts entered into by boards of trustees for the transportation of pupils shall be in writing ~~in a form approved by~~ using the current pupil transportation model contract developed by the state department of education. School districts may attach to the model contract addenda to meet local requirements. School districts shall submit to the state superintendent of public instruction a copy of the pupil transportation contract prior to both parties signing it, for a review of legal requirements and appropriate costs and for final approval. The state superintendent of public instruction shall respond to the school district within twenty-one (21) calendar days of the postmarked receipt of the contract by notifying the school district of contract approval or of recommended or required changes. A school district may appeal to the state board of

education any changes the state superintendent requires, in which case the state board may, upon review, approve the contract without such changes.

(2) No contract shall be executed covering a period of time exceeding five (5) years. School districts shall advertise, bid and contract for all bus transportation service routes at a single time, and contract with the lowest responsible bidder or bidders meeting the specifications.

(3) Before entering into such contracts, the board of trustees shall invite bids by twice giving notice as provided in section 33-402 g., Idaho Code, and shall award the contract to the lowest responsible bidder.

Approved March 19, 2004.

CHAPTER 137
(S.B. No. 1408)

AN ACT

APPROPRIATING MONEYS FROM THE PERMANENT BUILDING FUND TO THE DIVISION OF PUBLIC WORKS FOR THE VARIOUS PURPOSES SPECIFIED; REAPPROPRIATING UNEXPENDED MONEYS TO THE DIVISION OF PUBLIC WORKS AND DIRECTING THEIR USE; EXPRESSING LEGISLATIVE INTENT CONCERNING THE USE OF MONEYS APPROPRIATED IN THIS ACT; EXEMPTING THE APPROPRIATIONS FROM THE PROVISIONS OF CHAPTER 36, TITLE 67, IDAHO CODE, AND FROM THE PROVISIONS OF SECTION 67-3516, IDAHO CODE; AND AUTHORIZING THE USE OF TAX ANTICIPATION NOTES.

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

SECTION 1. There is hereby appropriated from the Permanent Building Fund to the Division of Public Works the following amounts, or so much thereof as in each case may be necessary, for the purpose of paying the cost of any land, building, equipment, or the rebuilding, renovation or repair, of buildings, installations, facilities or structures at the places, institutions and agencies, or their successors, including those listed in this section. The Permanent Building Fund Advisory Council is hereby authorized and directed to anticipate revenues accruing to the Permanent Building Fund for the purpose of undertaking the construction, renovation, repair and acquisitions herein authorized, without delay, and to determine the priority of construction pursuant to which the work hereunder will be undertaken.

A. MAINTENANCE PROJECTS IN THE FOLLOWING AREAS:	$16,037,700
(1) Alterations and Repairs	
(2) Asbestos Abatement	
(3) Underground Storage Tank Program	
(4) Statewide ADA Compliance	
(5) Building Demolition	
(6) Capitol Mall Maintenance	
B. IDAHO STATE HISTORICAL SOCIETY:	$ 4,600,000
(1) Idaho History Center, Phase 2	

C. DEPARTMENT OF ADMINISTRATION/DEPARTMENT OF LABOR: $ 700,000
(1) Purchase Department of Labor Space in IFSOB

GRAND TOTAL $21,337,700

SECTION 2. There is hereby reappropriated from the Permanent Building Fund to the Division of Public Works the following amounts of unexpended moneys remaining from the appropriations made for the following projects:

(1) IDAHO STATE HISTORICAL SOCIETY:
Idaho Historical Society Library/Archives
Building Planning and Design
Section 2, Chapter 47, Laws of 1994 $ 800

(2) DEPARTMENT OF CORRECTION:
Community Work Center Building and Training
Academy Building
Section 1, Chapter 200, Laws of 1994 $ 5,741

(3) DEPARTMENT OF CORRECTION:
Project No. 1. Department of Correction for necessary infrastructure
improvements in conjunction with the addition to the
Maximum Security Institution
Section 2, Chapter 385, Laws of 1994 $ 1,784

(4) DEPARTMENT OF CORRECTION:
ISCI 500-bed Medium-security Facility
Section 2, Chapter 310, Laws of 1995 $3,311,034

(5) DEPARTMENT OF CORRECTION:
Inmate Housing - Givens Hall, Orofino
Section 2, Chapter 310, Laws of 1995 $ 36,740

(6) DEPARTMENT OF CORRECTION:
SICI Kitchen and Dining Room Enlargement
Section 3, Chapter 412, Laws of 1996 $ 33,666

(7) STATE BOARD OF EDUCATION:
Boise State University - Information Technology
Infrastructure (Planning)
Section 1, Chapter 262, Laws of 1999 $ 6,773

(8) STATE BOARD OF EDUCATION:
Eastern Idaho Technical College -
Library Expansion
Section 1, Chapter 456, Laws of 2000 $ 101,605

TOTAL $3,498,143

The Division of Public Works shall use the reappropriated amounts authorized by this section for alteration and repair projects included in Section 1 of this act.

SECTION 3. It is legislative intent that the moneys appropriated in this act may be made available for matching any allocation of moneys now in existence or hereafter made available by agencies of the United States and/or private donations; and it is further the express intention of the Legislature to authorize the Division of Public Works to expend, for the purpose of paying the cost of any land, building, equipment or the rebuilding, renovation or repair of buildings, moneys appropriated for public works to various agencies as part of the respective agency operating budgets; provided the express approval by the Permanent Build-

ing Fund Advisory Council is granted to make application for such moneys in each instance.

SECTION 4. All appropriations made herein shall be exempt from the provisions of Chapter 36, Title 67, and Section 67-3516, Idaho Code, but shall be available for expenditure only after allotment in accordance with the other provisions of Chapter 35, Title 67, Idaho Code, and all appropriations made hereunder shall be subject to the provisions of Section 67-5711, Idaho Code, except as otherwise provided herein.

SECTION 5. The State Treasurer is hereby authorized and directed to anticipate the revenues in the Permanent Building Fund by the issuance of tax anticipation notes in accordance with authority conferred in Sections 63-3201 through 63-3204, Idaho Code, and in accordance with the procedures and subject to the limitations provided in those sections, in the same manner as though the revenues in the General Fund were being anticipated.

Approved March 19, 2004.

CHAPTER 138
(S.B. No. 1410)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF VOCATIONAL REHABILITATION FOR FISCAL YEAR 2005; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO RESOURCE SHARING.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the Division of Vocational Rehabilitation the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

A. RENAL DISEASE:	
FROM:	
General Fund	$ 550,800
FOR:	
Operating Expenditures	$ 53,600
Trustee and Benefit Payments	497,200
TOTAL	$ 550,800
B. VOCATIONAL REHABILITATION:	
FROM:	
General Fund	$ 3,068,000
Federal Grants Fund	13,254,400
Rehabilitation Revenue and Refunds Fund	609,000
Miscellaneous Revenue Fund	408,100
TOTAL	$17,339,500

FOR:	
Personnel Costs	$ 7,173,100
Operating Expenditures	1,342,100
Trustee and Benefit Payments	8,824,300
TOTAL	$17,339,500
C. EPILEPSY SERVICES:	
FROM:	
General Fund	$ 70,300
FOR:	
Trustee and Benefit Payments	$ 70,300
D. INDEPENDENT LIVING COUNCIL:	
FROM:	
General Fund	$ 78,700
Federal Grants Fund	204,400
Miscellaneous Revenue Fund	19,100
TOTAL	$ 302,200
FOR:	
Personnel Costs	$ 112,100
Operating Expenditures	80,100
Trustee and Benefit Payments	110,000
TOTAL	$ 302,200
E. CSE WORK SERVICES:	
FROM:	
General Fund	$ 3,970,800
FOR:	
Personnel Costs	$ 100,000
Operating Expenditures	25,000
Trustee and Benefit Payments	3,845,800
TOTAL	$ 3,970,800
GRAND TOTAL	$22,233,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Vocational Rehabilitation is authorized no more than one hundred fifty (150) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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. RESOURCE SHARING. The legislature reaffirms that the Division of Professional-Technical Education, the Division of Vocational Rehabilitation and the Office of the State Board of Education each play unique and vital roles in the state's educational system. The Legislature authorizes these agencies to share administrative resources only to the extent necessary to achieve readily obtainable administrative efficiencies. The shared resources authorized in this section shall be narrowly defined as human resources, information technology, reception and the fiscal activities of accounts payable, payroll processing and financial statement and budget preparation. Each division administrator shall retain management decision-making autonomy over their respective divisions. The employees of the Division of Professional-Technical Education and the Division of Vocational Rehabilitation shall not be considered or

used as adjunct staff by the Office of the State Board of Education. Under no circumstances shall this arrangement impair the individual ability of these agencies to fulfill their individual missions. This authorization is automatically withdrawn to the extent it is found to be inconsistent with laws or regulations pertaining to the use of federal or dedicated funds. The Legislature shall review this authorization each year and reserve its prerogative to withdraw it at any time.

Approved March 19, 2004.

CHAPTER 139
(S.B. No. 1411)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR THE IDAHO STATE CAPITOL COMMISSION FOR FISCAL YEAR 2005; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR THE IDAHO STATE CAPITOL COMMISSION; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; DIRECTING TRANSFER OF MONEYS; AND DECLARING AN EMERGENCY FOR SECTIONS 2 AND 5 OF THIS ACT.

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

SECTION 1. There is hereby appropriated to the Department of Administration for the Idaho State Capitol Commission the following amounts to be expended according to the designated expense classes from the listed fund for the period July 1, 2004, through June 30, 2005:

IDAHO STATE CAPITOL COMMISSION:

FOR:	
Personnel Costs	$ 31,600
Operating Expenditures	97,300
TOTAL	$128,900
FROM:	
Capitol Endowment Income Fund	$128,900

SECTION 2. In addition to the appropriation made in Section 1, Chapter 319, Laws of 2003, and in Section 1 of this act, there is hereby appropriated to the Department of Administration for the Idaho State Capitol Commission the following amount to be expended according to the designated expense class from the listed fund for the period March 1, 2004, through June 30, 2005.

IDAHO STATE CAPITOL COMMISSION:

FOR:	
Capital Outlay	$2,006,900
FROM:	
Capital Endowment Income Fund	$2,006,900

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Idaho State Capitol Commission is authorized no more than one-tenth (0.1) full-time equivalent position at any point during the period July 1, 2004, through June 30, 2005, 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 4. There is hereby reappropriated to the Department of Administration for the Idaho State Capitol Commission the unexpended and unencumbered balance of any funds appropriated by Section 1, Chapter 319, Laws of 2003, to be used for nonrecurring expenditures only for the period July 1, 2004, through June 30, 2005.

SECTION 5. The State Controller is hereby directed to transfer on the effective date of this act, or as soon thereafter as is practicable, $2,750,000 from the Capitol Endowment Income Fund to the Capitol Permanent Endowment Fund.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, Sections 2 and 5 of this act shall be in full force and effect on and after passage and approval.

Approved March 19, 2004.

CHAPTER 140
(S.B. No. 1412)

AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER FOR FISCAL YEAR 2005; PRESCRIBING BILLING METHODOLOGIES FOR STATEWIDE ACCOUNTING AND STATEWIDE PAYROLL; REQUIRING CERTAIN PURCHASES BE SUBJECT TO CERTAIN CONDITIONS; REAPPROPRIATING UNEXPENDED AND UNENCUMBERED BALANCES FROM THE DATA PROCESSING SERVICES FUND; REAPPROPRIATING UNEXPENDED AND UNENCUMBERED BALANCES FROM THE GENERAL FUND; SETTING FORTH THE CONDITIONS FOR GENERAL FUND REAPPROPRIATION; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. ADMINISTRATION:			
FROM:			
General Fund	$ 402,500	$ 57,600	$ 460,100
II. STATEWIDE ACCOUNTING:			
FROM:			
General Fund	$1,451,500	$1,160,800	$ 2,612,300
III. STATEWIDE PAYROLL:			
FROM:			
General Fund	$1,211,200	$ 829,800	$ 2,041,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
IV. COMPUTER CENTER:			
FROM:			
Data Processing Services Fund	$3,683,300	$2,273,900	$ 5,957,200
GRAND TOTAL	$6,748,500	$4,322,100	$11,070,600

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, 2005, 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, 2004, through June 30, 2005, are to be submitted to and coordinated with the Information Technology Resource Management Council.

SECTION 4. There is hereby reappropriated to the State Controller, the unexpended and unencumbered cash balance of any appropriation made to the State Controller from the Data Processing Services Fund for fiscal year 2004, to be used for nonrecurring expenditures only for the period July 1, 2004, through June 30, 2005.

SECTION 5. There is hereby reappropriated to the State Controller, the unexpended and unencumbered cash balance of any appropriation made to the State Controller from the General Fund for fiscal year 2004, to be used for nonrecurring expenditures only for the period July 1, 2004, through June 30, 2005. Provided however, that such reappropriated amount shall not exceed $150,000, and shall be used to modernize the Statewide Accounting and Reporting System.

SECTION 6. The reappropriation granted in Section 5 of this act is subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is zero, the reappropriation of General Fund money in Section 5 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount of General Fund moneys reappropriated in Section 5 of this act shall be in the proportion that the General Fund reappropriation for the State Controller bears to the total General Fund reappropriation authority granted to all state agencies.

SECTION 7. 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, 2004, through June 30, 2005, 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 19, 2004.

CHAPTER 141
(S.B. No. 1413)

AN ACT

APPROPRIATING MONEYS FOR THE AGRICULTURAL RESEARCH AND COOPERATIVE EXTENSION SERVICE PROGRAM FOR FISCAL YEAR 2005; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED BALANCES; AND SETTING FORTH CONDITIONS FOR REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Board of Regents of the University of Idaho for the Agricultural Research and Cooperative Extension Service Program the following amounts from the listed funds for the period July 1, 2004, through June 30, 2005:

FROM:	
General Fund	$24,679,100
Equine Education Fund	136,100
Federal Grant Fund	4,599,500
Miscellaneous Revenue Fund	181,900
TOTAL	$29,596,600

SECTION 2. There is hereby reappropriated to the Board of Regents of the University of Idaho for the Agricultural Research and Cooperative Extension Service, subject to the provisions of Section 3 of this act, the unexpended and unencumbered balance of any appropriation contained in Section 1, Chapter 365, Laws of 2003, to be used for nonrecurring expenditures, for the period July 1, 2004, through June 30, 2005.

SECTION 3. The reappropriation for the General Fund moneys granted in Section 2 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is zero, the reappropriation for the General Fund moneys in Section 2 is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, that amount reappropriated in Section 2 of this act shall be in the proportion that the reappropriation for the Office of the State Board of Education bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 19, 2004.

CHAPTER 142
(S.B. No. 1414)

AN ACT

APPROPRIATING MONEYS FOR PROFESSIONAL-TECHNICAL EDUCATION FOR FISCAL YEAR 2005; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED BALANCES; SETTING FORTH THE CONDITIONS FOR REAPPROPRIATION; AND EXPRESSING LEGISLATIVE INTENT REGARDING RESOURCE SHARING.

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

SECTION 1. There is hereby appropriated to the State Board for Professional-Technical Education the following amounts to be expended by the Division of Professional-Technical Education for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
I. STATE LEADERSHIP AND TECHNICAL ASSISTANCE:					
FROM:					
General Fund	$1,584,500	$239,600			$ 1,824,100
Federal Grant Fund	307,900	36,400			344,300
TOTAL	$1,892,400	$276,000			$ 2,168,400
II. GENERAL PROGRAMS:					
FROM:					
General Fund	$ 218,300	$ 37,800	$10,274,200		$10,530,300
Hazardous Materials/ Waste Enforcement Fund			68,800		68,800
Federal Grant Fund	159,400	15,000	4,950,600		5,125,000
TOTAL	$ 377,700	$ 52,800	$15,293,600		$15,724,100
III. POSTSECONDARY PROGRAMS:					
FROM:					
General Fund				$33,102,600	$33,102,600
Unrestricted Current Fund				371,900	371,900
TOTAL				$33,474,500	$33,474,500
IV. UNDERPREPARED ADULTS/DISPLACED HOMEMAKERS:					
FROM:					
General Fund			$ 234,600		$ 234,600
Displaced Homemaker Fund			170,000		170,000
Federal Grant Fund			2,048,800		2,048,800
TOTAL			$ 2,453,400		$ 2,453,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
GRAND TOTAL	$2,270,100	$328,800	$17,747,000	$33,474,500	$53,820,400

SECTION 2. There is hereby reappropriated to the State Board for Professional-Technical Education for the Division of Professional-Technical Education, subject to the provisions of Section 3 of this act, the unexpended and unencumbered balance of any appropriation contained in Section 1, Chapter 368, Laws of 2003, to be used for nonrecurring expenditures, for the period July 1, 2004, through June 30, 2005.

SECTION 3. The reappropriation for the General Fund moneys granted in Section 2 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is zero, the reappropriation for the General Fund moneys in Section 2 is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, that amount reappropriated in Section 2 of this act shall be in the proportion that the reappropriation for the State Board of Education bears to the total General Fund reappropriation authority granted to all state agencies.

SECTION 4. The Legislature reaffirms that the Division of Professional-Technical Education, the Division of Vocational Rehabilitation and the Office of the State Board of Education each play unique and vital roles in the state's educational system. The Legislature authorizes these agencies to share administrative resources only to the extent necessary to achieve readily obtainable administrative efficiencies. The shared resources authorized in this section shall be narrowly defined as human resources, information technology, reception and the fiscal activities of accounts payable, payroll processing and financial statement and budget preparation. Each division administrator shall retain management decision-making autonomy over their respective divisions. The employees of the Division of Professional-Technical Education and the Division of Vocational Rehabilitation shall not be considered or used as adjunct staff by the Office of the State Board of Education. Under no circumstances shall this arrangement impair the individual ability of these agencies to fulfill their individual missions. This authorization is automatically withdrawn to the extent it is found to be inconsistent with laws or regulations pertaining to the use of federal or dedicated funds. The Legislature shall review this authorization each year and reserves its prerogative to withdraw it at any time.

Approved March 19, 2004.

CHAPTER 143
(S.B. No. 1232, As Amended)

AN ACT

RELATING TO AQUACULTURE OPERATIONS; AMENDING CHAPTER 70, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-7041, IDAHO CODE, TO PROHIBIT DAMAGE TO AQUACULTURE OPERATIONS, TO SET FORTH PENALTIES, TO PROVIDE FOR COURT-ORDERED RESTITUTION AND TO PERMIT CIVIL REMEDIES.

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

SECTION 1. That Chapter 70, 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 18-7041, Idaho Code, and to read as follows:

18-7041. DAMAGE TO AQUACULTURE OPERATIONS. (1) It is unlawful for any person to knowingly transfer, damage, vandalize, poison, or knowingly attempt to transfer, damage, vandalize or poison the product or facilities of a posted commercial aquaculture operation in Idaho, or to knowingly release or knowingly allow another person to release any poisonous or dangerous substance that comes in contact with any species in production in an aquaculture operation and causes damage to either the species in production or the aquaculture facility itself.

(2) Any person or persons violating any provision of this section when the value of the damage to either the species in production or the aquaculture facility itself is one thousand dollars ($1,000) or less shall be guilty of a misdemeanor. Any person or persons violating any provisions of this section when the value of the damage to either the species in production or the aquaculture facility itself is in excess of one thousand dollars ($1,000) shall be guilty of a felony and upon conviction thereof shall be punished by a term of imprisonment of not more than twenty (20) years or by a fine not in excess of ten thousand dollars ($10,000), or by both such fine and imprisonment.

(3) Nothing in this section shall be construed to limit the court's power to order restitution equal to the extent of the damage suffered by the aquaculture operation.

(4) Nothing in this section shall be construed to limit an aquaculture operation from proceeding in a civil action to seek any lawful civil remedy.

Approved March 23, 2004.

CHAPTER 144
(S.B. No. 1298)

AN ACT

RELATING TO SOLID WASTE DISPOSAL SYSTEMS; AMENDING SECTION 31-4403, IDAHO CODE, TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS TO OPERATE AND MAINTAIN SYSTEMS BY EXCLUSIVE OR NONEXCLUSIVE MEANS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 50-344, IDAHO CODE, TO AUTHORIZE CITIES TO OPERATE AND MAINTAIN SYSTEMS BY EXCLUSIVE OR NONEXCLUSIVE MEANS.

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

SECTION 1. That Section 31-4403, Idaho Code, be, and the same is hereby amended to read as follows:

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

(1) Employees, facilities, equipment and supplies hired by or acquired by the board of county commissioners;

(2) Contracts, franchises or otherwise, entered into by the board to have the maintenance and operation performed by private persons;

(3) Contracts entered into by the board to have the maintenance and operation performed by another unit of government;

(4) Contracts, franchises or otherwise, granted pursuant to law by the board, for all or any part or parts of the county;

(5) Any combination of subsections (1), (2), (3), and (4) of this section;

(6) Notwithstanding any other provision of law to the contrary, in order to provide for the public health, safety, and well-being, the board of county commissioners and/or another unit of state government, may determine whether solid waste disposal systems services are to be provided by means of a contract, franchise or otherwise, provided for under subsection (2) of this section, or any contract, franchise or otherwise, awarded under subsection (4) of this section, with or without compulsory competitive bidding;

(7) The board of county commissioners before entering into such contracts, franchises or otherwise may require such security for the performance thereof as it deems appropriate or may waive such undertaking.

SECTION 2. That Section 50-344, Idaho Code, be, and the same is hereby amended to read as follows:

50-344. SOLID WASTE DISPOSAL. (1) Cities shall have the power to maintain and operate solid waste collection systems. Such maintenance and operation may, by exclusive or nonexclusive means, be performed by:

(a) Employees, facilities, equipment and supplies engaged or acquired by cities;

(b) Contracts, franchises or otherwise providing maintenance and operation performed by private persons;

(c) Contracts providing for maintenance and operation performed by another unit of government;

(d) Contracts, franchises or otherwise for maintenance and operation that may provide solid waste collection for all or geographic parts of a city;

(e) Any combination of paragraphs (a), (b), (c), and (d) of this section.

(2) Upon a finding by the mayor or city manager for public safety or necessary protection of public health and welfare and property, the provisions of section 50-341, Idaho Code, shall not apply to solid waste collection, as provided herein.

(3) Before entering into such contracts, franchises or otherwise, a city may require such security for the performance thereof as it deems appropriate or may waive such undertaking.

Approved March 23, 2004.

CHAPTER 145
(S.B. No. 1302)

AN ACT

RELATING TO GUARDIANS OF MINORS; AMENDING SECTION 15-5-207, IDAHO CODE, TO REVISE PROCEDURES RELATING TO COURT APPOINTMENT OF GUARDIANS OF MINORS TO PROVIDE FOR DE FACTO CUSTODIANS, TO REQUIRE THE COURT TO APPOINT AN ATTORNEY FOR A MINOR UPON THE FILING OF A PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE MINOR, TO PROVIDE FOR THE POWERS AND DUTIES OF THE ATTORNEY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING PART 2, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-213, IDAHO CODE, TO PROVIDE FOR DE FACTO CUSTODIANS.

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

SECTION 1. That Section 15-5-207, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. Proceedings for the appointment of a guardian may be initiated by any relative of the minor, the minor if he is fourteen (14) years of age, a de facto custodian of the minor, or any person interested in the welfare of the minor.

(a) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-1-401 of this code to:

(1) T~~t~~he minor, if he is fourteen (14) or more years of age;

(2) T~~t~~he person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition; ~~and~~

(3) The de facto custodian of the minor, if any; and

(4) A~~a~~ny living parent of the minor.

(b) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204 of this P~~p~~art have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(c) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(d) ~~If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may~~ Upon the filing of a petition, the court shall appoint an attorney

to represent the minor, ~~giving consideration to the preference of the minor if the minor is fourteen (14) years of age or older~~ who shall have the powers and duties of a guardian ad litem.

(e) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

SECTION 2. That Part 2, Chapter 5, 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 15-5-213, Idaho Code, and to read as follows:

15-5-213. DE FACTO CUSTODIAN. (1) "De facto custodian" means a person who has been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older.

(2) If a person meets the definition of a de facto custodian, the court shall give the person the same standing that is given to each parent under this act.

Approved March 23, 2004.

CHAPTER 146
(S.B. No. 1313, As Amended)

AN ACT

RELATING TO BONDED WAREHOUSES; AMENDING CHAPTER 2, TITLE 69, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 69-213A, IDAHO CODE, TO PROVIDE FOR ANNUAL NOTIFICATION BY EVERY LICENSED WAREHOUSEMAN TO EACH INDIVIDUAL HAVING AN INTEREST IN CERTAIN AGRICULTURAL COMMODITIES STORED IN THEIR WAREHOUSE OR HAVING AN INTEREST IN ANY OPEN CREDIT SALES CONTRACT RELATED TO AN AGRICULTURAL COMMODITY WITH THE WAREHOUSEMAN FOR THE PURPOSE OF CONFIRMING SUCH INTEREST, TO PROVIDE REQUIREMENTS RELATING TO THE NOTIFICATION, TO PROVIDE FOR CERTAIN VOLUNTARY ANNUAL NOTIFICATION AND TO PROVIDE AN EXCEPTION TO NOTIFICATION REQUIREMENTS.

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

SECTION 1. That Chapter 2, Title 69, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 69-213A, Idaho Code, and to read as follows:

69-213A. ANNUAL NOTIFICATION. Beginning in the year 2005, on or before December 1 of each year, every licensed warehouseman shall send written notification to each individual having an interest in any agricultural commodity stored in their warehouse for a period of thirty-six (36) months or more, or having an interest in any open credit sales contract related to an agricultural commodity with the warehouseman, for the purpose of confirming said interest, which notification shall include the name of the individual, and the type and measurement of the agricultural commodity. Notification shall be sent by United States

mail, postage prepaid to the last known address of each individual. Warehousemen shall maintain a record of the names and addresses of the individuals to whom notification was sent. A warehouseman may voluntarily elect to provide annual notification to any individual having an interest in any agricultural commodity stored in their warehouse for a period of less than thirty-six (36) months. Notwithstanding any other provision of this section, a warehouseman shall not be required to send annual notification to any individual having an interest in any agricultural commodity stored in their warehouse that was produced on lands owned by an Indian tribe as defined in section 67-4001, Idaho Code.

Approved March 23, 2004.

CHAPTER 147
(S.B. No. 1367)

AN ACT

RELATING TO LATERAL DITCHES; AMENDING CHAPTER 13, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1310, IDAHO CODE, TO AUTHORIZE REPAIRS, IMPROVEMENTS AND MAINTENANCE BY AN IRRIGATION DELIVERY ENTITY UNDER CONDITIONS SPECIFIED.

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

SECTION 1. That Chapter 13, 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 42-1310, Idaho Code, and to read as follows:

42-1310. LATERAL DITCHES -- REPAIRS, IMPROVEMENTS AND MAINTENANCE BY IRRIGATION DELIVERY ENTITIES. In the event that a water users' association of lateral or laterals has not been constituted on a particular lateral or distributing ditch pursuant to this chapter, any individual water user taking water from a canal or reservoir to be conveyed to their respective premises for any distance through such lateral or distributing ditch may authorize the irrigation delivery entity providing water to the lateral or ditch to perform any necessary repairs, improvements, or maintenance to the lateral or ditch. The irrigation delivery entity may agree to perform such work only if it has duly adopted a bylaw authorizing such work to be done for its individual water users, or adopts a resolution authorizing the work. In performing such work, the irrigation delivery entity shall have the same rights and privileges to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the lateral or ditch, and to perform such work, as does the individual water user authorizing the work. By performing such work, the irrigation delivery entity does not assume ownership of the lateral or ditch, or responsibility for or incur liability for any injury to person or property caused by an act or omission of the individual water user authorizing the work, or of any other person. When such work has been authorized, the irrigation entity shall assess the individual water user for the annual cost of any necessary repairs, improvements, or maintenance performed on the lateral or ditch, in addition to the assessments that are levied for the delivery of water

to the individual water user, and the same provisions shall apply with regard to delinquent assessments as in the case of assessments levied for the delivery of water. Nothing in this section shall affect the authority of a water users' association of lateral or laterals from assessing its members for work authorized under this chapter.

Approved March 23, 2004.

CHAPTER 148
(S.B. No. 1372)

AN ACT

RELATING TO INDEPENDENT EXPENDITURES; AMENDING SECTION 67-6611, IDAHO CODE, TO PROVIDE THE TIME IN WHICH WRITTEN STATEMENTS SETTING FORTH CERTAIN EXPENDITURES MUST BE FILED WITH THE SECRETARY OF STATE; AND DECLARING AN EMERGENCY.

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~~ more than forty-eight (48) hours from the time of such expenditure. The statement shall include the information required in subsection (3) of this section.

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

Approved March 23, 2004.

CHAPTER 149
(S.B. No. 1393, As Amended)

AN ACT

RELATING TO COMMUNITY SERVICE WORK; AMENDING SECTION 72-102, IDAHO CODE, TO REVISE THE DEFINITION FOR "COMMUNITY SERVICE WORKER"; AMENDING SECTION 20-245, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE, TO SET FORTH PROVISIONS APPLICABLE TO OFFENDER LABOR ON COMMUNITY SERVICE PROJECTS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CHANGES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 72-102, Idaho Code, be, and the same is hereby amended to read as follows:

72-102. DEFINITIONS. Words and terms used in the worker's compensation law, unless the context otherwise requires, are defined in the subsections which follow:

(1) "Alien" means a person who is not a citizen, a national or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien.

(2) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this law.

(3) "Burial expenses" means a sum, not to exceed six thousand dollars ($6,000) for funeral and burial or cremation, together with the actual expenses of transportation of the employee's body to his place of residence within the United States or Canada.

(4) "Commission" means the industrial commission.

(5) "Community service worker" means:

(a) Aany person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter 5, title 20, Idaho Code, and who has been informally diverted under the provisions of section 20-511, Idaho Code, or any person or youth who has been diverted from the criminal or juvenile justice system and who performs a public service for any department, institution, office, college, university, authority, division, board, bureau, commission, council, or other entity of the state, or any city, county, school district, irrigation district or other taxing district authorized to levy a tax or an assessment or any other political subdivision or any private not-for-profit agency which has elected worker's compensation insurance coverage for such person; or

(b) Parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the board of correction who are performing public service or community service work for any of the entities specified in paragraph (5)(a) of this section other than the department of correction.

(6) "Compensation" used collectively means any or all of the income benefits and the medical and related benefits and medical services.

(7) "Custom farmer" means a person who contracts to supply operated

equipment to a proprietor of a farm for the purpose of performing part or all of the activities related to raising or harvesting agricultural or horticultural commodities.

(8) "Death" means death resulting from an injury or occupational disease.

(9) Dependency limitations.

(a) "Adopted" and "adoption" include cases where persons are treated as adopted as well as those of legal adoption unless legal adoption is specifically provided.

(b) "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption.

(c) "Child" includes adopted children, posthumous children, and acknowledged illegitimate children, but does not include stepchildren unless actually dependent.

(d) "Grandchild" includes children of legally adopted children and children of stepchildren, but does not include stepchildren of children, stepchildren of stepchildren, or stepchildren of adopted children unless actually dependent.

(e) "Parent" includes stepparents and parents by adoption.

(f) "Grandparent" includes parents of parents by adoption, but does not include parents of stepparents, stepparents of parents, or stepparents of stepparents.

(10) "Disability," for purposes of determining total or partial temporary disability income benefits, means a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided in section 72-430, Idaho Code.

(11) "Employee" is synonymous with "workman" and means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. It does not include any person engaged in any of the excepted employments enumerated in section 72-212, Idaho Code, unless an election as provided in section 72-213, Idaho Code, has been filed. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to his dependents as herein defined, if the context so requires, or, where the employee is a minor or incompetent, to his committee or guardian or next friend.

(12) (a) "Employer" means any person who has expressly or impliedly hired or contracted the services of another. It includes contractors and subcontractors. It includes the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is secured, it means his surety so far as applicable.

(b) "Professional employer" means a professional employer as defined in chapter 24, title 44, Idaho Code.

(c) "Temporary employer" means the employer of temporary employees as defined in section 44-2403(7), Idaho Code.

(d) "Work site employer" means the client of the temporary or professional employer with whom a worker has been placed.

(13) "Farm labor contractor" means any person or his agent or subcontractor who, for a fee, recruits and employs farm workers and per-

forms any farm labor contracting activity.

(14) "Gender and number." The masculine gender includes the feminine and neuter; "husband" or "wife" includes "spouse"; the singular number includes plural and the plural the singular.

(15) "Income benefits" means payments provided for or made under the provisions of this law to the injured employee disabled by an injury or occupational disease, or his dependents in case of death, excluding medical and related benefits.

(16) "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished. For the purposes of worker's compensation law, a custom farmer is considered to be an independent contractor.

(17) "Injury" and "accident."

(a) "Injury" means a personal injury caused by an accident arising out of and in the course of any employment covered by the worker's compensation law.

(b) "Accident" means an unexpected, undesigned, and unlooked for mishap, or untoward event, connected with the industry in which it occurs, and which can be reasonably located as to time when and place where it occurred, causing an injury.

(c) "Injury" and "personal injury" shall be construed to include only an injury caused by an accident, which results in violence to the physical structure of the body. The terms shall in no case be construed to include an occupational disease and only such nonoccupational diseases as result directly from an injury.

(18) "Manifestation" means the time when an employee knows that he has an occupational disease, or whenever a qualified physician shall inform the injured worker that he has an occupational disease.

(19) "Medical and related benefits" means payments provided for or made for medical, hospital, burial and other services as provided in this law other than income benefits.

(20) "Medical services" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicines, apparatus, appliances, prostheses, and related services, facilities and supplies.

(21) "Occupational diseases."

(a) "Occupational disease" means a disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and peculiar to the trade, occupation, process, or employment, but shall not include psychological injuries, disorders or conditions unless the conditions set forth in section 72-451, Idaho Code, are met.

(b) "Contracted" and "incurred," when referring to an occupational disease, shall be deemed the equivalent of the term "arising out of and in the course of" employment.

(c) "Disablement," except in the case of silicosis, means the event of an employee's becoming actually and totally incapacitated because of an occupational disease from performing his work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.

(d) "Disablement," in the case of silicosis, means the event of first becoming actually incapacitated, because of such disease, from

performing any work in any remunerative employment; and "disability" means the state of being so incapacitated.

(e) "Silicosis" means the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO_2) dust.

(22) "Outworker" means a person to whom articles or materials are furnished to be treated in any way on premises not under the control or management of the person who furnished them.

(23) "Person" means the state or any political subdivision thereof, or any individual, partnership, firm, association, trust, corporation, including the state insurance fund, or any representative thereof.

(24) "Physician" means medical physicians and surgeons, ophthalmologists, otorhinolaryngologists, dentists, osteopaths, osteopathic physicians and surgeons, optometrists, podiatrists, chiropractic physicians, and members of any other healing profession licensed or authorized by the statutes of this state to practice such profession within the scope of their practice as defined by the statutes of this state and as authorized by their licenses.

(25) "Secretary" means the secretary of the commission.

(26) "Self-insurer" means an employer who has been authorized under the provisions of this law to carry his own liability to his employees covered by this law.

(27) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.

(28) "Surety" means any insurer authorized to insure or guarantee payment of worker's compensation liability of employers in any state; it also includes the state insurance fund, a self-insurer and an inter-insurance exchange.

(29) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone and the territories of the United States.

(30) "Wages" and "wage earning capacity" prior to the injury or disablement from occupational disease mean the employee's money payments for services as calculated under section 72-419, Idaho Code, and shall additionally include the reasonable market value of board, rent, housing, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as part of his remuneration, and gratuities received in the course of employment from others than the employer. "Wages" shall not include sums which the employer has paid to the employee to cover any special expenses entailed on him by the nature of his employment.

(31) "Wages" and "wage earning capacity" after the injury or disablement from occupational disease shall be presumed to be the actual earnings after the injury or disablement, which presumption may be overcome by showing that those earnings do not fairly and reasonably represent wage earning capacity; in such a case wage earning capacity shall be determined in the light of all factors and circumstances which may affect the worker's capacity to earn wages.

(32) "Work experience student" means any person enrolled in the public school districts of this state and who, as part of his instruction, is enrolled in a class or program for academic credit and for which the student is employed by, or works for, a private or governmental entity. The student need not receive wages from the private or governmental entity in order to be classified as a work experience student.

(33) "Worker's compensation law" or "workmen's compensation law" means and includes the worker's compensation law of this state and any like or similar law of any state, United States, territory, or province of Canada.

SECTION 2. That Section 20-245, Idaho Code, be, and the same is hereby amended to read as follows:

20-245. ~~CONVICT--LABOR ON STATE PROJECTS WITHIN OR OUTSIDE OF PENITENTIARY----SALE OF PRODUCTS~~ OFFENDER LABOR ON STATE AND COMMUNITY SERVICE PROJECTS. (1) Offender labor on state projects. The state board of correction shall have the authority to use, under such rules ~~and regulations~~ as they may prescribe, the labor of ~~convicts~~ offenders either within or without the walls of the penitentiary and on all public works done under the direct control of the state; that ~~convict~~ offender labor under control of the state board of correction shall manufacture and repair state highway signs, except for highways and projects where ~~F~~federal regulations would prohibit the use of signs so manufactured; provided, that so far as practicable any manufacture conducted within the walls shall be in connection with metal motor license plates, road or street signs furnished by the state or used by its municipalities, wearing apparel, articles~~,~~ and containers, for state use in the various departments or institutions of the state not for sale upon the open market. When any product produced by the ~~convict~~ offender shall be used by any department or other institution of the state, the current appropriation shall receive from such department or institution such reimbursement therefor as may be fixed by the state board of correction with the approval of the state board of examiners.

(2) Offender labor on community service projects. The state board of correction shall have the authority to assign parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the board of correction, as community service workers as set forth in section 72-102(5), Idaho Code. The state board of correction shall have the authority to charge offenders performing community service work an hourly fee in an amount to be determined by the state insurance fund, to be remitted to the state insurance fund for purposes of providing worker's compensation insurance for parolees, probationers or community work center residents assigned as community service workers.

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

Approved March 23, 2004.

CHAPTER 150
(S.B. No. 1415)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 2005; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE WATER RESOURCES ADJUDICATION FUND; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO A RATHDRUM PRAIRIE AQUIFER STUDY; REAPPROPRIATING UNEXPENDED AND UNENCUMBERED BALANCES FROM THE GENERAL FUND; AND SETTING FORTH CONDITIONS FOR GENERAL FUND REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Department of Water Resources the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT SERVICES:					
FROM:					
General Fund	$ 883,400	$ 518,200			$ 1,401,600
Indirect Cost Recovery Fund	277,800	131,600			409,400
Water Administration Fund	28,500	21,400			49,900
Miscellaneous Revenue Fund		240,000			240,000
Petroleum Price Violation Fund		120,000			120,000
TOTAL	$ 1,189,700	$1,031,200			$ 2,220,900
II. PLANNING AND TECHNICAL SERVICES:					
FROM:					
General Fund	$ 1,909,400	$ 525,800		$ 894,800	$ 3,330,000
Indirect Cost Recovery Fund	107,600	12,600			120,200
Miscellaneous Revenue Fund		373,300			373,300
Federal Grant Fund	420,700	1,823,200			2,243,900
TOTAL	$ 2,437,700	$2,734,900		$ 894,800	$ 6,067,400
III. ENERGY RESOURCES:					
FROM:					
General Fund	$ 34,200	$ 2,900			$ 37,100
Indirect Cost Recovery Fund	48,000	136,500			184,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	92,500	593,100			685,600
Petroleum Price Violation Fund	594,700	1,500,000	$12,000		2,106,700
Federal Grant Fund	503,700	562,900	12,000		1,078,600
TOTAL	$ 1,273,100	$2,795,400	$24,000		$ 4,092,500
IV. SNAKE RIVER BASIN ADJUDICATION:					
FROM:					
General Fund	$ 1,883,200	$ 865,200			$ 2,748,400
Water Resources Adjudication Fund		203,500		$ 500,000	703,500
TOTAL	$ 1,883,200	$1,068,700		$ 500,000	$ 3,451,900
V. WATER MANAGEMENT:					
FROM:					
General Fund	$ 2,424,800	$ 499,900			$ 2,924,700
Indirect Cost Recovery Fund	48,700	4,600			53,300
Water Administration Fund	867,300	205,400			1,072,700
Miscellaneous Revenue Fund	599,200	167,500			766,700
Federal Grant Fund	263,900	189,600			453,500
TOTAL	$ 4,203,900	$1,067,000			$ 5,270,900
GRAND TOTAL	$10,987,600	$8,697,200	$24,000	$1,394,800	$21,103,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Water Resources is authorized no more than one hundred seventy-five (175) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 the provisions of Section 39-3630, Idaho Code, the State Controller is hereby directed to transfer $456,400 from the Water Pollution Control Fund to the Water Resources Adjudication Fund for the period July 1, 2004, through June 30, 2005. The State Controller shall coordinate cash transfers with the Department of Environmental Quality and the Department of Water Resources to minimize potential cash flow problems.

SECTION 4. With the assistance of the state of Idaho and the state of Washington, the United States Geological Survey is conducting a study

of the Rathdrum Prairie Aquifer. It is legislative intent that the Department of Water Resources provide Idaho's match to ensure the timely completion of this study. The match requirements may be met through technical assistance or other in-kind services, and if necessary, through actual dollars within the department's current budget.

SECTION 5. There is hereby reappropriated to the Department of Water Resources, the unexpended and unencumbered cash balance of any appropriation made to the Department of Water Resources from the General Fund for fiscal year 2004, to be used for nonrecurring expenditures only for the period July 1, 2004, through June 30, 2005.

SECTION 6. The reappropriation granted in Section 5 of this act is subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is zero, the reappropriation of General Fund money in Section 5 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 2004, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount of General Fund money reappropriated in Section 5 of this act shall be in the proportion that the General Fund reappropriation for the Department of Water Resources bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 23, 2004.

CHAPTER 151
(S.B. No. 1417)

AN ACT

RELATING TO ANIMAL DISEASE CONTROL; AMENDING SECTION 25-207A, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF FISH AND GAME SHALL COOPERATE WITH THE DIVISION OF ANIMAL INDUSTRIES REGARDING SPACIAL SEPARATION OF BIG GAME AND LIVESTOCK IN CERTAIN AREAS.

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

SECTION 1. That Section 25-207A, Idaho Code, be, and the same is hereby amended 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) <u>The Idaho department of fish and game shall cooperate with the division regarding spacial separation of big game and livestock in any areas designated by the division as requiring disease control methods.</u>

(4) 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.

(5) 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 23, 2004.

CHAPTER 152
(S.B. No. 1422, As Amended)

AN ACT

RELATING TO REGIONAL PUBLIC TRANSPORTATION AUTHORITIES; AMENDING SECTION 40-2113, IDAHO CODE, TO PROVIDE THAT AUTHORITIES ARE EXEMPT FROM TAXATION ON SPECIAL FUELS USED IN MOTOR VEHICLES OWNED OR LEASED AND OPERATED BY AUTHORITIES AND TO PROVIDE THAT AUTHORITIES SHALL BE ENTITLED TO CREDITS AND REFUNDS AS PROVIDED IN FUELS TAX LAW FOR POLITICAL SUBDIVISIONS OF THE STATE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 40-2113, Idaho Code, be, and the same is hereby amended to read as follows:

40-2113. EXEMPTION FROM TAXATION. It is hereby found, determined and declared that the creation of a regional public transportation authority is in all respects for the benefit of the people of the state of Idaho, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and that projects and services operated by authorities are essential parts of the public transportation system, and that such authorities will be performing essential governmental functions in the exercise of the powers conferred upon them by this chapter. The state of Idaho declares that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdiction, control, possession, or supervision or upon the activities of authorities in the operation and maintenance of projects and services, or upon any charges, fees, revenues, or other income received by authorities, ~~except motor vehicle fuel and aviation fuel taxes~~ or upon special fuels used in motor vehicles owned or leased and operated by authorities, and that the bonds of authorities and the income therefrom shall at all times be exempt from taxation. Regional public transportation authorities created pursuant to this chapter shall be exempt from the sales tax imposed under the provisions of section 63-3621, Idaho Code, ~~and~~ shall be issued a tax exemption certificate as provided for in section 63-3622, Idaho Code, and shall be entitled to such credits and refunds as other political subdivisions of the state of Idaho are entitled under section 63-2423, 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 July 1, 2002.

Approved March 23, 2004.

CHAPTER 153
(S.B. No. 1423)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Juvenile Corrections the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General Fund	$ 1,855,900	$ 726,200			$ 2,582,100
Miscellaneous Revenue Fund	62,100	18,000	$15,000		95,100
TOTAL	$ 1,918,000	$ 744,200	$15,000		$ 2,677,200
II. COMMUNITY SERVICES:					
FROM:					
General Fund	$ 583,200	$ 90,200		$ 3,400,900	$ 4,074,300
Juvenile Corrections - Cigarette/Tobacco Tax Fund				4,550,000	4,550,000
Juvenile Corrections Fund	38,900	68,500			107,400
Federal Grant Fund	41,300	100,000			141,300
Miscellaneous Revenue Fund				30,000	30,000
TOTAL	$ 663,400	$ 258,700		$ 7,980,900	$ 8,903,000
III. INSTITUTIONS:					
FROM:					
General Fund	$13,559,000	$1,205,600		$10,706,000	$25,470,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
State Juvenile Corrections Center Fund		945,600			945,600
Federal Grant Fund	333,100	94,500	$ 3,100	1,110,000	1,540,700
Miscellaneous Revenue Fund		462,000		570,000	1,032,000
TOTAL	$13,892,100	$2,707,700	$ 3,100	$12,386,000	$28,988,900
IV. JUVENILE JUSTICE COMMISSION:					
FROM:					
General Fund	$ 88,600	$ 20,500		$ 37,000	$ 146,100
Federal Grant Fund	264,300	345,300		3,460,600	4,070,200
TOTAL	$ 352,900	$ 365,800		$ 3,497,600	$ 4,216,300
GRAND TOTAL	$16,826,400	$4,076,400	$18,100	$23,864,500	$44,785,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Juvenile Corrections is authorized no more than three hundred forty-four and twenty-five hundredths (344.25) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 154
(H.B. No. 511)

AN ACT

RELATING TO THE STATE BOARD OF LAND COMMISSIONERS; AMENDING SECTION 58-104, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF LAND COMMISSIONERS SHALL HAVE POWER TO SOLICIT BIDS AND CONTRACT FOR WORK TO BE PERFORMED.

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

SECTION 1. That Section 58-104, Idaho Code, be, and the same is hereby amended to read as follows:

58-104. STATE LAND BOARD -- POWERS AND DUTIES. The state board of land commissioners shall have power:

1. To exercise the general direction, control and disposition of the public lands of the state.

2. To appoint its executive officer, the director of the department of lands.

3. To perform legislative functions not inconsistent with law and to delegate to its executive officer and his assistants the execution of all policies adopted by it.

4. To review upon appeal all decisions of the director of the department of lands in contested matters.

5. To determine the policy, direct the work to be undertaken, solicit bids, contract for work to be performed, and appropriate from its funds the money necessary to carry out such work.

6. To prescribe rules, not inconsistent with law, for the government of the department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use and preservation of the records, papers, books, documents, and property pertaining thereto.

7. To engage in reseeding and reforestation programs on the public lands of the state.

8. To exchange any public lands of the state, over which the board has power of disposition and control for lands of equal value, the title to which, or power of disposition, belongs or is vested in the governing body or board of trustees of any state governmental unit, agency or institution.

9. To regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided, that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands; except that when necessary to provide for the highest and best use of such lands for commercial, navigational, recreational or other public purposes, the board may acquire the riparian or littoral rights of upland owners by purchase or gift. The term "natural or ordinary high water mark" as herein used shall be defined to be the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. Provided that this definition shall not be construed so as to affect or change the vested property rights of either the state of Idaho or of riparian or littoral property owners. Lands lying below the meander line of a lake bed encompassing a national wildlife refuge as established under the authority of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222), as amended, or the Fish and Wildlife Coordination Act (48 Stat. 401), as amended, or the Fish and Wildlife Act of 1956 (70 Stat. 1119), as amended (16 USC 742a through 742i), are not subject to the application of this act.

10. To enter into a joint exercise of powers agreement with the United States forest service in the department of agriculture, pursuant to section 67-2328, Idaho Code.

11. To direct and oversee the conduct and operations of the endowment fund investment board and the Idaho department of lands.

12. To appoint and consult with expert advisors for each critical function for which the state board of land commissioners has responsibility. In this context, the term "expert advisor" shall mean a person engaged in the business for which he holds himself out to be an expert and who is experienced in that field.

13. Strategically plan and establish policies to coordinate the management of state lands with the investment goals of the permanent endowment funds and earnings reserve funds.

14. To provide reports of the status and performance of state endowment lands and the respective endowment funds to the state affairs committees of the senate and the house of representatives within fourteen (14) days after a regular session of the legislature convenes.

15. To make distributions to endowment income funds as provided in section 57-723A, Idaho Code.

Approved March 23, 2004.

CHAPTER 155
(H.B. No. 515)

AN ACT

RELATING TO LEASES OF STATE LANDS; AMENDING SECTION 58-307, IDAHO CODE, TO PROVIDE AUTHORITY FOR THE STATE BOARD OF LAND COMMISSIONERS TO LEASE ALL ENDOWMENT LANDS FOR A LEASE PERIOD OF UP TO FORTY-NINE YEARS FOR COMMERCIAL PURPOSES, TO REVISE THE DEFINITION OF "COMMERCIAL PURPOSES" AND TO PROVIDE APPLICATION TO MINERAL LEASES ON STATE LANDS.

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

SECTION 1. That Section 58-307, Idaho Code, be, and the same is hereby amended to read as follows:

58-307. TERM OF LEASE -- APPLICATION FOR RENEWAL -- ALLOWANCE FOR IMPROVEMENTS. (1) No lease of state public school endowment lands, other than those valuable for stone, coal, oil, gas or other minerals, shall be for a longer term than ten (10) years.

(2) Notwithstanding any other provisions of law, all state lands may be leased for a period of up to twenty-five (25) years to the federal government, to federal agencies, state agencies, counties, or cities, school districts or political subdivisions when leased for public purposes. Such leases for public purposes may be entered into by negotiation and shall secure a rental amount based on the fair market value of the state land.

(3) Notwithstanding any other provisions of law, ~~only the~~ all state endowment lands~~,--other--than--public-school-endowment-lands,-described below~~ may be leased for a period of up to forty-nine (49) years for commercial purposes, under such terms and conditions as may be set by the board, provided that, for such leases in excess of ten (10) years, the board consults with the county commissioners of the county in which the lands are located before leasing the lands, ~~described-below,~~ and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. For each lease in excess of ten (10) years, t~~T~~he department shall hold a hearing~~, on-each-of-the-parcels-described-below,~~ in the ~~community~~ county in which the parcel is located.

~~(a)--One--(1)--parcel-----E1/2,-Section-5,-T2N,-R2E,-Boise-Meridian,~~
~~containing-three-hundred-twenty--(320)--acres,--more--or--less,--and~~
~~located-south-of-the-Boise-Airport-on-Pleasant-Valley-Road.~~
~~(b)--One--(1)-parcel---SWSWNW,-Section-27,-T3N,-R2E,-Boise-Meridian,~~
~~containing-eight-(8)-acres,-more-or-less,-located--northeasterly--of~~
~~the-Boise-Airport-and-north-of-the-Boise-Interagency-Fire-Center.~~
~~(c)--Four--(4)--parcels-----E1/2SW,-W1/2SE,-NESE,-Section-31;-SW1/4,~~
~~Section-32,-T3N,-R2E,-Boise-Meridian,-all-containing--three--hundred~~
~~sixty--(360)-acres,-more-or-less,-located-south-of-the-Boise-Airport~~
~~and-west-of-Pleasant-Valley-Road.~~
~~(d)--Three-(3)-parcels---SWSW,-Section--28;--Pt.--SESE,--Section--29~~
~~(east--of-the-Railroad-R/W,-now-a-bikepath);-W1/2NW,-Section-33,-all~~
~~in-T3N,-R18E,-Boise-Meridian,-all-containing-one-hundred-twenty-five~~
~~(125)-acres,-more-or--less,--located--two--(2)--miles--northerly--of~~
~~Hailey,--Idaho,--excepting--therefrom,--a-parcel-of-land,-containing~~
~~twenty-(20)-acres,-more-or-less,-at-a-location-to-be-determined-with~~
~~access-to-the-sheep-driveway-located-on-the-county-road.~~
~~(e)--One-(1)-parcel---SWNE,-Section-32,-T3N,--R2E,--Boise--Meridian,~~
~~containing--forty--(40)--acres,--more-or-less,-located-southerly-and~~
~~westerly-of-the-Boise-Airport-off-Gowen-Road;-Public-Building-Endow-~~
~~ment.~~
~~(f)--Two-(2)-parcels---Part-NESWNE,--Section--35,--T3N,--R2E,--Boise~~
~~Meridian,-containing-three-and-fifteen-hundredths-(3.15)-acres,-more~~
~~or-less;-Part-NENESE,-Section-35,-T3N,-R2E,-Boise-Meridian,-contain-~~
~~ing--one--and--eight-tenths--(1.8)-acres,-more-or-less;-both-located~~
~~northerly-and-easterly-of-I-84-between-the-Broadway-Interchange--and~~
~~the--Gowen--Road/State--Highway-21-Interchange;-Normal-School-Endow-~~
~~ment.~~
~~(g)--One-(1)-parcel---Part-Lot-1,-Section-1,-T2N,-R2E,-Boise--Merid-~~
~~ian,-containing-five-(5)-acres,-more-or-less,-located-near-the-Gowen~~
~~Road/State-Highway-21-Exit-from-I-84;-Penitentiary-Endowment.~~
~~(h)--One--(1)--parcel----N1/2NW1/4SW1/4,-SW1/4NW1/4SW1/4,-Section-4,~~
~~T2N,-R2E,-Boise-Meridian,--excepting--that--portion--deeded--to--Ada~~
~~County--for--a-public-road,-containing-twenty-eight-and-seventy-nine~~
~~hundredths-(28.79)-acres,-more-or-less,-located-south-of--the--Boise~~
~~Airport-and-east-of-Pleasant-Valley-Road;-Normal-School-Endowment.~~
~~(i)--One--(1)--parcel-----NWSWSE,-S2SWSE,-E2SW,-Lot-9-(NWSW),-Lot-11~~
~~(SWSW),-Section-19,-Township-16-North,-Range-3-East,-Boise-Meridian,~~
~~containing-one-hundred-eighty-six-and-forty-nine-hundredths-(186.49)~~
~~acres,-more-or-less;-NWNE,-S2NE,-E2W2,-Lots-1-4-(W2W2),-SE,--Section~~
~~30,-Township-16-North,-Range-3-East,-Boise-Meridian,-containing-five~~
~~hundred--ninety-four--and--forty--hundredths-(594.40)-acres,-more-or~~
~~less;-E2,-E2W2,-Lots-1-4-(W2W2),--Section--31,--Township--16--North,~~
~~Range-3-East,-Boise-Meridian,-containing-six-hundred-forty-three-and~~
~~ten-hundredths-(643.10)-acres,-more-or-less,-all-located-on-the-west~~
~~side-of-Cascade-Reservoir.~~
~~(j)--One--(1)--parcel----W2NENE,-NWNE,-Section-8,-Township-15-North,~~
~~Range-3-East,-Boise-Meridian,-containing-sixty-(60)-acres,--more--or~~
~~less,-located-on-the-west-side-of-Cascade-Reservoir.~~

~~(4)--Notwithstanding--any--other--provisions--of-law,-only-the-state public-school-endowment-lands-described-below-may-be-leased-for--commercial--purposes,--for--a-term-not-to-exceed-ten-(10)-years,-and-the-board may-grant,-upon-payment-of-good-and-valuable-consideration,-a--preferential--right--to--renew-said-lease-not-more-than-four-(4)-times,-provided~~

~~that the board shall consult with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.~~

~~(a) One (1) parcel All, Section 16, T3N, R18E, Boise Meridian, containing six hundred forty (640) acres, more or less, and located in Ohio Gulch some five (5) miles northerly of Hailey, Idaho.~~

~~(b) One (1) parcel E1/2NE, Section 16, T18N, R3E, Boise Meridian, containing eighty (80) acres, more or less, and located northwesterly of the intersection of Deinhard Lane and Sampson Trail in McCall, Idaho.~~

~~(c) One (1) parcel S1/2NW, NESW, Part NWSW, Part SWSW, Part SESW, Section 36, T3N, R2E, Boise Meridian, containing one hundred seventy eight and seventy one hundredths (178.71) acres, more or less, located northerly and easterly of I 84 between the Broadway Interchange and the Gowen Road/State Highway 21 Interchange; Public School Endowment.~~

~~(d) One (1) parcel NE1/4SW1/4, SE1/4NW1/4SW1/4, Section 4, T2N, R2E, Boise Meridian, containing fifty (50) acres, more or less, located south of the Boise Airport and east of Pleasant Valley Road; Public School Endowment.~~

~~(e) Two (2) parcels Lot 14 (Pt. NESE), Lot 15 (Pt. NESE), Lot 16 (Pt. N2SE), SWSE, Lot 17 (SESE), Section 22, Township 6 North, Range 36 East, Boise Meridian, containing one hundred sixty and two tenths (160.20) acres, more or less; NWSW, Pt. SWSW, Section 23, Township 6 North, Range 36 East, Boise Meridian, containing forty eight (48) acres, more or less, located fifty (50) miles north of Idaho Falls at the junction of State Highway 28 and Interstate Highway 15.~~

~~(f) One (1) parcel Lot 9 (Pt. NWNE, Pt. NENW), Lot 10 (Pt. SWNE, Pt. SENW), Section 12, Township 2 North, Range 37 East, Boise Meridian, containing nineteen and twenty seven hundredths (19.27) acres, more or less, located adjacent to the U of I/ISU Center in Idaho Falls.~~

~~(g) One (1) parcel Lots 1 and 2, Section 8, Township 2 North, Range 38 East, Boise Meridian, containing seven and seventy seven hundredths (7.77) acres, more or less, located on Lincoln Street in Idaho Falls.~~

~~(h) One (1) parcel W1/2, Section 16; Lots 1 and 2 (E2NE), W2NE, Section 17, Township 3 South, Range 18 East, Boise Meridian, containing four hundred eighty and fifty seven hundredths (480.57) acres, more or less, located on State Highway 93 north of Shoshone at Shoshone Ice Caves.~~

~~(5) Notwithstanding any other provisions of law, only the state public school endowment lands described below may be leased for a period of up to forty nine (49) years for commercial purposes, under such terms and conditions as may be set by the board, provided that the board consults with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.~~

~~(a)--One--(1)--parcel----All,-Section-36,-Township-16-North,-Range-2 East,-Boise-Meridian,-containing-six-hundred-forty-(640)-acres,-more or-less,-located-on-the-west-side-of-Cascade-Reservoir.~~

(6) The term "commercial purposes" means industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments and other similar businesses. For purposes of this section, agricultural leases, grazing leases, oil and gas leases, mineral leases, geothermal leases, communication site leases, ~~and~~ single family, recreational cottage site and homesite leases, and leases for other similar uses, are not considered leases for commercial purposes.

(7) The board may require that all fixed improvements constructed upon land leased for commercial purposes be removed or become the property of the state upon termination of the lease, and that any heirs, encumbrances or claims of third parties with respect to any improvements shall be expressly subordinate and subject to the rights of the state under this section.

(8) Except for geothermal, oil and gas, mineral and commercial leases, the lease year shall run from January 1 through December 31, and all leases shall expire on December 31 of the year of expiration.

(9) All applications to lease or to renew an existing lease which expires December 31 of any year, shall be filed in the office of the director of the department of lands by the thirtieth day of April preceding the date of such expiration. Such applications will be considered by the state land board and be disposed of in the manner provided by law; except that the board may reject conflicting applications for a lease for commercial purposes if the lessee exercises the preference right to renew clause.

(~~10~~8) Where conflicts appear upon leases, except for mineral leases which, ~~do--not~~ pursuant to chapter 7, title 47, Idaho Code, contain a preferential right to renew clause, such applications shall be considered as having been filed simultaneously. However, nothing herein shall be construed to prevent the state board of land commissioners from accepting and considering applications for new leases at any time.

(~~11~~9) In case improvements have been made on land while under lease which is expiring, and the former lessee is not the successful bidder, but the land is leased to another, the amount of such improvements shall be paid to the former lessee. The following shall be considered improvements: plowing done within one (1) year, provided no crop has been raised on the plowed land after such plowing, fencing, buildings, cisterns, wells, growing crops and any other asset which shall be considered an improvement by the director.

(1~~2~~0) Commercial leases of the state lands ~~described-in-this-section~~ shall not be subject to the conflict auction provisions of section 58-310, Idaho Code. The board may, at its discretion, call for proposals and sealed bids by public advertisement, and may evaluate said proposals and award the lease to the bidder whose proposal achieves the highest return over the term of the lease and who is capable of meeting such terms and conditions as may be set by the board; in the alternative, the board may call for lease applications by public advertisement and if more than one (1) person files an application to hold an auction in the same manner as provided in section 58-310, Idaho Code. In either case, the board must obtain a reasonable rental, based upon fair market value of the state land, throughout the duration of the lease. The board may

reject any or all proposals and any or all bids, and may reoffer the lease at a later date if the board determines that the proposals or bids do not achieve the highest and best use of the land at market rental.

Approved March 23, 2004.

CHAPTER 156
(H.B. No. 516)

AN ACT

RELATING TO PROPERTY TAX RELIEF; AMENDING SECTION 63-602G, IDAHO CODE, TO REVISE THE DEFINITION OF "OWNER" BY DELETING REFERENCE TO GRANTOR TRUSTS, BY INCLUDING ANY PERSON WHO IS THE BENEFICIARY OF A REVOCABLE OR IRREVOCABLE TRUST, BY DELETING AFFIDAVIT PROCEDURES AND BY REFERENCING THE AFFIDAVIT PROCEDURES IN CHAPTER 7, TITLE 63, IDAHO CODE; AMENDING SECTION 63-701, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-702, IDAHO CODE, TO CLARIFY THE DATES TO WHICH CONDITIONS APPLY WHEN FILING A CLAIM; AMENDING SECTION 63-703, IDAHO CODE, TO REVISE THE TERM "OWNER" BY INCLUDING PERSONS INVOLVED IN REVOCABLE AND IRREVOCABLE TRUSTS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES OR CORPORATIONS AND DEPENDING ON SPECIFIED CONDITIONS OF INVOLVEMENT WITH SUCH ENTITIES, TO PROVIDE FOR AN AFFIDAVIT FOR TRUST OWNERSHIP AND AN AFFIDAVIT FOR ENTITY OWNERSHIP AND TO DELETE REDUNDANT LANGUAGE; AMENDING SECTION 63-707, IDAHO CODE, TO REVISE THE INFORMATION COUNTY ASSESSORS PROVIDE WHEN PREPARING THE PROPERTY TAX REDUCTION ROLL, TO CLARIFY LANGUAGE RELATING TO MARITAL STATUS AND TO SPECIFY INFORMATION THE STATE TAX COMMISSION SHALL CERTIFY TO THE COUNTY AUDITOR AND TAX COLLECTOR REGARDING PROPERTY TAX REDUCTION CLAIMS FOR EACH COUNTY; AMENDING SECTION 63-709, IDAHO CODE, TO DELETE REDUNDANT LANGUAGE; AMENDING SECTION 63-710, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-602G, Idaho Code, be, and the same is hereby amended to read as follows:

63-602G. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS. (1) During the tax year 1983 and each year thereafter, the first fifty thousand dollars ($50,000) of the market value for assessment purposes of residential improvements, or fifty percent (50%) of the market value for assessment purposes of residential improvements, whichever is the lesser, shall be exempt from property taxation.

(2) The exemption allowed by this section may be granted only if:

(a) The residential improvements are owner-occupied and used as the primary dwelling place of the owner as of January 1, provided that in the event the residential improvements are owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption. The residential improvements may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for

anything other than the primary dwelling of the owner. The presence of an office in an owner-occupied residential property, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

(ii) That the residential improvements are his primary dwelling place; and

(iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other residential improvements in the county.

(d) For the purpose of this section, the definition of owner shall be the same definition set forth in section 63-701(7), Idaho Code.

When an "owner," pursuant to the provisions of section 63-701(7), Idaho Code, is any person who ~~as grantor, or whose spouse as grantor, created a revocable or irrevocable trust and was named as~~ is the beneficiary of ~~that~~ a revocable or irrevocable trust, or who is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, he or she may provide proof of the trust, limited partnership, limited liability company, or corporation in the manner set forth in section 63-703(4), Idaho Code. ~~with an affidavit stating: (i) the name of the grantor, partner, member or shareholder; (ii) a statement that the grantor, or the grantor's spouse, is the beneficiary of the trust, or the person is a partner of the limited partnership, or a member of the limited liability company, or a shareholder of the corporation; (iii) the grantor, the grantor's spouse, partner, member or shareholder is the occupier of the residential property and uses the property as the primary dwelling place of the grantor, the grantor's spouse, partner, member or shareholder as of January 1; and (iv) if applicable, the person holds at least a five percent (5%) ownership in the limited partnership, limited liability company or corporation.~~

~~The affidavit shall include the attaching of the copies of those portions of the trust or other document which set forth the grantor, the grantor or the grantor's spouse as beneficiary and the signature page of the trust or other document; those portions of the articles of organization or operating agreement of the limited liability company indicating the person's membership in the company and the ownership percentage held by such person; those portions of the limited partnership agreement or other records of the limited partnership indicating that the person has been admitted to the partnership and the ownership percentage held by such person; or those portions of the articles of incorporation indicating that the person is a shareholder of the corporation and the ownership percentage held by such person.~~

(e) Any owner may request in writing the return of all copies of any documents submitted with the affidavit set forth in ~~paragraph (d) of this subsection~~ section 63-703(4), Idaho Code, that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(8), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(6), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner or beneficiary, partner, member or shareholder, as appropriate, still occupies the same residential improvements for which the owner made application.

(c) The residential improvements described in subsection (3)(b) of this section are owner-occupied or occupied by a beneficiary, partner, member or shareholder, as appropriate, and used as the primary dwelling place of the owner or beneficiary, partner, member or shareholder, as appropriate, as of January 1; provided however, that in the event the residential improvements are owner-occupied after January 1, but before April 15, the owner of the property is entitled to the exemption.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) The legislature declares that this exemption is necessary and just.

(6) Residential improvements having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to the owner's, beneficiary's, partner's, member's or shareholder's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone by the owner, beneficiary, partner, member or shareholder, as appropriate, as defined in section 112 of the Internal Revenue Code, and such improvements would have otherwise qualified under this section, then the board of county commissioners of the county in which the residential improvements are located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

SECTION 2. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

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

(1) "Claimant" means a person who has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as pro-

vided in section 63-702(2), Idaho Code, on January 1 of the year or before April 15 in which the claim was filed a claimant must be an owner of a homestead and be:

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

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

(c) A widow or widower; or

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

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

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

(g) Blind.

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

(3) "Household" means the claimant and the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) "Household income" means all income received by the claimant and, if ~~applicable~~ married, all income received by the claimant's spouse, in a calendar year.

(5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:

(a) Alimony;

(b) Support money;

(c) Nontaxable strike benefits;

(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);

(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;

(f) Worker's compensation; and

(g) The gross amount of loss of earnings insurance.

It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and~~/or~~, if ~~applicable~~ married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars ($5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

(6) ~~years~~ "Occupied" means actual use and possession.

(7) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who:

(a) ~~As--grantor,-or-whose-spouse-as-grantor,-created-a-revocable-or irrevocable-trust-and-was-named-as-a-beneficiary-of-that-trust;-or~~

~~(b)~~ Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(~~c~~b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

(~~d~~c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining ini-

tial qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property is held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(8) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 <u>or before April 15</u> of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 <u>or before April 15</u> and:

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

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

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. Payment of utilities shall not be payment of a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care

facility is a hospital, nursing facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(16), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

SECTION 3. That Section 63-702, Idaho Code, be, and the same is hereby amended to read as follows:

63-702. CLAIM IS PERSONAL -- EXCEPTIONS. (1) The right to file a claim under the provisions of sections 63-701 through 63-710, Idaho Code, shall be personal to the claimant and shall not survive his death except as otherwise provided in this section. A property tax reduction shall be allowed pursuant to the provisions of sections 63-701 and 63-710, Idaho Code, if the owner occupies the residential improvements after January 1 but before April 15, and if no other property tax reductions have been claimed. Such right may be exercised on behalf of a living claimant by an agent authorized in writing to so act, by a guardian or other representative acting pursuant to judicial authority or by any person or entity described in section 63-711(3), Idaho Code. If a claimant dies after having filed a timely claim, the amount thereof shall be allowed to his personal representative, if one is appointed, or to surviving heirs or to the trust or other entity owning the property, as appropriate.

(2) In the case of property owned by an estate, revocable trust, irrevocable trust, limited partnership, limited liability company or corporation, where the deceased person's widow or widower succeeds to the interest of the deceased person in that entity and occupies the dwelling as required in this chapter, the deceased owner's widow or widower, or any person or entity described in section 63-711(3), Idaho Code, on behalf of that widow or widower:

(a) May file a claim on behalf of the deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 <u>or before April 15</u> of the year in which the claim is filed; or

(b) The widow or widower shall be deemed the owner of the property in any year after the year of the death of the spouse.

SECTION 4. That Section 63-703, Idaho Code, be, and the same is hereby amended to read as follows:

63-703. PROCEDURE FOR FILING CLAIMS. (1) Any claim filed shall be signed by the claimant or by any person or entity described in section 63-711(3), Idaho Code. By signing such claim, the claimant or other person or entity signing such claim shall attest to the truth of such claim, and shall be subject to the penalties provided by section 18-5401, Idaho Code, for stating as true any material fact known to be false. All claims s hall be made on forms prescribed by the state tax commission and shall be in triplicate. One (1) copy of the form shall be provided to the claimant or the person or entity acting on behalf of the claimant, one (1) copy shall be kept for all county purposes, and one (1) copy shall be forwarded to the state tax commission with the prop-

erty tax reduction roll. Except as provided in section 63-707, Idaho Code, the claim and its documentation shall not be deemed to be public records and may not be used for any commercial purpose; provided however, the state tax commission and the county assessor may use the contents of such claims and documentation for general statistical analysis and may publish such analysis, or any part of such analysis, as appropriate.

(2) By filing a claim, a claimant does not relinquish any right he or any member of his household may have to apply for a cancellation of property taxes pursuant to section 63-711, Idaho Code. The county commissioners may grant any such claimant, or any member of his household, a cancellation of property taxes, late charges and interest under such section, if a claim has been filed under the provisions of sections 63-701 through 63-710, Idaho Code.

(3) If two (2) or more individuals of a household are able to meet the qualifications of a claimant, they may decide between themselves who may obtain a reduction in property taxes under the provisions of sections 63-701 through 63-710, Idaho Code, and shall certify such division in writing to the county assessor in such form as the county assessor shall require, but if they do not decide between themselves, then the reduction shall be divided equally among or between the claimants in the household or shall be divided as determined under section 63-701(7), Idaho Code, whichever is appropriate.

(4) When an "owner" is any person who ~~as grantor, or whose spouse as grantor, created a revocable or irrevocable trust and was named as~~ is the beneficiary of ~~that~~ a revocable or irrevocable trust, or is a partner of a limited partnership, or member of a limited liability company, or shareholder of a corporation, if such entity holds title in fee simple or holds a certificate of motor vehicle title. and if said person holds at least a five percent (5%) ownership in such entity, he or she, or any person or entity described in section 63-711(3), Idaho Code, may provide proof of the foregoing as follows:

(a) If the owner of the homestead is a revocable or irrevocable trust, ~~with~~ by an affidavit stating:

(i) ~~the name of the grantor, (ii) a statement t~~That the ~~grantor,~~ claimant or the ~~grantor's~~ claimant's spouse, is ~~the~~ a beneficiary of the trust; and

(ii~~i~~) That the ~~grantor~~ claimant, or the ~~grantor's~~ claimant's spouse, is the occupier of the residential property and uses the property as the primary dwelling place of the occupier as of January 1 or before April 15.

The affidavit shall include the attaching of copies of those portions of the trust which set forth the ~~name of the grantor, the~~ status of the ~~grantor~~ claimant or the ~~grantor's~~ claimant's spouse as beneficiary and which contain the signature page or pages of the trust. ~~The county assessor may require such additional documentation as is necessary to carry out the provisions of this chapter including, but not limited to:~~

(b) If the owner is a limited partnership, limited liability company, or corporation, by an affidavit stating the entity holds title in fee simple or holds a certificate of motor vehicle title, and if said person holds at least a five percent (5%) ownership in such entity. The affidavit shall include the attaching of:

(~~a~~i) Proof of the current status of the entity owning the property, including statements from the secretary of state as to such status if appropriate;

(~~b~~ii) Copies of any documents, or portions thereof, relating to the entity including, but not limited to, those portions of the articles of organization or operating agreements of the entity indicating the person's membership or ownership in the entity and the membership or ownership percentage held by such person; and

(~~c~~iii) Copies of any contracts or other agreements between the entity and the claimant or the claimant's spouse including, but not limited to, any portions thereof that show the right of occupancy of the homestead by the person.~~; and~~

(~~d~~c) Any other documentation which the county assessor determines would aid the county assessor in carrying out the provisions of this chapter.

SECTION 5. That Section 63-707, Idaho Code, be, and the same is hereby amended to read as follows:

63-707. PROCEDURE AFTER CLAIM APPROVAL. (1) Immediately after claims have been approved by the board of equalization, the county assessor shall prepare a property tax reduction roll, which shall be in addition to the property roll, the subsequent property roll and missed property rolls which property tax reduction roll shall show:

(a) The name of the taxpayer;

(b) The description of the property for which a reduction in property taxes is claimed, suitably detailed to meet the requirements of the individual county;

(c) The ~~property's prior year's market value for assessment purposes or the~~ assessor's best estimate of current market value, and any prorated net taxable value of the eligible portion of the property's current market value for assessment purposes; and

(d) The amount of tax reduction for which the applicant is eligible as determined by the income of the claimant and, if ~~applicable~~ married, the claimant's spouse, pursuant to sections 63-704 and 63-705, Idaho Code.

(2) As soon as possible, but in any event by no later than the fourth Monday of June, the property tax reduction roll shall be certified to the county auditor and to the state tax commission in the manner prescribed by rules promulgated by the state tax commission. The property tax reduction roll shall be accompanied by a copy of the claim forms for disapproved claims, when requested by the state tax commission and a copy of the approved claims form.

(3) (a) As soon as possible, but in any event by no later than the fourth Monday of October, the county auditor shall complete the property tax reduction roll by adding the following information:

(i) The current year's levy for the code area in which the property is situated;

(ii) The amount of property tax reduction claimed based on the current year's market value for assessment purposes and the current year's levy; and

(iii) The current year's market value for assessment purposes.

(b) As soon as possible, but in any event no later than the fourth Monday of October, the county auditor shall certify the completed property tax reduction roll to the state tax commission in the manner prescribed by rules promulgated by the state tax commission.

(4) The state tax commission shall ~~calculate~~ determine the total number of ~~all~~ claims ~~for reduction in property taxes from current year's property taxes, evidenced by the abstracts and claims forms from all the counties. Each~~ to be allowed in each county, the dollar amount of each claim allowed, and the total dollar amount for all claims for each county. These amounts shall be certified to the county auditor ~~shall be notified~~ and tax collector by the state tax commission by no later than the third Monday in November. ~~of the amount of property tax reduction to be granted.~~

(5) The state tax commission may audit each and every claim submitted to it, and, any other provision of law notwithstanding, may utilize income tax returns filed by the claimant or by the claimant's spouse to determine the income of the claimant or the claimant's spouse.

(6) If it is determined by the state tax commission that a claim is erroneous, the tax commission shall disapprove so much of the claim as necessary in order to conform with statutory standards. The tax commission shall provide the claimant, or the person or entity acting on behalf of the claimant, written notice of the tax commission's intent to disapprove all or a portion of the claim. The claimant, or the person or entity acting on behalf of the claimant, shall have fourteen (14) days to make written protest to the tax commission of the intended action. The claimant, or the person or entity acting on behalf of the claimant, may submit additional information and may request an informal hearing with the commission. If the claimant, or the person or entity acting on behalf of the claimant, fails to make written protest within fourteen (14) days, the tax commission shall provide written notice of disapproval to the claimant, or the person or entity acting on behalf of the claimant, by the fourth Monday of October and to the county auditor of the county from which the claim was received. Any claimant, or person or entity acting on behalf of the claimant, whose claim is disapproved in whole or in part by the state tax commission may:

(a) File a claim with the county commissioners for a special cancellation pursuant to section 63-711, Idaho Code;

(b) Appeal such disapproval by the state tax commission to the board of tax appeals or to the district court of the county of residence of the taxpayer within thirty (30) days.

SECTION 6. That Section 63-709, Idaho Code, be, and the same is hereby amended to read as follows:

63-709. REIMBURSEMENT BY STATE TAX COMMISSION. ~~(1) The state tax commission shall determine the total number of claims to be allowed in each county, the dollar amount of each claim allowed, and the total dollar amount for all claims for each county. These amounts shall be certified to the county auditor and tax collector by the state tax commission by no later than the first Monday in November.~~

~~(2)~~ By no later than December 20 of each year the state tax commission shall pay to the county tax collector of each county one-half (1/2) of the amount due each county as reimbursement for reduction in property taxes as provided in sections 63-701 through 63-710, Idaho Code, as

shown on the abstract of property tax reduction roll and claims forms approved by the state tax commission, and shall pay the second one-half (1/2) of such amount by not later than June 20 of the following year.

SECTION 7. That Section 63-710, Idaho Code, be, and the same is hereby amended to read as follows:

63-710. PROCEDURE AFTER REIMBURSEMENT. (1) Upon receipt of the notice of percentage reduction from the state tax commission, the county auditor shall immediately notify the county commissioners, and the commissioners may take this reduction into consideration in making its property tax levies, and the county commissioners are authorized, but not required, to increase any levy to the extent necessary to compensate for the percentage reduction.

(2) The money received by the county tax collector under the provisions of section 63-709~~(2)~~, Idaho Code, may be considered by the counties and other taxing districts and budgeted against at the same time, in the same manner and in the same year as revenues from taxation.

SECTION 8. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2004.

Approved March 23, 2004.

CHAPTER 157
(H.B. No. 520, As Amended in the Senate)

AN ACT

RELATING TO THE IDAHO DNA DATABASE ACT OF 1996; AMENDING SECTION 19-5502, IDAHO CODE, TO DEFINE "DNA ANALYSIS"; AMENDING SECTION 19-5506, IDAHO CODE, TO PROVIDE FOR THE ADDITION OF TWO CLASSES OF OFFENDERS COMMITTING BURGLARY AND FELONY DOMESTIC VIOLENCE THAT SHALL BE SUBJECT TO SAMPLE COLLECTION, TO PROVIDE THAT PERSONS SUBJECT TO SECTION 19-5506, IDAHO CODE, MAY BE ORDERED BY THE COURT TO PAY RESTITUTION TO HELP OFFSET COSTS INCURRED BY LAW ENFORCEMENT AGENCIES FOR THE EXPENSE OF DNA ANALYSIS, TO PROVIDE THE AMOUNT OF RESTITUTION, TO PROVIDE WHICH LAW ENFORCEMENT ENTITIES ARE ENTITLED TO RECEIVE THE RESTITUTION AND TO PROVIDE FOR DEPOSIT OF MONEYS REMITTED TO THE IDAHO STATE POLICE AND THE OFFICE OF THE ATTORNEY GENERAL; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 19-5502, Idaho Code, be, and the same is hereby amended to read as follows:

19-5502. DEFINITIONS. (1) "CODIS" means the federal bureau of investigation's combined DNA index system that allows the storage and exchange of DNA records submitted by state and local forensic laboratories.

(2) "Director" means the director of the Idaho state police.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA analysis" means the scientific test of a DNA sample for the purpose of obtaining a DNA profile.

(5) "DNA profile" means the list of one (1) or more genetic types determined for an individual based on variations in DNA sequence.

(~~5~~6) "DNA record" means DNA information stored in the statewide DNA database system of the bureau of forensic services or CODIS and includes information commonly referred to as a DNA profile.

(~~6~~7) "DNA sample" means a body fluid or tissue sample provided by any person convicted of a qualifying sex crime or violent crime or any body fluid or tissue sample submitted to the statewide DNA database system for analysis pursuant to a criminal investigation or missing person investigation.

(~~7~~8) "Forensic laboratory" means the bureau of forensic services of the Idaho state police.

(~~8~~9) "Law enforcement purpose" means to assist federal, state or local criminal justice and law enforcement agencies within and outside the state of Idaho in identification or prosecution of sex crimes, violent crimes or other crimes and the identification and location of missing and unidentified persons.

(~~9~~10) "Statewide DNA databank" means the state repository of DNA samples collected under this chapter.

(~~10~~11) "Statewide DNA database system" means the DNA record system administered by the Idaho bureau of forensic services.

SECTION 2. That Section 19-5506, Idaho Code, be, and the same is hereby amended to read as follows:

19-5506. SCOPE OF LAW -- OFFENDERS SUBJECT TO SAMPLE COLLECTION -- EARLY COLLECTION OF SAMPLES -- RESTITUTION. (1) Any person, including any juvenile tried as an adult, who is convicted of, or pleads guilty to, any of the following crimes, regardless of the form of judgment or withheld judgment, and regardless of the sentence imposed or disposition rendered, shall be required to provide to the Idaho state police, a DNA sample and a right thumbprint impression:

(a) Aggravated arson (section 18-805, Idaho Code);

(b) Aggravated assault (section 18-905, Idaho Code);

(c) Aggravated battery (section 18-907, Idaho Code);

(d) Assault with the intent to commit a serious felony (section 18-909, Idaho Code);

(e) Battery with the intent to commit a serious felony (section 18-911, Idaho Code);

(f) Domestic violence (section 18-918, Idaho Code, constituting a felony);

(g) Burglary (sections 18-1401 and 18-1405, Idaho Code), except those convictions in which the defendant entered a retail mercantile establishment and the offense took place when the victim was open to the public for business and the defendant committed a theft and his actions did not constitute grand theft as defined in chapter 24, title 18, Idaho Code;

(h) Injury to a child (section 18-1501(1), Idaho Code);

(~~g~~i) Sexual abuse of a child under the age of sixteen years (section 18-1506, Idaho Code);

(hj) Possession of sexually exploitive material for other than a commercial purpose (section 18-1507A, Idaho Code);
(ik) Lewd conduct with minor child under sixteen (section 18-1508, Idaho Code);
(jl) Sexual battery of a minor child sixteen or seventeen years of age (section 18-1508A, Idaho Code);
(km) Murder, any degree (sections 18-4001 and 18-4003, Idaho Code);
(ln) Manslaughter (section 18-4006(1) or (2), Idaho Code);
(mo) Kidnapping, any degree (sections 18-4501 and 18-4502, Idaho Code);
(np) Mayhem (section 18-5001, Idaho Code);
(oq) Rape (section 18-6101, Idaho Code);
(pr) Robbery (section 18-6501, Idaho Code);
(qs) Incest (section 18-6602, Idaho Code);
(rt) Crime against nature (section 18-6605, Idaho Code);
(su) Forcible sexual penetration (section 18-6608, Idaho Code);
(tv) Racketeering (section 18-7804, Idaho Code);
(uw) Transfer of body fluid which may contain the HIV virus (section 39-608, Idaho Code);
(vx) Failure to register as sex offender (sections 18-8304 and 18-8308, Idaho Code).

(2) In addition to those crimes enumerated in subsection (1) of this section, any person, including any juvenile tried as an adult, who is convicted for an attempt to commit any of the following crimes, regardless of the form of judgment or withheld judgment, and regardless of the sentence imposed or disposition rendered, shall be required to provide to the Idaho state police, a DNA sample and a right thumbprint impression:

(a) Aggravated arson (section 18-805, Idaho Code);
(b) Sexual abuse of a child under the age of sixteen years (section 18-1506, Idaho Code);
(c) Injury to a child (section 18-1501(1), Idaho Code);
(d) Lewd conduct with minor child under sixteen (section 18-1508, Idaho Code);
(e) Sexual battery of a minor child sixteen or seventeen years of age (section 18-1508A, Idaho Code);
(f) Murder, any degree (sections 18-4001 and 18-4003, Idaho Code);
(g) Kidnapping, any degree (sections 18-4501 and 18-4502, Idaho Code);
(h) Mayhem (section 18-5001, Idaho Code);
(i) Rape (section 18-6101, Idaho Code);
(j) Robbery (section 18-6501, Idaho Code);
(k) Incest (section 18-6602, Idaho Code);
(l) Crime against nature (section 18-6605, Idaho Code);
(m) Forcible sexual penetration (section 18-6608, Idaho Code);
(n) Transfer of body fluid which may contain the HIV virus (section 39-608, Idaho Code).

(3) This chapter's requirements for submission to tests and procedures for obtaining a DNA sample and thumbprint impression from the persons described above are mandatory and apply to those persons convicted of such crimes covered in this chapter prior to its effective date, and who, as a result of the offense, are incarcerated in a county jail facility or a penal facility or are under probation or parole supervision after the effective date of this chapter.

(4) The collection of samples and impressions specified in this chapter are required regardless of whether the person previously has supplied a DNA sample to law enforcement agencies in any other jurisdiction.

(5) The requirements of this chapter are mandatory and apply regardless of whether a court advises a person that samples and impressions must be provided to the databank and database as a condition of probation or parole.

(6) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order any person subject to the provisions of this section to pay restitution to help offset costs incurred by law enforcement agencies for the expense of DNA analysis.

(7) The court may order such person to pay restitution for DNA analysis in an amount not to exceed five hundred dollars ($500) per DNA sample analysis, or in the aggregate not more than two thousand dollars ($2,000), regardless of whether:

(a) The source of the sample is the person, the victim or other persons of interest in the case;

(b) Results of the analysis are entered into evidence in the person's criminal case;

(c) The DNA sample was previously analyzed for another criminal case; or

(d) Restitution for that DNA sample analysis was ordered in any other criminal case.

(8) Law enforcement agencies entitled to restitution under this section include the Idaho state police, county and city law enforcement agencies, the office of the attorney general, county prosecuting attorneys and city attorneys.

(9) In the case of reimbursement for DNA analysis performed by the Idaho state police, those moneys shall be paid to the Idaho state police and deposited in the law enforcement fund. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund.

(10) Persons who have been sentenced to death, or life without the possibility of parole, or to any life or indeterminate term are not exempt from the requirements of this chapter.

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

Approved March 23, 2004.

CHAPTER 158
(H.B. No. 521)

AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2108, IDAHO CODE, TO REVISE PROVISIONS AND FEE SCHEDULES RELATING TO LICENSE, PENALTY, AMENDMENT AND APPLICATION FEES FOR OUTFITTERS, CERTAIN DESIGNATED AGENTS, AND GUIDES AND TO STRIKE UNNECESSARY VERBIAGE.

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, 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 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, t~~The applicant shall pay ~~a~~ license, ~~fee,~~ penalty, amendment and application fees to the board 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 chapter, and for the administration costs of the board.

3. The license fee for ~~resident and nonresident~~ outfitters for the 2005 license year shall be three hundred dollars ($300) for online licensing and three hundred fifty dollars ($350) for offline licens-

ing; for the 2006 license year it shall be three hundred twenty-five dollars ($325) for online licensing and three hundred seventy-five dollars ($375) for offline licensing; for the 2007 license year it shall be three hundred fifty dollars ($350) for online licensing and four hundred dollars ($400) for offline licensing; for the 2008 license year it shall be three hundred seventy-five dollars ($375) for online licensing and four hundred twenty-five dollars ($425) for offline licensing; for the 2009 license year. and for each year thereafter, it shall be four hundred dollars ($400) for online licensing and four hundred fifty dollars ($450) for offline licensing; the license fee for a designated agent as defined in section 36-2102(b), Idaho Code, for the 2005 license year shall be one hundred twenty dollars ($120) for online licensing and one hundred forty dollars ($140) for offline licensing; for the 2006 license year it shall be one hundred twenty-five dollars ($125) for online licensing and one hundred fifty dollars ($150) for offline licensing; for the 2007 license year it shall be one hundred thirty dollars ($130) for online licensing and one hundred sixty dollars ($160) for offline licensing; for the 2008 license year. and for each year thereafter, it shall be one hundred forty dollars ($140) for online licensing and one hundred sixty dollars ($160) for offline licensing; and the license fee for ~~resident and nonresident~~ guides for the 2005 license year shall be ninety-five dollars ($95.00) for online licensing and one hundred five dollars ($105) for offline licensing; for the 2006 license year it shall be ninety-five dollars ($95.00) for online licensing and one hundred ten dollars ($110) for offline licensing; for the 2007 license year it shall be one hundred dollars ($100) for online licensing and one hundred fifteen dollars ($115) for offline licensing; for the 2008 license year. and for each year thereafter. it shall be one hundred five dollars ($105) for online licensing and one hundred fifteen dollars ($115) for offline licensing.

4. A penalty fee in the amount of fifty dollars ($50.00), which shall increase to one hundred fifty dollars ($150) beginning January 1, 2005, 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.

5. A seventy-five dollar ($75.00) fee, which shall increase to two hundred dollars ($200) beginning January 1, 2005, shall be charged for every amendment to an outfitter's license other than ~~an incidental~~ a minor amendment, ~~and a ten~~ dollar ($10.00) fee, which shall increase to thirty-five dollars ($35.00) beginning January 1, 2005, shall be charged for every ~~incidental~~ minor amendment to an outfitter's license, and a ten dollar ($10.00) fee. which shall increase to twenty dollars ($20.00) beginning January 1, 2005, shall be charged for every amendment to the license of a designated agent or guide~~'s license~~.

~~4~~6. ~~A~~ The following fees shall be established annually by the board and shall be used for application related expenses: 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 maximum of which shall increase to twenty dollars ($20.00) beginning January 1, 2005. The board shall establish by rule a policy to refund unused application fees 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.

Approved March 23, 2004.

CHAPTER 159
(H.B. No. 524, As Amended in the Senate)

AN ACT

RELATING TO BANKS AND BANKING; AMENDING SECTION 26-106, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-703, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO REAL ESTATE LOANS OFFERED BY BANKS; REPEALING SECTIONS 26-704, 26-705, 26-706 AND 26-707, IDAHO CODE, RELATING TO MORTGAGE INSURANCE, GOVERNMENT GUARANTEED LOANS, COMMERCIAL LOANS AND CONSTRUCTION LOANS; AMENDING SECTION 26-708, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-709, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THAT THE TOTAL LOANS AND EXTENSIONS OF CREDIT TO PERSONS SHALL BE LIMITED, TO DEFINE "LOANS AND EXTENSIONS OF CREDIT," TO PROVIDE THAT CERTAIN ITEMS DO NOT CONSTITUTE LOANS OR EXTENSIONS OF CREDIT, TO EXEMPT CERTAIN LOANS OR EXTENSIONS OF CREDIT FROM LENDING LIMITS, TO PROVIDE FOR THE COMBINATION OF LOANS OR EXTENSIONS OF CREDIT UNDER CERTAIN OUTLINED CONDITIONS, TO DEFINE TERMS, TO PROVIDE FOR CALCULATION OF LENDING LIMITS, TO SET FORTH CONDITIONS UNDER WHICH LOANS SHALL BE CONSIDERED NONCONFORMING, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-710, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 26-711, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE THAT BANKS SHALL NOT INVEST IN CERTAIN REAL ESTATE HOLDINGS IN AMOUNTS GREATER THAN FIFTY PERCENT OF THE CAPITAL STRUCTURE OF THE BANK AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 26-712, 26-713, 26-714, 26-715 AND 26-716, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 26-717, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 26-718 AND 26-719, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 26-801, IDAHO CODE, TO REVISE TERMINOLOGY REFERRING TO THE CAPITAL STRUCTURE OF BANKS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 26-107, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS.

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

SECTION 1. That Section 26-106, Idaho Code, be, and the same is hereby amended to read as follows:

26-106. DEFINITIONS. As used in this act, unless the context or subject matter otherwise requires:

(1) "Bank" means any person engaged in soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether or not such deposit, however evidenced, is made subject to check or draft or other order.

(2) "Banking business" means the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business whether such deposit is made subject to check or draft or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing; provided, that nothing herein shall apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) "Banking facility" means a place of business of a bank which performs activities limited to:

(a) ~~t~~Taking applications for loans, accepting deposits, issuing receipts therefor, and transmitting such deposits to the bank maintaining such facility;

(b) ~~c~~Carrying and disbursing cash change, cashing checks, accepting checks;

(c) ~~i~~Issuing checks drawn on or certified by the bank operating the facility, renting safety deposit boxes, keeping necessary accounts of all transactions; and carrying out such other transactions as the director may allow by regulation.

(4) "Bank service corporation" means a corporation organized to perform bank services for two (2) or more banks, each of which owns part of the capital stock of such corporation, and which are subject to examination by either the department of finance of the state of Idaho or a federal bank supervisory agency.

For the purpose of this definition "bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

(5) "Borrowing" means any nondeposit liability.

(6) "Branch" means any location except a bank facility or customer-bank communication terminal or bank service corporation at which a bank performs any or all functions of a bank.

(7) "Capital" means the amount of unimpaired paid-up common stock plus the amount of paid-up preferred stock issued and unimpaired.

(8) "Capital note" means a convertible or nonconvertible note of a bank subordinated as to principal and interest to the depositors of the bank and containing such conditions as the director may require.

(9) "Capital structure" means the total of the capital, surplus, undivided profits and subordinated capital notes and contingency reserves of the bank or such other account as determined by the director of the department of finance, less intangible assets.

(10) "Common stock" means the stock of a banking corporation other than preferred stock.

(11) "Commercial paper" means a short term negotiable instrument arising out of a commercial transaction; provided, however, that commercial paper shall not be construed to be a deposit as defined in this act.

(12) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(13) "Demand deposit" means all deposits except time deposits.

(14) "Deposit" means the act of placing or lodging money in the custody of a person, for safety or convenience whether interest-bearing or not, to be withdrawn at the will of the depositor or under rules, terms and regulations agreed upon by the depositor and the depository. If the context requires, deposit may also mean the money so deposited or the credit the depositor receives for it.

(15) "Depositor" means any person who deposits money.

(16) "Director" means the director of the department of finance.

(17) "Dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in this act.

(18) "Executive officer" means each officer of a bank, who by virtue of his position, has both voice in the formulation of the policy of the bank and responsibility for the implementation of such policy.

(19) "Federal funds" means member bank deposits at federal reserve banks.

(20) "Federal reserve act" means and includes the act of congress of the United States approved December 23, 1913, as amended.

(21) "Federal reserve bank" means a federal reserve bank created and organized under the authority of the Federal Reserve Act.

(22) "Federal reserve board" means the board of governors of the Federal Reserve System created and described in the Federal Reserve Act.

(23) "Federal bank supervisory agency" means the comptroller of the currency, the board of governors of the Federal Reserve System, or the board of directors of the Federal Deposit Insurance Corporation.

(24) "Fiduciary" means trustee, agent, executor, administrator, personal representative, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(25) "Member bank" means any national bank or state bank which has become or which becomes a member of one (1) of the federal reserve banks created by the Federal Reserve Act.

(26) "Merger" means the union of two (2) or more bank corporations by the transfer of property of all to one (1) of them. As used in this act "merger" includes a consolidation.

(27) "Merging bank" means a party to a merger.

(28) "Mobile facility" means a banking facility which is moved from place to place and not permanently attached to real property.

(29) "National bank" means a bank organized under the laws of the United States and issued an organization certificate by the comptroller of the currency.

(30) "Net demand deposits" means the total of the bank's demand deposits after subtracting from the deposit balance due to any bank the deposit balance due from the same bank (other than trust funds deposited by either bank) and any cash items in the process of collection due from or due to such banks shall be included in determining such net balance, except that balances of time deposits of any bank and any balances standing to the credit of private banks, of banks in foreign countries, of foreign branches of other American banks, and of American branches of foreign banks shall be reported gross without any such subtraction, and excluding any deposits received in any office of the bank for deposits in any other office of the bank. The amount of trust funds held in the

bank's own trust department, which the bank keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included as net deposits.

(31) "Net profits" means profits remaining after the deduction of all expenses including depreciation, losses, or doubtful assets, as required by the director of the department of finance, interest, and taxes accrued or due.

(32) "Person" means ~~a--natural--person,-corporation~~ an individual, sole proprietorship, partnership, joint venture, association, ~~cooperative--association,--unincorporated--association,~~ trust, estate, business trust, corporation, limited liability company, not-for-profit corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any ~~other-legal-or-commercial~~ similar entity or organization.

(33) "Preferred stock" means a class of the stock of a banking corporation issued in accordance with section 26-206, Idaho Code, which is accorded a preference or priority over the common stock of the corporation.

(34) "Resulting bank" means the bank resulting from a merger or conversion.

(35) "Savings deposit" means a deposit:

(a) ~~t~~That consists of funds deposited to the credit of or in which the entire beneficial interest is held by one (1) or more individuals, or a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes and not operated for profit; or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or political subdivision thereof; or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, association, or other organization not qualifying above to the extent such funds do not exceed one hundred fifty thousand dollars ($150,000) per such depositor at a bank; and

(b) ~~w~~With respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give notice in writing of an intended withdrawal not less than thirty (30) days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(36) "State bank" means any bank chartered by the state of Idaho.

(37) "Temporary banking facility" means a banking facility which is operated for less than thirty (30) days and is established for the purpose of providing bank facility services for a specific occasion.

(38) "Time certificate of deposit" means a deposit evidenced by a negotiable ~~on-non-negotiable~~ or nonnegotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

(a) ~~o~~On a certain date, specified in the instrument, not less than thirty days (30) after the date of the deposit; or

(b) ~~a~~At the expiration of a certain specified time not less than thirty (30) days after date of the instrument; or

(c) ~~u~~Upon notice in writing which is actually required to be given not less than thirty (30) days before the date of repayment; and

(d) ~~i~~In all cases only upon presentation and surrender of the instrument.

(39) "Time deposit" means time certificates of deposit, time deposits open account, and savings deposits.

(40) "Time deposits open account" means a deposit, other than a time certificate of deposit, with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than thirty (30) days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than thirty (30) days in advance of withdrawal.

(41) "Trust department" means the division of a bank which has been granted trust powers by the director of finance.

SECTION 2. That Section 26-703, Idaho Code, be, and the same is hereby amended to read as follows:

26-703. REAL ESTATE LOANS. Any bank may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties, as are consistent with safe and sound banking practices. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument which shall constitute a lien upon real estate.~~,-and-any-bank may--purchase--any--obligation-so-secured-when-the-entire-amount-of-such obligation-is-sold-to-the-bank.--The-amount-of-any-such--loan--hereafter made-shall-not-exceed-ninety-percent-(90%)-of-the-appraised-value-of-the real--estate--offered--as--security-and-no-such-loan-shall-be-made-for-a longer-term-than-thirty--(30)--years.---The--foregoing--limitations--and restrictions-shall-not-prevent-the-renewal-or-extension-of-loans-heretofore-made-and-shall-not-apply-to:~~

~~(a)--real-estate-loans-which-are-insured-under-the-provisions-of-the National-Housing-Act,-act-of-congress-of-June-27,-1934,-and~~

~~(b)--amendatory--and--supplemental--legislation--relating--to--loans insured-by-the-federal-housing-administration.~~

~~No--such-bank-shall-hold-on-its-books-real-estate-loans-in-an-aggregate-sum-in-excess-of-the-amount-of-the-capital--and--capital--notes--of such--bank,-plus-the-amount-of-its-unimpaired-surplus-fund,-or-in-excess of-sixty-percent-(60%)-of-the-amount-of-its-savings-and--time--deposits, whichever-is-the-greater-except-with-the-consent-of-the-director.~~

SECTION 3. That Sections 26-704, 26-705, 26-706 and 26-707, Idaho Code, be, and the same are hereby repealed.

SECTION 4. That Section 26-708, Idaho Code, be, and the same is hereby amended to read as follows:

26-708~~4~~. DETERMINATION OF LIMITS OF LOANS AND INVESTMENTS OF BANKS. For the purpose of determining limitations on loans and investments the following items are to be disregarded:

(~~a~~1) ~~t~~The sale of excess reserve funds by one (1) bank to another bank;

(~~b~~2) ~~t~~The purchase of securities by a bank, under an agreement to resell at the end of a stated period; and

(~~c~~3) ~~t~~The purchase of mortgage loans by a bank, under agreement to resell at the end of a stated period.

The director may, upon application by a bank, approve loans and investments in excess of the limitations provided in this chapter.

SECTION 5. That Section 26-709, Idaho Code, be, and the same is hereby amended to read as follows:

26-709~~5~~. LOANS TO ONE PERSON. (1) The total ~~liabilities to any bank of--any~~ loans and extensions of credit by a bank to a person ~~for money borrowed~~ outstanding at one (1) time, shall at no time exceed twenty percent (20%) of the ~~aggregate--paid-in-capital,-surplus-and~~ capital ~~notes~~ structure of such bank.

(2) "Loans and extensions of credit" means a bank's direct or indirect advance of funds to or on behalf of a borrower based upon an obligation of the borrower to repay the funds, or repayable from specific property pledged by or on behalf of the borrower, and includes, for the purposes of this section:

(a) A contractual commitment to advance funds;

(b) A maker or endorser's obligation arising from a bank's discount of commercial paper;

(c) A bank's purchase of securities subject to an agreement that the seller shall repurchase the securities at the end of a stated period, but not including a bank's purchase of type I securities, as defined in 12 CFR part 1, subject to a repurchase agreement, where the purchasing bank has assured control over or has established its rights to the type I securities as collateral;

(d) A bank's purchase of third-party paper subject to an agreement that the seller shall repurchase the paper upon default or at the end of a stated period. The amount of the bank's loan is the total unpaid balance of the paper owned by the bank less any applicable dealer reserves retained by the bank and held by the bank as collateral security. Where the seller's obligation to repurchase is limited, the bank's loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A bank's purchase of third party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller;

(e) An overdraft, whether or not prearranged, but not an intra-day overdraft for which payment is received before the close of business of the bank that makes the funds available;

(f) The sale of federal funds with a maturity of more than one (1) business day, but not federal funds with a maturity of one (1) day or less or federal funds sold under a continuing contract; and

(g) Loans or extensions of credit that have been charged off on the books of the bank in whole or in part, unless the loan or extension of credit:

(i) Is unenforceable by reason of discharge in bankruptcy;

(ii) Is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or

(iii) Is no longer legally enforceable for other reasons, provided that the bank maintains sufficient records to demonstrate that the loan is unenforceable.

(3) The following items do not constitute loans or extensions of credit for purposes of this section:

(a) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(b) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(c) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(d) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by this section), or a new borrower replaces the original borrower, or unless the director determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(e) Amounts paid against uncollected funds in the normal process of collection; and

(f) (i) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing shall be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.

(ii) When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded shall be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming, rather than a violation, if:

1. The originating bank had a valid and unconditional participation agreement with a participating bank or banks that was sufficient to reduce the loan to within the originating bank's lending limit;

2. The participating bank reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

3. The participation was to be funded by close of business of the originating bank's next business day.

(4) The following loans or extensions of credit are not subject to the lending limits of this section:

(a) The discount of bills of exchange drawn in good faith against actual existing values~~,~~;

(b) T~~t~~he discount of bankers' acceptances of other banks~~,~~;

(c) T~~t~~he discount of commercial or business paper actually owned by the person negotiating the same~~, and~~;

(d) T~~t~~he obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the F~~f~~ederal F~~f~~arm L~~l~~oan A~~a~~ct;~~, shall not be considered as money borrowed, nor shall the foregoing limitations apply to~~

(e) L~~l~~oans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable com~~modities of the~~ marketable value of at least one hundred twenty percent (120%) of the amount loaned thereon~~.~~;

(f) Loans ~~or obligations shall not be subject under this section to any limitation based upon such capital and surplus~~ and extensions of credit to the extent ~~that such loans or obligations are~~ secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any Federal Reserve Bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; or

(g) Loans, including portions thereof, secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law.

~~The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association and shall be included in the liabilities of any member thereof in determining the foregoing limitations.~~

(5) Combination. Loans or extensions of credit to one (1) borrower shall be attributed to another person and each person shall be deemed a borrower when proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used, or when a common enterprise is deemed to exist between the persons.

(a) Direct benefit. The proceeds of a loan or extension of credit to a borrower shall be deemed to be used for the direct benefit of another person and shall be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods or services.

(b) Common enterprise. A common enterprise shall be deemed to exist and loans to separate borrowers shall be aggregated:

(i) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither

borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer shall not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee unless the standards of paragraph (b)(ii) of this subsection are met;

(ii) When loans or extensions of credit are made:

1. To borrowers who are related directly or indirectly through common control, including where one (1) borrower is directly or indirectly controlled by another borrower; and

2. Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty percent (50%) or more of one (1) borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(iii) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than fifty percent (50%) of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(iv) When the director determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(c) Loans to a corporate group.

(i) Loans or extensions of credit by a bank to a corporate group may not exceed fifty percent (50%) of the bank's capital and surplus. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than fifty percent (50%) of the voting securities or voting interests of the corporation or company.

(ii) Except as provided in paragraph (c)(i) of this subsection, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(d) Loans to partnerships, joint ventures, and associations.

(i) Partnership loans. Loans or extensions of credit to a partnership, joint venture or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture or association, and those provisions are valid under applicable law.

(ii) Loans to partners.

1. Loans or extensions of credit to members of a partnership, joint venture or association are not attributed to the partnership, joint venture or association unless either the direct benefit or the common enterprise test is met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

2. Loans or extensions of credit to members of a partnership, joint venture or association are not attributed to other members of the partnership, joint venture or association unless either the direct benefit or common enterprise test is met.

(e) Loans to foreign governments and their agencies and instrumentalities.

(i) Aggregation. Loans and extensions of credit to foreign governments and their agencies and instrumentalities shall be aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

1. The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support (excluding guarantees by a central government of the borrower's debt) exceeds the borrower's annual revenues from other sources, it shall be presumed that the means test has not been satisfied.

2. The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.

(ii) Documentation. In order to show that the means and purpose tests have been satisfied, a bank must, at a minimum, retain in its files the following items:

1. A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity;

2. Financial statements for the borrowing entity for a minimum of three (3) years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less than three (3) years;

3. Financial statements for each year the loan or extension of credit is outstanding;

4. The bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

5. A loan agreement or other written statement from the borrower that clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the purpose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(6) Calculation. For purposes of determining compliance with this section, a bank shall determine its lending limit as of the last day of the preceding calendar quarter. A bank's lending limit calculated in accordance with this section shall be effective on the date that the limit is to be calculated. If the director determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by this subsection, the director may provide written notice to the bank directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice from the director.

(7) Nonconforming loans. A loan, within a bank's legal lending limit when made, shall not be deemed a violation but shall be treated as nonconforming if the loan is no longer in conformity with the bank's lending limit because:

(a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the lending limit or capital rules have changed. A bank must use reasonable efforts to bring a loan that is nonconforming under this subsection into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

(b) Collateral securing the loan to satisfy the requirements of a lending limit exception has declined in value. A bank must bring a loan that is nonconforming under this subsection into conformity with the bank's lending limit within thirty (30) calendar days, except when judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(8) When in the judgment of the director the ~~liabilities of any corporation~~ loans and extensions of credit to any person, or the combined ~~liabilities of~~ loans and extensions of credit to any corporation and one (1) or more of its stockholders ~~to any bank~~ are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

Provided, further, that the director may compel the reduction of any loan which shall in his judgment appear excessive or dangerous.

SECTION 6. That Section 26-710, Idaho Code, be, and the same is hereby amended to read as follows:

26-7~~1~~06. LOANS TO OFFICERS. Except as authorized under this section, no bank may extend credit in any manner to any of its own executive officers. Any extension of credit under this section must be approved by the board of directors of the bank, and may be made only if

such credit extension comports with the principles of safety and soundness and is in compliance with regulation O of the board of governors of the federal reserve system, 12 C.F.R. 215.

SECTION 7. That Section 26-711, Idaho Code, be, and the same is hereby amended to read as follows:

26-7~~11~~07. REAL ESTATE HOLDINGS. A bank may purchase, acquire, hold and convey real estate for the following purposes only:

(1) Such as shall be necessary for the convenient transaction of its business, including at the same location as its banking offices other property to rent as a source of income; provided, however, that no bank shall invest in buildings and lots and furniture, fixtures and equipment in an amount greater than fifty ~~per cent~~ percent (50%) of the capital~~, surplus and capital notes~~ structure of such bank.

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of business.

(3) Such as it shall purchase at sale on judgments, decrees, mortgage foreclosure or trustees sale for debts previously contracted, but a bank shall not bid at such sale a larger amount than is necessary to satisfy all debts and costs necessary to obtain clear title. Such real estate shall be carried on the books of the bank at the lower of cost or market value. Market value shall be determined by a current appraisal prepared by an independent qualified appraiser approved by the director. Thereafter, but no more frequently than annually, the director may in his discretion request that the bank obtain from an independent qualified appraiser approved by the director, a further appraisal of market value or certification by the appraiser that the market value has not declined.

(4) No real estate acquired under subsections (2) and (3) of this section may be held for a longer period than five (5) years, provided, however, that upon application by the bank, the director shall approve the continued holding of any such real estate by the bank for an additional period of five (5) years upon the bank's showing of its good faith attempt to dispose of the real estate within the first five (5) year period, or that disposal within the first five (5) year period would be detrimental to the bank; and provided further that the bank shall, during the second five (5) year period, at the end of each year beginning at the end of the sixth year in which the property is held, write down the value of such real estate by twenty percent (20%) of the value at which such real estate is carried on its books at the beginning of the second five (5) year period. Value at the beginning of the second five (5) year period shall be the lower of cost or market value as determined pursuant to appraisal as provided in subsection (3) of this section. Nothing in this section shall be construed to prevent a bank from making loans secured by real estate as provided in this act, or a trust department holding and conveying real estate in trust.

(5) A bank may, with the approval of the director and the board of governors of the Federal Reserve System or the Federal Deposit Insurance Corporation invest in bank premises or in the stock, bonds, debentures, or other obligations of any corporation holding the banking buildings, lots and furniture, fixtures and equipment of such bank in an amount not to exceed the capital and surplus of the bank.

SECTION 8. That Section 26-712, Idaho Code, be, and the same is hereby amended to read as follows:

26-7~~12~~08. VALUATION OF ASSETS. No bank shall enter or at any time carry on its books any of its assets at a valuation exceeding their actual cost to the bank; nor shall the value of any of its assets be increased on the books of the bank without the written consent of the director. Additional charges, delinquency charges and other similar charges on consumer credit transactions permitted by and made in compliance with the Uniform Consumer Credit Code and added to the principal balance of the loan, shall not come within the prohibition of this section.

SECTION 9. That Section 26-713, Idaho Code, be, and the same is hereby amended to read as follows:

26-7~~13~~09. STATUTORY BAD DEBT. Every bank carrying any bad debt, or a debt of doubtful value, as an asset shall, upon the request or demand of the director, collect the same or put it in good bankable condition or charge it out of its books. Any debt on which interest is past due and unpaid for a period of six (6) months, unless the same is well secured and in process of collection, shall be considered a bad debt within the meaning of this section.

SECTION 10. That Section 26-714, Idaho Code, be, and the same is hereby amended to read as follows:

26-71~~4~~0. OWNERSHIP AND LEASING OF PROPERTY FOR CUSTOMERS. A bank may become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property.

SECTION 11. That Section 26-715, Idaho Code, be, and the same is hereby amended to read as follows:

26-71~~5~~1. LENDING OF CREDIT -- SURETYSHIP AND GUARANTYSHIP. A bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, only if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability.

SECTION 12. That Section 26-716, Idaho Code, be, and the same is hereby amended to read as follows:

26-71~~6~~2. VALIDITY OF TRANSACTIONS. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours.

SECTION 13. That Section 26-717, Idaho Code, be, and the same is hereby amended to read as follows:

26-71~~7~~3. ADVERSE CLAIM TO BANK DEPOSIT. Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person shall not require the bank to recognize the adverse claim unless the adverse claimant shall:

(~~a~~1) ~~p~~Procure a restraining order, injunction or other appropriate process against the bank from a court of competent jurisdiction wherein the person to whose credit the deposit stands is made a party and served with summons~~,~~; or

(~~b~~2) ~~e~~Execute to said bank, in a form and with sureties acceptable to the bank, a bond indemnifying the bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank.

This section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship and the facts showing reasonable cause for belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant.

SECTION 14. That Section 26-718, Idaho Code, be, and the same is hereby amended to read as follows:

26-718~~4~~. ACCOUNT OF PERSON UNDER DISABILITY. Whenever any minor or any person under disability shall become a depositor, as defined in section 26-106, Idaho Code, in any bank in his or her name, such bank may pay such money on the check, order or endorsement of such depositor the same as in cases of depositors not under disability, and such payment shall be in all respects valid in law.

SECTION 15. That Section 26-719, Idaho Code, be, and the same is hereby amended to read as follows:

26-719~~5~~. BRANCH OR OFFICE AT WHICH INSTRUMENTS ARE TO BE PRESENTED MUST BE INDICATED. All checks, drafts, bills of exchange or other orders for the payment of money drawn against any bank operating branch banks shall indicate the particular bank and branch at which the same are to be presented for payment or acceptance.

SECTION 16. That Section 26-801, Idaho Code, be, and the same is hereby amended to read as follows:

26-801. BORROWING MONEY -- LIMITATIONS. At no time shall the total borrowings of any bank exceed in the aggregate an amount equal to the capital ~~and surplus~~ structure of the bank, except with the consent of the director.

For the purpose of computing total borrowings the following items shall not be included:

(~~a~~1) Federal funds purchased.

(~~b~~2) The sale of securities by a bank, under an agreement to repurchase at the end of a stated period.

(~~c~~3) Borrowings from the Federal Reserve System.

(~~d~~4) The sale of mortgage loans by a bank, under agreement to repurchase at the end of a stated period.

(~~e~~5) Money borrowed to meet seasonal requirements.

(~~f~~6) Money borrowed to meet unexpected withdrawals.

(~~g~~7) Capital notes issued in accordance with section 26-802, Idaho Code.

The total of all borrowings by a bank including those items excluded from the computation of total borrowings may not exceed in the aggregate an amount equal to two and one-half (2 1/2) times the capital ~~and--surplus~~ structure of the bank, except with the consent of the director.

Whenever it shall appear to the director that a bank is borrowing money in excess of the above limitation, or for purposes other than as specified above, he may require it to reduce such borrowings within a time to be fixed by him.

SECTION 17. That Section 26-107, Idaho Code, be, and the same is hereby amended to read as follows:

26-107. SECTIONS APPLICABLE TO NATIONAL BANKS. The provisions of sections 26-215, 26-301 through and including, 26-309, 26-311, 26-71~~6~~2, 26-71~~7~~3, 26-71~~8~~4, 26-1203, 26-1206, 26-1207, 26-1208, and 26-120~~9~~, 26-160~~1~~ through ~~2~~6-1605, 26-2601 through 26-2612, Idaho Code, shall also apply to national banks.

Approved March 23, 2004.

CHAPTER 160
(H.B. No. 531)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-525A, IDAHO CODE, TO PROVIDE FOR THE EXPUNGEMENT OF RECORDS AFTER FIVE YEARS FOR PERSONS WHO HAVE COMMITTED FELONY OFFENSES OR WHO HAVE BEEN COMMITTED TO THE DEPARTMENT OF JUVENILE CORRECTIONS, TO PROVIDE FOR THE EXPUNGEMENT OF RECORDS AFTER ONE YEAR FOR PERSONS WHO HAVE COMMITTED MISDEMEANOR OR STATUS OFFENSES AND WHO HAVE NOT BEEN COMMITTED TO THE DEPARTMENT, TO PROVIDE FOR THE EXPUNGEMENT OF RECORDS AFTER ONE YEAR IN CASES WHERE THE DIVERSION PROCESS HAS BEEN UTILIZED OR THE COURT ORDERS AN INFORMAL ADJUSTMENT, TO PROVIDE THAT RECORDS TO BE SEALED INCLUDE LAW ENFORCEMENT INVESTIGATORY REPORTS AND FINGERPRINT RECORDS AND TO PROVIDE THAT REFERENCES TO DIVERSIONS OR INFORMAL ADJUSTMENTS SHALL BE REMOVED FROM PUBLIC RECORDS.

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

SECTION 1. That Section 20-525A, Idaho Code, be, and the same is hereby amended to read as follows:

20-525A. EXPUNGEMENT OF RECORD -- HEARING -- FINDINGS NECESSARY -- SPECIAL INDEX -- EFFECT OF ORDER. (1) Any person who has been adjudicated in a case under this act and found to be within the purview of the

act for having committed a felony offense or having been committed to the department of juvenile corrections may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the court, or, in case the juvenile was committed to the juvenile corrections center, five (5) years from the date of his release from the juvenile corrections center, or after reaching age eighteen (18), whichever occurs last, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and of the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(2) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed misdemeanor or status offenses only and not having been committed to the department of juvenile corrections may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(3) In any case where the prosecuting attorney has elected to utilize the diversion process or the court orders an informal adjustment pursuant to section 20-511, Idaho Code, the person may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.

(4) The court may not expunge a conviction for any of the following crimes from a juvenile's record:

(a) Administering poison with intent to kill (18-4014, Idaho Code);

(b) Aggravated battery (18-907, Idaho Code);

(c) Armed robbery (chapter 65, title 18, Idaho Code);

(d) Arson (chapter 8, title 18, Idaho Code);

(e) Assault with intent to commit a serious felony (18-909, Idaho Code);

(f) Assault with intent to murder (18-4015, Idaho Code);

(g) Assault or battery upon certain personnel, felony (18-915, Idaho Code);

(h) Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);

(i) Infamous crime against nature, committed by force or violence (18-6605, Idaho Code);

(j) Injury to child, felony (18-1501, Idaho Code);

(k) Kidnapping (18-4501, Idaho Code);

(l) Murder of any degree (18-4001 and 18-4003, Idaho Code);

(m) Rape, excluding statutory rape (18-6101 and 18-6108, Idaho Code);

(n) Ritualized abuse of a child (18-1506A, Idaho Code);
(o) Sexual exploitation of a child (18-1507, Idaho Code);
(p) Unlawful use of destructive device or bomb (18-3320, Idaho Code);
(q) Voluntary manslaughter (18-4006 1., Idaho Code);
(r) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;
(s) A violation of the provisions of section 37-2732B, Idaho Code, related to drug trafficking or manufacturing of illegal drugs.

(~~3~~5) If the court finds after hearing that the petitioner has not been adjudicated as a juvenile for any of the crimes identified in subsection (2) of this section, and has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction or his release from the juvenile corrections center, and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds to its satisfaction that the petitioner has been held accountable, is developing life skills necessary to become a contributing member of the community and that the expungement of the petitioner's record will not compromise public safety, it shall order all records in the petitioner's case in the custody of the court and all such records, including law enforcement investigatory reports and fingerprint records, in the custody of any other agency or official sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public. However, a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of a court of competent jurisdiction. Copies of the order shall be sent to each agency or official named in the order. Upon the entry of the order the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter be permitted only by the court upon petition by the person who is the subject of the records or by any other court of competent jurisdiction, and only to persons named in the petition.

Approved March 23, 2004.

CHAPTER 161
(H.B. No. 539, As Amended in the Senate)

AN ACT

RELATING TO BILLS FOR ELECTRIC SERVICES; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-337, IDAHO CODE, TO ALLOW FOR INFORMATION REGARDING FISH AND WILDLIFE MITIGATION COSTS TO BE INCLUDED ON BILLS FOR ELECTRIC SERVICE.

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

SECTION 1. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-337, Idaho Code, and to read as follows:

61-337. FISH AND WILDLIFE MITIGATION INFORMATION. (1) On and after July 1, 2004, each electric utility with one thousand (1,000) customers or more may provide information in its bills to its customers regarding the percentage of the electric utility's costs of supplying electric energy to its customers which is utilized for fish and wildlife mitigation purposes on the electric utility's system.

(2) On and after July 1, 2004, each cooperative and municipality furnishing electric service, as those terms are defined in section 61-332A, Idaho Code, (excepting a cooperative that serves less than one thousand (1,000) customers and also serves consumers in other states) may provide information on its bills to its customers of the percentage cost of fish and wildlife mitigation included in the cost of electric energy sold to the cooperative or municipality's customers.

(3) Annually, at a time at the discretion of the utility or entity, a statement shall be posted on the utility's or entity's website detailing to whom and the amount spent on fish and wildlife mitigation by the utility or entity for the most recent fiscal year.

Approved March 23, 2004.

CHAPTER 162
(H.B. No. 549)

AN ACT

RELATING TO THE PURE SEED LAW; AMENDING SECTION 22-434, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM LICENSING REQUIREMENTS FOR CERTAIN SEED DEALERS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 22-434, Idaho Code, be, and the same is hereby amended to read as follows:

22-434. SEED DEALER'S LICENSE. An in-state seed dealer or an out-of-state seed dealer who conditions or labels or sells, for the use of others any seed, shall obtain a license from the department authorizing him to condition or label or sell such seed. A dealer shall not be entitled to a license unless he has an established plant, warehouse or place of business.

(1) A separate license shall be required for each place of business from which seed regulated under this chapter is sold. Application for ~~licenses~~ shall be on a form provided by the director.

(2) Applications shall be renewed no later than July 1 of each year.

(3) Fees so collected shall be paid into the state treasury and credited to the state agricultural inspection account.

(4) In-state producers selling their own crop shall be exempt from this section.

(5) Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars ($500) is exempt from this section.

(6) An in-state seed dealer or an out-of-state seed dealer, who sells, offers for sale, exposes for sale or delivers seed only in packages of less than eight (8) ounces shall be exempt from this section.

(7) The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(~~1~~a) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license; and/or

(~~2~~b) The licensee was guilty of violating any of the provisions of this chapter.

Approved March 23, 2004.

CHAPTER 163
(H.B. No. 558, As Amended)

AN ACT

RELATING TO RECORDS EXEMPT FROM DISCLOSURE; AMENDING SECTION 9-340C, IDAHO CODE, TO EXEMPT CERTAIN INFORMATION FROM VOTER REGISTRATION CARDS FROM DISCLOSURE AND PROVIDING EXCEPTIONS; AND AMENDING SECTION 34-416, IDAHO CODE, TO GOVERN INFORMATION IN VOTER REGISTRATION CARDS WHICH IS EXEMPT FROM DISCLOSURE.

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; 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 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 54-4901, Idaho Code.

(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.

(25) The physical voter registration card on file in the county clerk's office; however, a redacted copy of said card shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes.

SECTION 2. That Section 34-416, Idaho Code, be, and the same is hereby amended to read as follows:

34-416. REGISTRATION CARDS. (1) The 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.

(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 and shall be considered confidential and unavailable for public inspection and copying except as provided by subsection (25) of section 9-340C, Idaho Code.

Approved March 23, 2004.

CHAPTER 164
(H.B. No. 559)

AN ACT

RELATING TO RECALL PETITIONS AND ELECTIONS; AMENDING SECTION 34-1704, IDAHO CODE, TO FURTHER GOVERN APPROVAL OF A PROSPECTIVE RECALL PETITION; AMENDING SECTION 34-1705, IDAHO CODE, TO PROVIDE QUALIFICATIONS FOR A PERSON WHO CIRCULATES A PETITION; AMENDING SECTION 34-1706, IDAHO CODE, TO REQUIRE EXAMINATION TO VERIFY SIGNATURES BY THE COUNTY CLERK; AMENDING SECTION 34-1707, IDAHO CODE, TO CLARIFY PROCEDURE GOVERNING NOTIFICATION OF SUFFICIENCY OF PETITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-1711, IDAHO CODE, TO INCREASE THE NUMBER OF DAYS ALLOWED FOR CANVASS OF RETURNS; AMENDING SECTION 34-1713, IDAHO CODE, TO ELIMINATE PROCEDURE FOR REMOVAL OF A SIGNATURE AFTER THE PETITIONS HAVE BEEN FILED; AND AMENDING SECTION 34-1715, IDAHO CODE, TO GOVERN PROCEDURE IN THE EVENT OF REFUSAL TO ACCEPT A PETITION.

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

SECTION 1. That Section 34-1704, Idaho Code, be, and the same is hereby amended to read as follows:

34-1704. PRINTING OF PETITION AND SHEETS FOR SIGNATURES -- TIME LIMITS FOR PERFECTING PETITION. (1) Before or at the time of beginning to circulate any petition for the recall of any officer subject to recall, the person or persons, organization or organizations under whose authority the recall petition is to be circulated, shall send or deliver to the secretary of state, county clerk, or city clerk, as the case may be, a copy of ~~such~~ a prospective petition duly signed by at least twenty (20) electors eligible to sign such petition. The receiving officer 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 signature sheets for recall ~~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~~ of standardized size in substantial conformance within the provisions of section 34-1703, Idaho Code. To every sheet of petitioners' signatures shall be attached a full and correct copy of the recall petition.

(2) The secretary of state, county clerk, or city clerk, as the case may be, shall indicate in writing on the prospective recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, the secretary of state, county ~~auditor~~ clerk, or city clerk, shall inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of certified signatures within ~~sixty-(60)~~ seventy-five (75) days following the date of approval as to form. Signatures on the prospective petition shall not be counted toward the required number of certified signatures. Any petition that has not been perfected with the required number of certified signatures within the ~~sixty--(60)~~ seventy-five (75) days allowed shall be declared null and void ab initio in its entirety~~, except-for-the-extension-allowed-for-in-section-34-1707,-Idaho-Code~~.

SECTION 2. That Section 34-1705, Idaho Code, be, and the same is hereby amended to read as follows:

34-1705. VERIFICATION ON SHEETS FOR SIGNATURES. 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

ss.

County of

I, ..., swear, under penalty of perjury, that I am a resident of the State of Idaho and at least eighteen (18) years of age; and 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~~....

(Notary Seal)

.....

Notary Public

Residing at .....

SECTION 3. That Section 34-1706, Idaho Code, be, and the same is hereby amended to read as follows:

34-1706. EXAMINATION AND CERTIFICATION OF SIGNATURES. ~~(1)~~ All petitions with attached signature sheets shall be ~~presented to~~ filed on the same day with the secretary of state, county clerk, or city clerk, as the case may be~~,-on-the-same-day,-and-a-cursory-examination-of-the-petitions--shall--be--made-by-such-officer-first-receiving-them.-The-cursory examination-shall-be-made-to-determine-whether-the-petitions--apparently contain--the--necessary--number-of-signatures~~. The secretary of state or the city clerk shall promptly transmit the petitions and attached signature sheets to the county clerk. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk as provided in section 34-1807, Idaho Code. This examination shall not exceed fifteen (15) business days from the date of receipt of the petitions.

~~(a)--If--the-total-number-of-signatures-on-the-petitions-is-not-sufficient-to-satisfy-the-number-required--by--section--34-1702,--Idaho Code,-all-petitions-with-attached-signature-sheets-shall-be-retained by--the--officer--who--shall-notify-in-writing-the-person-filing-the petition-of-the-number-of-signatures-needed,-and-further--signatures may-be-gathered.~~

~~(b)--If-the-cursory-examination-of-the-signature-sheets-reveals:~~

~~(i)---Erasures-on-any-signature;~~

~~(ii)--Illegible-or-undecipherable-signatures;~~

~~(iii)-Signatures-not-properly-identified-by-all-of-the-information-required-on-the-sheet;~~

~~(iv)--Duplicate-signatures;~~

~~(v)---Signatures--of--persons--who-have-requested-in-writing-to have-their-names-removed-from-the-petition;~~

~~the-officer-making-such-cursory-examination-shall-summarily-reject--such signatures--and--such--rejected--signatures--shall--not-be-counted.-Each rejected-signature-shall-be-drawn-through-with-ink-and-initialed-by--the rejecting-officer.-If-the-total-number-of-signatures-not-rejected-is-not sufficient--to--satisfy--the--number--required-by-section-34-1702,-Idaho Code,-all-petitions-with-attached-signature-sheets-shall-be-retained--by the--officer--who-shall-notify-in-writing-the-person-filing-the-petition of-the-number-of-signatures-needed,-and-further-signatures-may-be--gathered.~~

~~(2)-(a)--All--recall--petitions--presented-to-the-secretary-of-state found-to-apparently-contain--the--necessary--number--of--signatures, after--the--examination--provided--for--in-section-34-1706(1),-Idaho Code,-shall-be-filed-by-the-secretary-of--state--and--become--public records--of--the--state--not--to-be-returned.-The-secretary-of-state shall-promptly-transmit-the-petition-sections-with--attached--signature--sheets-to-the-proper-county-clerk,-with-an-accompanying-letter from-the-secretary-of-state-ordering--the--signature--sheets--to--be examined--and--returned--to--the--secretary-of-state-within-ten-(10) days.-The-county-clerk-shall-examine-each-signature-purported-to--be that--of-a-registered-elector-from-his-county,-and-compare-each-such signature-with-the-registration-documents-available--to--the--county clerk.-The-county-clerk-shall-summarily-reject-all-signatures:~~

~~(i)---Which-are-illegible-or-undecipherable;~~

~~(ii)--Which--are-not-the-signatures-of-registered-electors;-and such-rejected-signatures-shall-not-be-counted;~~

~~(iii)-Duplicate-signatures;-and~~

~~(iv)--Signatures-of-persons-who-have-requested--in--writing--to have-their-names-removed-from-the-petition.~~

~~Each--rejected--signature--shall--be-drawn-through-with-ink-and-initialed-by-the-auditor.~~

~~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-certify-to-the-secretary-of-state-within--the specified--number-of-days-the-number-of-signatures-on-the-petition-found to-be-of-registered-electors,-and-shall-return-all-petitions-to-the-secretary-of-state.~~

~~(b)--The-secretary-of-state-shall-total-the-number-of-certified-signatures-from-each-of-the-county-clerks,-if-applicable,-and-if--found to-total-the-number-of-signatures-required-by-section-34-1702,-Idaho Code,-shall-proceed-as-provided-in-section-34-1707,-Idaho-Code.~~

~~(3)--All--recall--petitions--presented--to--the-county-clerk-for-the recall-of-any-county-officer-or-special-district-officer-found-to-apparently-contain-the-necessary-number-of-signatures,-after-the--examination provided--for-in-section-34-1706(1),-Idaho-Code,-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-from-his-county,-and-compare-each-such-signature-with the--registration--documents--available--to-the-county-clerk.-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.-The-county-clerk-may-take-not-to-exceed-ten-(10) 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 if-found-to-total-the-number-of-signatures-required-by-section--34-1702, Idaho-Code,-shall-proceed-as-provided-in-section-34-1707,-Idaho-Code.~~

~~(4)--All-recall-petitions-presented-to-the-city-clerk-for-the-recall of--any-city-officer-found-to-apparently-contain-the-necessary-number-of signatures,-after-the-examination-provided-for--in--section--34-1706(1), Idaho-Code,-shall-be-filed-with-the-city-clerk-and-become-public-records of--the--city-not-to-be-returned.-The-city-clerk-shall-examine-each-such signature-purported-to-be-that-of-a-registered-elector-of-the-city,--and compare-each-such-signature-with-the-registration-documents-available-to the--city--clerk.--The--city-clerk-shall-summarily-reject-all-signatures which-are-not-the-signatures-of-a-registered-elector-of--the--city;--and such--rejected--signatures-shall-not-be-counted.-Each-rejected-signature shall-be-drawn-through-with-ink-and-initialed-by--the--city--clerk.--The city--clerk--may--take--not--to-exceed-ten-(10)-days-after-filing-of-the petition-to-complete-his-examination.~~

~~The-city-clerk-shall-certify-each-signature-found-to-comply-with-all of-the-requirements-of-this-act-by-an-appropriate--mark--following--each signature.~~

~~The--city--clerk-shall-total-the-number-of-certified-signatures,-and if-found-to-total-the-number-of-signatures-required-by-section--34-1702, Idaho-Code,-shall-proceed-as-provided-in-section-34-1707,-Idaho-Code.~~

SECTION 4. That Section 34-1707, Idaho Code, be, and the same is hereby amended to read as follows:

34-1707. SUFFICIENCY OF PETITION -- NOTIFICATION -- EFFECT OF RESIGNATION -- SPECIAL ELECTION.

(1) ~~(a) In the event that a petition filed with the secretary of state does not contain the required number of certified signatures after being returned by the county clerks, the secretary of state 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 thirty (30) days of the date that the secretary of state finds the petition defective for lack of certified signatures. If the petition is not perfected within the thirty (30) day period, the secretary of state shall declare the petition null and void ab initio in its entirety.~~

~~(b)~~ In the event that a petition filed with the secretary of state is found by the secretary of state to contain the required number of certified signatures, the secretary of state shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(~~i~~a) If the officer being recalled resigns his office within five (5) business days after notice from the secretary of state, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(~~ii~~b) If the officer being recalled does not resign his office within five (5) business days after notice from the secretary of state, a special election shall be ordered by the secretary of state, unless he is the officer being recalled, in which event the governor shall order such special election. The special election must be held on the date prescribed in section 34-106, Idaho Code. If the officer being recalled is one (1) specified in section 34-1701(1)(a), Idaho Code, the special election shall be conducted statewide. If the officer being recalled is one (1) specified in section 34-1701(1)(b), Idaho Code, the special election shall be conducted only in the legislative district.

(2) ~~(a) In the event that a petition filed with a 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 thirty (30) days of the date that the clerk finds the petition defective for lack of certified signatures. If the petition is not perfected within the thirty (30) day period, the clerk shall declare the petition null and void ab initio in its entirety.~~

~~(b)~~ In the event that a petition filed with the county clerk is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(~~i~~a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(~~ii~~b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the county clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted ~~county-wide~~ countywide.

(~~c~~3) In the event that a petition filed with the county clerk concerning the recall of an official of a special district is found by the county clerk to contain the required number of certified signatures, the county clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, and the governing board and election officials of the special district that the recall petition is in proper form.

(~~i~~a) If the officer being recalled resigns his office within five (5) business days after notice from the county clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(~~ii~~b) If the officer being recalled does not resign his office within five (5) business days after notice from the county clerk, a special election shall be ordered by the governing board of the special district. The special election must be held on the date prescribed in section 34-106, Idaho Code. The election shall be conducted by the special district in the manner provided in section 34-1401, Idaho Code, and the special district may contract with the county clerk as provided in section 34-1401, Idaho Code.

~~(3)--(a)-In--the--event-that-a-petition-filed-with-a-city-clerk-does not-contain-the-required-number-of-certified--signatures,--the--city 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-thirty-(30)-days-of-the-date-that-the-city-clerk-finds the--petition--defective--for--lack--of-certified-signatures.-If-the petition-is-not-perfected-within-the-thirty--(30)--day--period,--the clerk--shall--declare--the--petition--null-and-void-ab-initio-in-its entirety.~~

(~~b~~4) In the event that a petition filed with a city clerk is found by the city clerk to contain the required number of certified signatures, the city clerk shall promptly, by certified mail, inform the officer being recalled, and the petitioner, that the recall petition is in proper form.

(~~i~~a) If the officer being recalled resigns his office within five (5) business days after notice from the city clerk, his resignation shall be accepted and the resignation shall take effect on the day it is offered, and the vacancy shall be filled as provided by law.

(~~ii~~b) If the officer being recalled does not resign his office

within five (5) business days after notice from the city clerk, a special election shall be ordered by the city clerk. The special election must be held on the date prescribed in section 34-106, Idaho Code. The special election shall be conducted ~~city-wide~~ citywide.

(5) In the event that a petition is found not to have the required number of signatures, the officer shall continue in office and no new recall petition may be circulated for a period of ninety (90) days against the same officer.

SECTION 5. That Section 34-1711, Idaho Code, be, and the same is hereby amended to read as follows:

34-1711. CANVASS OF RETURNS. (1) The board of county commissioners shall act as the board of canvassers for all special recall elections involving state and county officers that involve elections held wholly or partly within their county.

(a) For all special recall elections involving state officers, the board of county commissioners shall meet ~~at 12 noon on the third~~ within ten (10) days after said election to canvass the votes cast at such election, and shall immediately transmit to the secretary of state an abstract of the votes cast.

(~~i~~b) Within ~~ten~~ fifteen (~~10~~5) days following the special recall election held to recall a state officer, the state board of canvassers shall meet and canvass the votes cast at such election, and the secretary of state shall immediately after the completion thereof, proclaim the results.

(~~b~~c) For all special recall elections involving county officers, the board of county commissioners shall meet ~~at 12 noon on the third~~ within ten (10) days after said election to canvass the votes cast at such election, and the county clerk shall immediately after the completion thereof, proclaim the results.

(~~c~~d) For all special recall elections involving city officers, the mayor and council shall meet within ~~five~~ six (~~5~~6) days after said election to canvass the votes cast at such election, and the city clerk shall immediately after the completion thereof, proclaim the results.

SECTION 6. That Section 34-1713, Idaho Code, be, and the same is hereby amended to read as follows:

34-1713. TIME WITHIN WHICH RECALL MAY BE FILED -- REMOVAL OF SIGNATURES. (1) No petition for a recall shall be circulated against any officer until he has actually held his office ninety (90) days.

(2) After one (1) special recall election, no further recall petition shall be filed against the same officer during his current term of office, unless the petitioners first pay into the public treasury which has paid such special recall election expenses the whole amount of the expenses for the preceding recall election. The specific reason for recall in one (1) recall petition cannot be the basis for a second recall petition during that current term of office.

(3) The signer of any recall petition 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.

~~(4)--The-signer-of-any-recall-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--officer--who-receives-the-recall-petition,-a-signed 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-officer-who-receives-the-statement-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-for-recall.~~

SECTION 7. That Section 34-1715, Idaho Code, be, and the same is hereby amended to read as follows:

34-1715. REFUSAL TO ACCEPT PETITION -- MANDATE -- INJUNCTION. If the secretary of state, county clerk, or city clerk, ~~shall~~ refuses to accept and file any petition for the recall of a public officer with the requisite number of eligible signatures, any citizen may apply within ten (10) business days after such refusal to the district court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state, county clerk, or city clerk shall then accept and file the recall petition, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office, except that the time limitations required by section 34-1704(2), Idaho Code, shall begin to run only as of the date of the court judgment, which shall be so stated in the judgment. On a showing that the petition is not legally sufficient, the court may enjoin the secretary of state, county clerk, or city clerk, and all other officers from certifying or printing any official ballot for a recall election. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the ~~supreme~~ court of appeals within ten (10) business days after a decision is rendered. The district court of the state of Idaho in and for Ada County shall have jurisdiction in all cases involving the recall of state officers.

Approved March 23, 2004.

CHAPTER 165
(H.B. No. 560, As Amended in the Senate)

AN ACT

RELATING TO CONDUCT OF ELECTIONS BY MAIL; AMENDING CHAPTER 3, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-308, IDAHO CODE, TO GOVERN THE CREATION OF A MAIL BALLOT PRECINCT AND TO PROVIDE CONDITIONS WHICH MUST BE MET IN THE CONDUCT OF AN ELECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 3, 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 34-308, Idaho Code, and to read as follows:

34-308. MAIL BALLOT PRECINCT. A precinct within the county which contains no more than one hundred twenty-five (125) registered electors at the last general election, may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year. Such a designation shall apply thereafter to all elections conducted within the precinct until revoked by the board of county commissioners. Having designated a mail ballot precinct, there shall be no voting place established within the precinct. Elections in a mail ballot precinct shall be conducted in a manner consistent with absentee voting with the following special provisions.

(1) The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct, and shall affix to the return envelope, postage sufficient to return the ballot.

(2) The ballot shall be mailed no sooner than twenty-four (24) days prior to the election day and no later than the fourteenth day prior to the election.

(3) The clerk shall make necessary provisions to segregate mail ballot precinct ballots by precinct, and for all purposes of the election, the precinct integrity shall be maintained.

(4) The clerk shall make available in the office of the clerk, registration on election day for any individual who is eligible to vote and who resides in a mail ballot precinct and has not previously registered. The clerk shall provide an official polling place in the office of the clerk and a qualified elector who registers on election day and resides in a mail ballot precinct shall be allowed to vote at the office of the clerk.

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

Approved March 23, 2004.

CHAPTER 166
(H.B. No. 564)

AN ACT

RELATING TO THE CIVIL RIGHTS OF PERSONS CONVICTED OF CRIME; AMENDING SECTION 18-310, IDAHO CODE, TO CLARIFY THE RESTORATION OF RIGHTS TO PERSONS WHO HAVE ACHIEVED FINAL DISCHARGE OF A CONVICTION IN ANOTHER STATE OR JURISDICTION AND TO MAKE A TECHNICAL CORRECTION.

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, 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, except that persons convicted of the felonies enumerated in paragraphs (s) and (t) of this subsection, for any degree of murder or voluntary manslaughter, shall not be restored the right to ship, transport, possess or receive a firearm regardless of the date of their conviction if the conviction was the result of an offense committed by use of a firearm.

(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) of this section, upon which the sentence was enhanced for the use of a firearm during the commission of said felony.

(4) Persons convicted of felonies in other states or jurisdictions shall be allowed to register and vote in Idaho upon final discharge which means satisfactory completion of imprisonment, probation and parole as the case may be. These individuals shall not have the right restored to ship, transport, possess or receive a firearm, in the same manner as an Idaho felon as provided in subsection (2) of this section.

Approved March 23, 2004.

CHAPTER 167
(H.B. No. 581)

AN ACT

RELATING TO BANKRUPTCY AND PENSION PLANS; AMENDING SECTION 11-604A, IDAHO CODE, TO INCLUDE 457 PLANS AS EXEMPT FROM EXECUTION, ATTACHMENT, GARNISHMENT, SEIZURE OR OTHER LEVY OR BY ANY OTHER LEVY BY OR UNDER ANY LEGAL PROCESS WHATEVER WITH EXCEPTIONS, TO FURTHER DEFINE THE TERM "EMPLOYEE BENEFIT PLAN," TO DELETE LANGUAGE REGARDING APPLICATION TO CERTAIN EMPLOYEE BENEFIT PLANS, TO PROVIDE PAYMENTS FROM A 457 PLAN UNDER CERTAIN CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 11-604A, Idaho Code, be, and the same is hereby amended to read as follows:

11-604A. PENSION MONEY EXEMPT. (1) It is the policy of the state of Idaho to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Idaho under 11 U.S.C. section 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Idaho as a pension from the government of the United States, whether the money be in the actual possession of a citizen or be deposited or loaned, shall be exempt from execution, attachment, garnishment, seizure, or other levy by or under any legal process whatever. When a debtor dies, or absconds, and leaves his family any money exempted by this subsection, the money shall be exempt to the family as provided in this subsection. This subsection shall not apply to any child support collection actions, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Idaho under any employee benefit plan, and any fund created by the benefit plan or arrangement, shall be exempt from execution, attachment, garnishment, seizure, or other levy by or under any legal process whatever. This subsection shall not apply to any child support collection actions, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in the plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for those orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b), 408, ~~or~~ 408A or 457 of the Internal Revenue Code of 1986, as amended, or section 409 of the Internal Revenue Code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection shall not prohibit actions against an employee benefit plan or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means:

(a) Assets held, payments made, and amounts payable under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service;

(b) Any plan or arrangement, whether funded by a trust, an annuity contract, an insurance contract, or an individual account, that is described in sections 401(a), 403(a), 403(b), 408, ~~or~~ 408A or 457 of the Internal Revenue Code of 1986, as amended, or section 409 of the Internal Revenue Code as in effect before January 1, 1984. The term "employee benefit plan" also means any rights accruing on account of money paid currently or in advance pursuant to a college savings

program described in chapter 54, title 33, Idaho Code. ~~The--term "employee--benefit-plan"-shall-not-include-any-employee-benefit-plan that-is-established-or-maintained-for-its-employees-by--the--government--of--the--United-States,-by-the-state-of-Idaho-or-any-political subdivision-of-the-state,-or-by-any-agent-or-instrumentality-of--any of-the-foregoing.~~

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the beneficiary and the trustee or custodian of the plan, or the ability of the debtor to withdraw, borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in the plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for those orders under the plan, or, in the case of benefits payable under a plan described in sections 403(b), 408, ~~or~~ 408A or 457 of the Internal Revenue Code of 1986, as amended, or section 409 of the Internal Revenue Code as in effect before 1984, to the extent ~~provided~~ in any order issued by a court of competent jurisdiction that provides home maintenance or support.

(6) Unless contrary to applicable federal law, nothing contained in subsection (3), (4) or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an individual retirement account held in the name of, or on account of, the other spouse, the "account holder spouse.". ~~.~~ At the death of the ~~non-account~~ nonaccount holder spouse, the account holder spouse may transfer or distribute the community property interest of the ~~non-account~~ nonaccount holder spouse in the account holder spouse's individual retirement account to the ~~non-account~~ nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the ~~non-account~~ nonaccount holder spouse, or the law of intestate succession if applicable, and that distributee may, but shall not be required to, obtain an order from a court of competent jurisdiction, including a nonjudicial dispute resolution agreement, or other order, entered to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the ~~non-account~~ nonaccount holder spouse's community property interest in an individual retirement account shall be considered a person entitled to the full protection of subsection (3) of this section. The ~~non-account~~ nonaccount holder spouse's consent to a beneficiary designation by the account holder spouse with respect to an individual retirement account shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation or transfer of the ~~non-account~~ nonaccount holder spouse's community property interest in an individual retirement account. For purposes of this subsection, the term "~~non-account~~nonaccount holder spouse" means the spouse of the person in whose name the individual retirement account is maintained. The term "individual retirement account" includes an individual retirement account and an individual retirement annuity both as described in section 408 of the Internal Revenue Code of 1986, as amended, a Roth individual retirement account as described in section 408A of the Internal Revenue Code of 1986, as amended, and an individual retirement bond as described in section 409 of the Internal Revenue Code as in effect before January 1, 1984.

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

Approved March 23, 2004.

CHAPTER 168
(H.B. No. 592)

AN ACT

RELATING TO WATER STORAGE AND MINE TAILINGS DAMS; AMENDING SECTION 42-1717, IDAHO CODE, TO PROVIDE THAT ALL DAMS OR MINE TAILINGS IMPOUNDMENT STRUCTURES REGULATED BY THE DEPARTMENT OF WATER RESOURCES SHALL BE INSPECTED AT LEAST ONCE EVERY FIVE YEARS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 42-1717, Idaho Code, be, and the same is hereby amended to read as follows:

42-1717. JURISDICTION OVER SUPERVISION OF MAINTENANCE, OPERATION AND INSPECTION OF DAMS AND MINE TAILINGS IMPOUNDMENT STRUCTURES. Supervision over the maintenance and operation of dams, reservoirs and mine tailings impoundment structures insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the director of the department of water resources. The director shall at state expense inspect or cause to be inspected, as often as he thinks advisable, every dam used for holding water and mine tailings impoundment structure used for holding tailings slurry in this state; however, all dams ~~twenty (20) feet or more in height~~ or mine tailings impoundment structures ~~more than thirty (30) feet in height~~ regulated by the department shall be inspected at least once every ~~two (2)~~ five (5) years, and if after any such inspection such dam or mine tailings impoundment structure, in the opinion of the director, is unsafe, and life or property liable to be endangered by reason thereof, the director shall give written notice and order by certified mail or by personal service upon the owner or owners to remove or repair the same so as to make it safe. If such owner or owners shall neglect or refuse to remove or repair the same after notice to that effect has been given in writing by the director, the director may draw off all or part of such water from behind such dam, embankment or mine tailings slurry from behind mine tailings impoundment structure and keep said water or mine tailings slurry drawn off until such time as the orders shall be complied with. In determining whether or not a dam, reservoir or mine tailings impoundment structure or proposed dam, reservoir or mine tailings impoundment structure constitutes or would constitute a danger to life or property, the director shall take into consideration the possibility that the dam, reservoir or mine tailings impoundment structure might be endangered by overtopping, seepage, settlement, erosion, cracking, earth movement or other conditions which exist or might occur in any area in the vicinity of the dam, reservoir or mine tailings impoundment structure.

No action shall be brought against the state, the water resource board, the director, or the department of water resources or their respective agents or employees for the recovery of damages caused by the partial or total failure of any dam, reservoir or mine tailings impoundment structure or through the operation of any dam, reservoir or mine tailings impoundment structure upon the ground that such defendant is liable by virtue of any of the following:

(a) The approval of the dam, reservoir or mine tailings impoundment structure.

(b) The issuance or enforcement of orders relative to maintenance or operation of the dam, reservoir or mine tailings impoundment structure.

(c) Control and regulation of the dam, reservoir or mine tailings impoundment structure.

(d) Measures taken to protect against failure during an emergency.

(e) The use of design and construction criteria prepared by the department.

(f) The failure to issue or enforce orders, to control or regulate dams, or to take measures to protect against dam failure.

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.

Nothing in this part shall be construed to relieve an owner or operator of a dam, reservoir or mine tailings impoundment structure of the legal duties, obligations or liabilities incident to the ownership or operation of the dam, reservoir or mine tailings impoundment structure.

The findings and orders of the director and the certificate of approval of any dam, reservoir or mine tailings impoundment structure issued by the director are final and conclusive and binding upon all state agencies, regulatory or otherwise, as to the safety of design, construction, maintenance and operation of any dam, reservoir or mine tailings impoundment structure.

The director may require owners to keep records of, and to report on, maintenance, operation, staffing and engineering and geologic investigations, and the water resource board shall issue such rules ~~and regulations~~ as necessary to secure maintenance and operation and to require staffing and engineering and geologic investigations which will safeguard life and property. In addition, the owner of a dam, reservoir or mine tailings impoundment structure or his agent shall fully and promptly advise the department of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence affecting the safety of the dam, reservoir or mine tailings impoundment structure. The director, from time to time, shall make inspections of dams, reservoirs and mine tailings impoundment structures at state expense for the purpose of determining their safety, but shall require owners to perform at their expense such work as necessary to disclose information sufficient to enable the director to determine conditions of dams, reservoirs, and mine tailings impoundment structures in regard to their safety and to perform at their expense other work necessary to secure maintenance and operation which will safeguard life and property.

Approved March 23, 2004.

CHAPTER 169
(H.B. No. 593)

AN ACT

RELATING TO DAM SAFETY DESIGN REVIEW FEES; AMENDING SECTION 42-1713, IDAHO CODE, TO PROVIDE FOR A MINIMUM FEE IN ADDITION TO THE AMOUNT SET FORTH IN THE FEE SCHEDULE BASED ON RESERVOIR STORAGE CAPACITY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 42-1713, Idaho Code, be, and the same is hereby amended to read as follows:

42-1713. FEES. Fees provided for in this ~~act~~ chapter shall be required of all enumerated in the definition of owner. Fees for an enlargement to an existing dam or mine tailings impoundment structure shall be based upon the increase in storage capacity or tailings storage capacity. Fees for alterations or repairs of an existing dam or mine tailings impoundment structure shall be based on an estimate, made by the director, of costs of inspections to be made, however, in no case shall such fees exceed that which would be required by the fee schedule for construction of the dam or mine tailings impoundment structure.

The fee for construction of a dam or mine tailings impoundment structure, or for enlarging an existing dam or mine tailings impoundment structure, shall be two hundred dollars ($200) plus the following amount:

(a) For one thousand (1,000) acre-feet capacity or less, ten dollars ($10.00) for each ten (10) acre-feet or part thereof.

(b) For over one thousand (1,000) acre-feet capacity but not exceeding ten thousand (10,000) acre-feet capacity, one thousand dollars ($1,000) plus one dollar ($1.00) for each ten (10) acre-feet or part thereof over the first one thousand (1,000) acre-feet capacity.

(c) For storage in excess of ten thousand (10,000) acre-feet, one thousand nine hundred dollars ($1,900) plus twenty cents (20¢) for each ten (10) acre-feet or part thereof over the first ten thousand (10,000) acre-feet capacity. In no case, however, shall the fee be more than six thousand dollars ($6,000).

All plans, drawings and specifications shall not be considered by the department until the filing fee is received. All moneys received by the department under the provisions of this chapter shall be deposited in the water administration fund created under section 42-238a, Idaho Code, and shall be available to the department in carrying out the provisions of this ~~act~~ chapter. Fees submitted shall not be refunded.

Approved March 23, 2004.

CHAPTER 170
(H.B. No. 604, As Amended)

AN ACT

RELATING TO OPTICAL STROBE LIGHT DEVICES; AMENDING CHAPTER 8, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-811, IDAHO CODE, TO DEFINE THE TERM "OPTICAL STROBE LIGHT DEVICE," TO LIMIT THE USE OF AN OPTICAL STROBE LIGHT DEVICE TO CERTAIN VEHICLES AND TO PROVIDE MISDEMEANOR PENALTIES FOR VIOLATION.

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

SECTION 1. That Chapter 8, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-811, Idaho Code, and to read as follows:

49-811. USE OF OPTICAL STROBE LIGHT DEVICES. (1) As used in this section "optical strobe light device" shall mean a strobe light device which emits an optical signal at a specific frequency to a traffic control signal enabling police or emergency vehicles to obtain the right-of-way at intersections or enabling transportation department, city, county or highway district maintenance vehicles to perform maintenance tests on traffic control signals.

(2) A person shall be guilty of a misdemeanor if the person uses an optical strobe light device on the highways of this state unless the person is operating or riding in an authorized emergency vehicle, as defined in section 49-123(2)(b), Idaho Code, or is operating or riding in a transportation department, city, county or highway district maintenance vehicle and the person is on official emergency duty while operating or riding in the vehicle.

(3) A person found guilty of violating subsection (2) of this section shall be sentenced by imprisonment of not greater than six (6) months, by a fine not in excess of one thousand dollars ($1,000), or by both such fine and imprisonment.

Approved March 23, 2004.

CHAPTER 171
(H.B. No. 608)

AN ACT

RELATING TO THE STATE TREASURER; AMENDING SECTION 67-1211, IDAHO CODE, TO PROVIDE THAT THE STATE TREASURER MUST PAY WARRANTS ON ANY OF THE SEVERAL FUNDS IN HIS OFFICE AS PRESCRIBED BY LAW PROVIDED THAT THE STATE TREASURER AND HIS EMPLOYEES RESERVE THE RIGHT TO DENY THE CASHING OF WARRANTS IN THE TREASURER'S OFFICE THAT TOTAL MORE THAN TWO THOUSAND DOLLARS AND TO PROVIDE THAT ANY OR ALL WARRANTS TOTALING MORE THAN TWO THOUSAND DOLLARS, MUST BE CASHED OR DEPOSITED AT ANOTHER FINANCIAL INSTITUTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-1211, Idaho Code, be, and the same is hereby amended to read as follows:

67-1211. PAYMENT OF WARRANTS. The state treasurer must pay warrants on any of the several funds in his office as prescribed by law, provided that the state treasurer and his employees reserve the right to deny the cashing of warrants in the treasurer's office that total more than two thousand dollars ($2,000). Any or all warrants totaling more than two thousand dollars ($2,000), must be cashed or deposited at another financial institution.

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

Approved March 23, 2004.

CHAPTER 172
(H.B. No. 614)

AN ACT
RELATING TO THE COMMODITY INDEMNITY FUND; AMENDING SECTION 69-261, IDAHO CODE, TO REVISE COMPENSATION PROVISIONS FOR MEMBERS OF THE COMMODITY INDEMNITY FUND ADVISORY COMMITTEE.

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

SECTION 1. That Section 69-261, Idaho Code, be, and the same is hereby amended to read as follows:

69-261. ADVISORY COMMITTEE -- TERMS -- COMPENSATION. (1) There is hereby created a commodity indemnity fund advisory committee consisting of nine (9) members to be appointed by the director. Appointments shall be for up to three (3) year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of six (6) producers primarily engaged in the production of commodities, and three (3) licensed bonded warehousemen or licensed commodity dealers.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it, provided, it shall meet not less than twice per year. Each committee member shall be compensated in accordance with section 59-509(~~i~~o), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the commodity indemnity fund.

(4) The committee shall have the power and duty to advise the director concerning assessments, administration of the commodity indemnity fund, and payment of claims from the fund. Every two (2) years the committee will review the maximum limits of the fund and give advice to the director.

Approved March 23, 2004.

CHAPTER 173
(H.B. No. 615)

AN ACT

RELATING TO THE SEED INDEMNITY FUND; AMENDING SECTION 22-5124, IDAHO CODE, TO REVISE COMPENSATION PROVISIONS FOR MEMBERS OF THE SEED INDEMNITY FUND ADVISORY COMMITTEE.

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

SECTION 1. That Section 22-5124, Idaho Code, be, and the same is hereby amended to read as follows:

22-5124. ADVISORY COMMITTEE. (1) There is hereby created a seed indemnity fund advisory committee appointed by the director consisting of nine (9) members representing the diversity of the industry. Appointments shall be for up to three (3) year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of seven (7) producers engaged in producing seed crops and two (2) seed buyers or seed buyer representatives.

(3) The terms of the appointees will be staggered and the initial appointments shall be three (3) producers and one (1) seed buyer for one (1) year terms, two (2) producers for two (2) year terms, and two (2) producers and one (1) seed buyer for three (3) year terms.

(4) The committee shall meet annually at such place and time as it determines and may meet as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with section 59-509(~~i~~o), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the seed indemnity fund.

(5) The committee shall have the power and duty to advise the director concerning assessments, administration of the seed indemnity fund, and payment of claims from the fund. Every two (2) years the committee will review the maximum limits of the fund and give advice to the director.

Approved March 23, 2004.

CHAPTER 174
(H.B. No. 616)

AN ACT

RELATING TO SLOW MOVING VEHICLES; AMENDING SECTION 49-619, IDAHO CODE, TO CLARIFY OPERATION OF SLOW MOVING VEHICLES ON PUBLIC HIGHWAYS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-619, Idaho Code, be, and the same is hereby amended to read as follows:

49-619. SLOW MOVING VEHICLES -- RESTRICTIONS AND EXCEPTIONS, EQUIPMENT -- EMBLEMS ON CERTAIN MACHINERY -- LIMITED EXEMPTION. (1) ~~Except for emergency and snow removal vehicles owned and operated by the state or its political subdivisions when enroute to, from, or in the performance of activities essential to the public safety, and implements of husbandry, except on interstate highways, equipped with lights as required by section 49-916, Idaho Code, when being moved from one (1) farm operation to another, and implements of husbandry when operating from one half hour after sunset to one half hour before sunrise shall have flashing lamps visible from a distance of not less than five hundred (500) feet to the rear, i~~It shall be unlawful to operate a slow moving vehicle on the highways at the following times and under the following circumstances:

(a) From ~~a~~ one-half (1/2) hour after sunset to ~~a~~ one-half (1/2) hour before sunrise, unless the vehicle or equipment is equipped with lights as required by section 49-916, Idaho Code;

(b) At a speed in excess of twenty-five (25) miles per hour, unless the vehicle or equipment, including towed units of farm equipment, is designed to safely travel at speeds in excess of twenty-five (25) miles per hour, but no such vehicle or equipment shall exceed the posted maximum speed limit and shall be operated by a licensed driver;

(c) In such a manner as to obstruct the free movement of traffic on the highways.

(2) A slow moving vehicle shall be equipped with a ~~foot-brake~~ braking system and with a mechanical signaling device as required for other similarly constructed vehicles.

(3) All slow moving vehicles, farm tractors, road rollers and implements of husbandry shall have affixed at the rear of the vehicle an emblem identifying them as slow moving equipment. The Idaho traffic safety commission shall recommend to the board the minimum standards for the emblem.

(4) Emergency and snow removal vehicles owned and operated by the state or its political subdivisions when en route to, from, or in the performance of activities essential to the public safety, shall be exempt from the provisions of paragraphs (a) and (c) of subsection (1) of this section.

Approved March 23, 2004.

CHAPTER 175
(H.B. No. 622)

AN ACT

RELATING TO THE IDAHO PETROLEUM CLEAN WATER TRUST FUND; AMENDING SECTION 41-4904, IDAHO CODE, TO PROVIDE THAT A MAJORITY OF THE BOARD MEMBERS SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ALL BUSINESS AND TO REMOVE LANGUAGE REQUIRING A MAJORITY VOTE FOR BOARD ACTIONS; AMENDING SECTION 41-4934, IDAHO CODE, TO PROVIDE THAT SPECIFIED CONFLICT

OF INTEREST PROVISIONS SHALL BE APPLICABLE TO BOARD MEMBERS; AMENDING SECTION 41-4945, IDAHO CODE, TO PROVIDE THAT THE BOARD AND ITS EMPLOYEES SHALL NOT BE PERSONALLY LIABLE IN A PRIVATE CAPACITY FOR OR ON ACCOUNT OF CERTAIN ACTS OR CONTRACTS; AND AMENDING SECTION 41-4946, IDAHO CODE, TO PROVIDE DESCRIPTIVE LANGUAGE AND TO PROVIDE THAT ACTIONS AGAINST THE BOARD SHALL BE SUBJECT TO THE IDAHO TORT CLAIMS ACT.

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

SECTION 1. That Section 41-4904, Idaho Code, be, and the same is hereby amended 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 all 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 2. That Section 41-4934, Idaho Code, be, and the same is hereby amended to read as follows:

41-4934. PROHIBITED PECUNIARY INTERESTS IN PLAN MANAGEMENT. (1) Neither 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 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.

(3) Any conflict of interest or prohibited pecuniary interest involving the members of the board of trustees of the trust fund shall be governed solely by the conflict of interest provisions of the Idaho nonprofit corporation act as set forth in section 30-3-81, Idaho Code.

SECTION 3. That Section 41-4945, Idaho Code, be, and the same is hereby amended to read as follows:

41-4945. PERSONAL LIABILITY. The board and the administrator shall not, nor shall any person employed by ~~him~~ them, be personally liable in ~~his~~ a 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 4. That Section 41-4946, Idaho Code, be, and the same is hereby amended to read as follows:

41-4946. ACTIONS AGAINST THE FUND, THE BOARD, ITS EMPLOYEES, AND ADMINISTRATOR SUBJECT TO THE IDAHO TORT CLAIMS ACT. Any action against the fund, the board, its employees, and the administrator shall be subject in full to the Idaho tort claims act under chapter 9, title 6, Idaho Code.

Approved March 23, 2004.

CHAPTER 176
(H.B. No. 623)

AN ACT
RELATING TO FISH AND GAME; AMENDING SECTION 36-106, IDAHO CODE, TO RESTRICT CERTAIN PUBLICATION REQUIREMENTS TO SEASON CLOSURE ORDERS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 36-106, Idaho Code, be, and the same is hereby amended to read as follows:

36-106. DIRECTOR OF DEPARTMENT OF FISH AND GAME. (a) Office of Director Created. The commission shall appoint a director of the department of fish and game, hereinafter referred to as the director, who shall be a person with knowledge of, and experience in, the requirements for the protection, conservation, restoration, and management of the wildlife resources of the state. The director shall not hold any other public office, nor any office in any political party organization, and shall devote his entire time to the service of the state in the discharge of his official duties, under the direction of the commission.

(b) Secretary to Commission. The director or his designee shall serve as secretary to the commission.

(c) Compensation and Expenses. The director shall receive such compensation as the commission, with the concurrence and approval of the governor, may determine and shall be reimbursed at the rate provided by law for state employees for all actual and necessary traveling and other expenses incurred by him in the discharge of his official duties.

(d) Oath and Bond. Before entering upon the duties of his office, the director shall take and subscribe to the official oath of office, as provided by section 59-401, Idaho Code, and shall, in addition thereto, swear and affirm that he holds no other public office, nor any position under any political committee or party. Such oath, or affirmation, shall be signed in the office of the secretary of state.

The director shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

(e) Duties and Powers of Director.

1. The director shall have general supervision and control of all activities, functions, and employees of the department of fish and game, under the supervision and direction of the commission, and shall enforce all the provisions of the laws of the state, and rules and proclamations of the commission relating to wild animals, birds, and fish and, further, shall perform all the duties prescribed by section 67-2405, Idaho Code, and other laws of the state not inconsistent with this act, and shall exercise all necessary powers incident thereto not specifically conferred on the commission.

2. The director is hereby authorized to appoint as many classified employees as the commission may deem necessary to perform administrative duties, to enforce the laws and to properly implement management, propagation, and protection programs established for carrying out the purposes of the Idaho fish and game code.

3. The appointment of such employees shall be made by the director

in accordance with chapter 53, title 67, Idaho Code, and rules promulgated pursuant thereto, and they shall be compensated as provided therein. Said employees shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

4. The director is hereby authorized to establish and maintain fish hatcheries for the purpose of hatching, propagating, and distributing all kinds of fish.

5. (A) The director, or any person appointed by him in writing to do so, may take wildlife of any kind, dead or alive, or import the same, subject to such conditions, restrictions and rules as he may provide, for the purpose of inspection, cultivation, propagation, distribution, scientific or other purposes deemed by him to be of interest to the fish and game resources of the state.

(B) The director shall have supervision over all of the matters pertaining to the inspection, cultivation, propagation and distribution of the wildlife propagated under the provisions of title 36, Idaho Code. He shall also have the power and authority to obtain, by purchase or otherwise, wildlife of any kind or variety which he may deem most suitable for distribution in the state and may have the same properly cared for and distributed throughout the state of Idaho as he may deem necessary.

(C) The director is hereby authorized to issue a license/tag/permit to a nonresident landowner who resides in a contiguous state for the purpose of taking one (1) animal during an emergency depredation hunt which includes the landowner's Idaho property subject to such conditions, restrictions or rules as the director may provide. The fee for this license/tag/permit shall be equal to the costs of a resident hunting license, a resident tag fee and a resident depredation permit.

(D) Notwithstanding the provisions of section 36-408, Idaho Code, to the contrary, on and after the effective date of this act, the director shall not expend any funds, or take any action, or authorize any employee or agent of the department or other person to take any action, to undertake actual transplants of bighorn sheep into areas they do not now inhabit or to augment the number of bighorn sheep in existing herds until:

(i) The boards of county commissioners of the counties in which the release is proposed to take place have been given reasonable notice of the proposed release.

(ii) The affected federal and state land grazing permittees and owners or leaseholders of private land in or contiguous to the proposed release site have been given reasonable notice of the proposed release.

(iii) The president pro tempore of the senate and the speaker of the house of representatives have received from the director a plan for the forthcoming year that details, to the best of the department's ability, the proposed transplants which shall include the estimated numbers of bighorn sheep to be transplanted and a description of the areas the proposed transplant or transplants are planned for.

Upon request, the department shall grant one (1) hearing per transplant if any affected individual or entity expresses written concern within ten (10) days of notification regarding any transplants of bighorn sheep and shall take into consideration these concerns in approving, modifying or canceling any proposed bighorn sheep transplant. Any such hearing shall be held within thirty (30) days of the request. Upon any transplant of bighorn sheep into areas they do not now inhabit or a transplant to augment existing populations, the department shall provide for any affected federal or state land grazing permittees or owners or leaseholders of private land a written letter signed by all federal, state and private entities responsible for the transplant stating that the existing sheep or livestock operations in the area of any such bighorn sheep transplant are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.

6. (A) The director shall have the power, at any time when it is desired to introduce any new species, or if at any time any species of wildlife of the state of Idaho shall be threatened with excessive shooting, trapping, or angling or otherwise, to close any open season for such time as he may designate; in the event an emergency is declared to exist such closure shall become effective forthwith upon written order of the director; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(B) In order to protect property from damage by wildlife, the fish and game commission may delegate to the director or his designee the authority to declare an open season upon that particular species of wildlife to reduce its population. The director or his designee shall make an order embodying his findings in respect to when, under what circumstances, in which localities, by what means, and in what amounts, numbers and sex the wildlife subject to the hunt may be taken. In the event an emergency is declared to exist such open season shall become effective forthwith upon written order of the director or his designee; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(C) Any season closure order issued under authority hereof shall be published in at least one (1) newspaper of general circulation in the area affected by the order for at least once a week for two (2) consecutive weeks, and such order shall be posted in public places in each county as the director may direct.

(D) During the closure of any open season or the opening of any special depredation season by the director all provisions of laws relating to the closed season or the special depredation season on such wildlife shall be in force and whoever violates any of the provisions shall be subject to the penalties prescribed therefor.

(E) Prior to the opening of any special depredation hunt, the director or his designee shall be authorized to provide up to a maximum of fifty percent (50%) of the available permits for such big game to the landholder(s) of privately owned land

within the hunt area or his designees. If the landholder(s) chooses to designate hunters, he must provide a written list of the names of designated individuals to the department. If the landholder(s) fails to designate licensed hunters, then the department will issue the total available permits in the manner set by rule. All hunters must have a current hunting license and shall have equal access to both public and private lands within the hunt boundaries. It shall be unlawful for any landholder(s) to receive any form of compensation from a person who obtains or uses a depredation controlled hunt permit.

7. The director shall make an annual report to the governor, the legislature, and the secretary of state, of the doings and conditions of his office, which report shall be made in accordance with section 67-2509, Idaho Code.

8. The director may sell or cause to be sold publications and materials in accordance with section 59-1012, Idaho Code.

9. Any deer, elk, antelope, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture. Any moneys expended by the department of fish and game on wildlife disease research shall be mutually agreed upon by the department of fish and game and the department of agriculture.

In addition, a comprehensive animal health program for all deer, elk, antelope, moose, bighorn sheep, or bison imported into, transported, or resident within the state of Idaho shall be implemented after said program is mutually agreed upon by the department of fish and game and the department of agriculture.

In order to enhance and protect the health of wildlife within the state, as well as safeguard the health of livestock resources, the director of the department of agriculture shall employ at least one (1) veterinarian licensed in Idaho whose duties shall include, but not be limited to, addressing wildlife disease issues and coordinating disease prevention work between the department of fish and game and the department of agriculture. The employing of said veterinarian shall be by mutual agreement of the director of the department of fish and game and of the director of the department of agriculture. The veterinarian shall be on the staff of the division of animal industries, department of agriculture. The salary or compensation to be paid said veterinarian or veterinarians shall be divided equally between the department of fish and game and the department of agriculture, and the department of fish and game's portion shall be deposited directly into the livestock disease control account. The veterinarian shall be employed on and after July 1, 1989.

10. In order to monitor and evaluate the disease status of wildlife and to protect Idaho's livestock resources, any suspicion by fish and game personnel of a potential communicable disease process in wildlife shall be reported within twenty-four (24) hours to the department of agriculture. All samples collected for disease monitoring or disease evaluation of wildlife shall be submitted to the division of animal industries, department of agriculture.

11. (A) The director is authorized to enter into an agreement with an independent contractor for the purpose of providing a telephone order and credit card payment service for controlled hunt permits, licenses, tags, and permits.
(B) The contractor may collect a fee for its service in an amount to be set by contract.
(C) All moneys collected for the telephone orders of such licenses, tags, and permits shall be and remain the property of the state, and such moneys shall be directly deposited by the contractor into the state treasurer's account in accordance with the provisions of section 59-1014, Idaho Code. The contractor shall furnish a good and sufficient surety bond to the state of Idaho in an amount sufficient to cover the amount of the telephone orders and potential refunds.
(D) The refund of moneys for unsuccessful controlled hunt permit applications and licenses, tags, and permits approved by the department may be made by the contractor crediting the applicant's or licensee's credit card account.
12. The director may define activities or facilities that primarily provide a benefit: to the department; to a person; for personal use; to a commercial enterprise; or for a commercial purpose.

Approved March 23, 2004.

CHAPTER 177
(H.B. No. 625, As Amended)

AN ACT

RELATING TO CITY ELECTIONS AND CAMPAIGN EXPENDITURES; AMENDING SECTION 50-477, IDAHO CODE, TO PROVIDE APPLICABILITY OF CAMPAIGN EXPENDITURE REPORTING TO ELECTIONS ON CITYWIDE MEASURES, TO PROVIDE APPLICABILITY TO CITIES OF FIVE THOUSAND OR MORE POPULATION AND TO PROVIDE THAT THE CITY ATTORNEY SHALL STAND IN PLACE OF THE ATTORNEY GENERAL WHEN CAMPAIGN REPORTING LAW APPLIES TO ELECTIONS IN CERTAIN CITIES.

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

SECTION 1. That Section 50-477, Idaho Code, be, and the same is hereby amended to read as follows:

50-477. APPLICATION OF CAMPAIGN EXPENDITURES REPORTING LAW TO ~~CERTAIN CITY~~ ELECTIONS IN CERTAIN CITIES. The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-6628, Idaho Code, insofar as they relate to the reporting of campaign contributions, are hereby made applicable to all elections for mayor, ~~and~~ councilman and citywide measures in cities of ~~sixteen~~ five thousand (~~16~~5,000) or more population, except that the city clerk shall stand in place of the secretary of state, and the city attorney shall stand in place of the attorney general.

Approved March 23, 2004.

CHAPTER 178
(H.B. No. 633)

AN ACT

RELATING TO FORFEITURE OF WATER RIGHTS; AMENDING SECTION 42-223, IDAHO CODE, TO PROVIDE THAT NO PORTION OF ANY WATER RIGHT SHALL BE LOST OR FORFEITED FOR NONUSE IF THE NONUSE RESULTS FROM THE WATER RIGHT BEING USED FOR MITIGATION PURPOSES APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES INCLUDING AS A CONDITION OF APPROVAL FOR A NEW WATER RIGHT APPROPRIATION, A WATER RIGHT TRANSFER, A WATER EXCHANGE OR A MITIGATION PLAN.

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.

(10) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from the water right being used for mitigation purposes approved by the director of the department of water resources including as a condition of approval for a new water right appropriation approved pursuant to section 42-203A, Idaho Code, a water right transfer approved pursuant to section 42-222, Idaho Code, a water exchange approved pursuant to section 42-240, Idaho Code, or a mitigation plan approved in accordance with rules promulgated pursuant to section 42-603, Idaho Code.

Approved March 23, 2004.

CHAPTER 179
(H.B. No. 634, As Amended)

AN ACT

RELATING TO IRRIGATION AND DRAINAGE EASEMENTS AND RIGHTS-OF-WAY; AMENDING SECTION 42-1102, IDAHO CODE, TO REQUIRE PERMISSION FROM OWNERS OF IRRIGATION RIGHTS-OF-WAY FOR ENCROACHMENTS OF ANY KIND ON THE RIGHTS-OF-WAY; AMENDING SECTION 42-1208, IDAHO CODE, TO CLARIFY THAT PROTECTION FROM ADVERSE POSSESSION APPLIES TO EASEMENTS AS WELL AS TO RIGHTS-OF-WAY OF IRRIGATION AND DRAINAGE DISTRICTS; AND AMENDING CHAPTER 12, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1209, IDAHO CODE, TO REQUIRE WRITTEN PERMISSION OF THE OWNER OF AN IRRIGATION OR DRAINAGE EASEMENT OR RIGHT-OF-WAY BEFORE ENCROACHMENTS OF ANY KIND ARE PERMITTED.

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

SECTION 1. That Section 42-1102, Idaho Code, be, and the same is hereby amended to read as follows:

42-1102. OWNERS OF LAND — RIGHT TO RIGHT-OF-WAY. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for the purposes of irrigation. The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. Provided, that in the making, constructing, keeping up and maintenance of such ditch, canal or conduit, through the lands of others, the person, company or corporation, proceeding under this section, and those succeeding to the interests of such person, company or corporation, must keep such ditch, canal or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section.

Rights-of-way provided by this section are essential for the operations of the ditches, canals and conduits. No person or entity shall cause or permit any encroachments onto the right-of-way, including public or private roads, utilities, fences, gates, pipelines, structures, or other construction or placement of objects, without the written permission of the owner of the right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the right-of-way. Encroachments of any kind placed in such right-of-way without express written permission of the owner of the right-of-way shall be removed at the expense of the person or entity causing or permitting such encroachment, upon the request of the owner of the right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

This section shall apply to ditches, canals or other conduits existing on the effective date of this act, as well as to ditches, canals or other conduits constructed after such effective date.

SECTION 2. That Section 42-1208, Idaho Code, be, and the same is hereby amended to read as follows:

42-1208. EASEMENTS OR RIGHTS-OF-WAY NOT SUBJECT TO ADVERSE POSSESSION. Easements or rRights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, ~~and~~ lateral ditch associations, and drainage districts are not subject to adverse possession, and no person shall prevent free access of authorized personnel on easements or rights-of-way or construct any obstruction on easements or rights-of-way in an effort to adversely possess said easement or right-of-way.

SECTION 3. That Chapter 12, 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 42-1209, Idaho Code, and to read as follows:

42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are essential for the operations of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachments onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures or other construction or placement of objects, without the written permission of the irrigation district, Carey act operating company, nonprofit irrigation entity, lateral ditch association, or drainage district owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Encroachments of any kind placed in such easement or right-of-way, without such express written permission shall be removed at the expense of the person or entity causing or permitting such encroachments, upon the request of the owner of the easement or right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

Approved March 23, 2004.

CHAPTER 180
(H.B. No. 635, As Amended in the Senate)

AN ACT

RELATING TO JURISDICTION OF THE DEPARTMENT OF WATER RESOURCES; AMENDING SECTION 42-1711, IDAHO CODE, TO FURTHER DEFINE THE TERM "DAM" TO CLARIFY THE JURISDICTION OF THE DEPARTMENT OF WATER RESOURCES; AMENDING SECTION 42-1712, IDAHO CODE, TO INCLUDE A REFERENCE TO CRI-

TERIA FOR BARRIERS, TO REGULATE LIABILITY WHEN RELYING UPON CRITERIA AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING APPLICATION TO PENDING PROCEDURES.

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

SECTION 1. That Section 42-1711, Idaho Code, be, and the same is hereby amended to read as follows:

42-1711. DEFINITIONS. Unless the context otherwise requires, the following definitions govern the construction of this chapter.

(a) "Department" means the department of water resources.

(b) "Dam" means any artificial barrier, together with appurtenant works, constructed for the purpose of storing water or that stores water, which is ten (10) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation, or has or will have an impounding capacity at maximum storage elevation of fifty (50) acre-feet or more. The following are not included as regulated dams or are not considered dams for the purposes of sections 42-1710 through 42-1721, Idaho Code; provided however, barriers defined in paragraphs (1) and (2), below, shall remain under the exclusive jurisdiction of the department:

(1) Barriers constructed in low risk areas as determined by the director, which are six (6) feet or less in height, regardless of storage capacity.

(2) Barriers constructed in low risk areas as determined by the director, which impound ten (10) acre-feet or less at maximum water storage elevation, regardless of height.

(3) Barriers in a canal used to raise or lower water therein or divert water therefrom.

(4) Fills or structures determined by the director to be designed primarily for highway or railroad traffic.

(5) Fills, retaining dikes or structures less than twenty (20) feet in height, which are under jurisdiction of the department of environmental quality or the department of agriculture, determined by the director of the department of water resources to be designed primarily for retention or treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants.

(6) Levees that store water regardless of storage capacity.

(c) "Levee" means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure.

(d) "Reservoir" means any basin which contains or will contain the water impounded by a dam.

(e) "Owner" includes any of the following who own, control, operate, maintain, manage, or propose to construct a dam, reservoir or mine tailings impoundment structure:

(1) The state of Idaho and its departments, agencies, institutions and political subdivisions;

(2) The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America shall not be required to pay any of the fees required by section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by section 42-1712, Idaho Code, for information purposes only;
(3) Every municipal or quasi-municipal corporation;
(4) Every public utility;
(5) Every person, firm, association, organization, partnership, business trust, corporation or company;
(6) The duly authorized agents, lessees, or trustees of any of the foregoing; or
(7) Receivers or trustees appointed by any court for any of the foregoing.

(f) "Alterations," "repairs," or either of them, mean only such alterations or repairs as may directly affect the safety of the dam, reservoir or mine tailings impoundment structure, as determined by the department.

(g) "Enlargement" means any change in or addition to an existing dam, reservoir or mine tailings impoundment structure, which raises or may raise the water storage elevation of the water impounded by the dam or mine tailings slurry impounded by the mine tailings impoundment structure.

(h) "Water storage elevation" means the maximum elevation of water surface which can be obtained by the dam or reservoir.

(i) "Storage capacity" means the total storage at the maximum storage elevation.

(j) "Days" used in establishing deadlines means calendar days including Sundays and holidays.

(k) "Certificate of approval" means a certificate issued by the director for all dams or mine tailings impoundment structures listing restrictions imposed by the director, and without which no new dams shall be allowed to impound water or mine tailings impoundment structures shall be allowed to impound mine tailings slurry.

(l) "Mine tailings impoundment structure" means any artificial embankment which is or will be more than thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry.

(m) "Lift construction" means mine tailings impoundment structure enlargement by raising the elevation of the structure on a continuous or recurring basis. Such practice will be considered under construction until the structure reaches its final crest elevation.

(n) "Mine tailings impoundment elevation" means the maximum elevation of stored mine tailings which can be obtained by the impounding structure.

(o) "Mine tailings slurry" means all slurry wastes from a mineral processing or mining operation.

(p) "Mine tailings storage capacity" means the total storage volume of the impounding area when filled with tailings to the maximum designed storage elevation.

SECTION 2. That Section 42-1712, Idaho Code, be, and the same is hereby amended to read as follows:

42-1712. CONSTRUCTION, ENLARGEMENT, ALTERATION OR REPAIR OF DAMS -- SUBMISSION OF DUPLICATE PLANS, DRAWINGS AND SPECIFICATIONS. Owners who shall desire to construct, or enlarge, or alter or repair, meaning only such alterations or repairs as may affect the safety of the dam or reservoir, any dam, for the purpose of storing or appropriating or diverting any of the waters of this state, when the same is to be more than twenty (20) feet in height or ~~to~~ have a storage capacity of one hundred (100) acre-feet or more, except as otherwise in this chapter provided, shall submit duplicate plans, drawings and specifications of the proposed work to the director, and construction of a new dam or enlargement, or alteration or repairs shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications.

Owners of dams under construction on the effective date of this legislation and for which plans, drawings and specifications are required but have not been approved on or before the effective date of this legislation shall submit such plans, drawings and specifications for approval, with the fee established hereinafter. The director shall give notice to owners to submit plans, drawings and specifications, and failure to submit plans, drawings and specifications for approval within thirty (30) days of the date of mailing the notice shall be punishable as provided in this act, and construction shall be stopped upon issuance of an order by the director unless for good cause shown as determined by the director ~~unless~~ further time is allowed. The notice and/or order provided for in this paragraph may be given by certified mail and a return receipt signed by the owner or responsible company shall constitute prima facie evidence of service.

Upon receipt of the plans, drawings and specifications, the director shall give consideration thereto and shall approve or disapprove the same within the time provided in this section, and if he approves them, the director shall affix his approval thereto and return one (1) copy of each such plans, drawings and specifications, with his approval, to the party or parties proposing to construct the works.

Plans, drawings and specifications submitted to the director complete with fees shall be approved or disapproved in no more than sixty (60) days and in no less than fourteen (14) days after receipt. Defective plans, drawings and specifications made in a bona fide attempt to conform to the law and rules ~~and regulations~~ of the water resource board shall not be rejected but notice of defect shall be sent to the owner by certified mail. If within thirty (30) days of the date of mailing the notice the owner does not file amended and perfected plans, drawings and specifications, the plans, drawings and specifications shall be rejected and canceled unless for good cause shown the director allows the owner further time.

The construction of all dams under plans, drawings and specifications approved by the director shall be pursued with reasonable diligence to completion. In the event that an owner fails to commence actual construction and maintain reasonable construction progress of the dam under the plans, drawings and specifications approved by the director prior to or after the effective date of this act, such approval may be voided by the director one (1) year after such approval. Notice of the intent to void any such approval shall be sent by the director to the owner by certified mail and said owner shall be allowed thirty (30) days within which to show cause why such approval should not be voided. The

director may grant additional time within which to commence the construction under plans, drawings and specifications approved by the director upon a showing of reasonable cause. Plans, drawings and specifications for which approval has become void must be resubmitted for approval, with the fee therefor as hereafter provided, prior to commencing construction of any such dam.

The plans, drawings and specifications shall include the following information:

(a) The name and address of the owner.

(b) The location, type, size and height of the proposed dam or reservoir and appurtenant works.

(c) The storage capacity of the reservoir.

(d) Such other pertinent information as the director may require including the following:

(1) Data concerning subsoil and foundation conditions and materials entering into construction of the dam or reservoir.

(2) Investigations of, and reports on subsurface conditions involving such matters as exploratory pits, trenches, and adits, drilling, coring, geophysical surveys, tests to determine leakage rates, and physical tests to measure in place the properties and behavior of foundation materials at the dam or reservoir site.

(3) Investigation of and reports on the geology of the dam or reservoir site and its vicinity, possible geological hazards, availability and quality of construction materials, and other pertinent factors.

The plans, drawings and specifications shall be of such character and size setting forth such pertinent details and dimensions and in such form as the director requires. Plans, drawings and specifications which are submitted to the department shall be prepared by or under the direction of a registered professional engineer who is registered pursuant to Idaho law and authenticated by him as provided in section 54-1215, Idaho Code, or by such other person as provided in section 54-1223, Idaho Code.

Where said dam is, in the opinion of the director, not of sufficient importance to have the provisions of the section apply to such dam, then the director shall have power, upon written application, to suspend the provisions of this section in regard to such dam.

The director shall prepare design and construction criteria for dams and barriers not requiring departmental approval of plans, drawings and specifications and shall supply such criteria upon request to any interested person to aid in constructing such dams and barriers. The use of such criteria shall in no way relieve the owner of responsibility for adequacy of design and construction procedures, nor be the basis of liability for any city or county that grants a permit related to construction of the dam or barrier pursuant to the provisions of chapter 65, title 67, 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 shall apply to any proceeding before any administrative or judicial tribunal pending on the effective date of this act, or initiated subsequent thereto without regard to any other provision of law.

Approved March 23, 2004.

CHAPTER 181
(H.B. No. 648)

AN ACT

RELATING TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT; AMENDING SECTION 39-7112, IDAHO CODE, TO CREATE THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND AND TO PROVIDE THAT RECOVERIES BY THE STATE FOR REIMBURSED COSTS SHALL BE DEPOSITED TO THE FUND.

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

SECTION 1. That Section 39-7112, Idaho Code, be, and the same is hereby amended to read as follows:

39-7112. COST RECOVERY AND CIVIL REMEDIES. (1) The military division shall be responsible for recovering those costs incurred by the state arising out of a hazardous substance incident identified in section 39-7109, Idaho Code, and legal costs including attorney's fees, investigation costs and litigation costs.

(2) In deciding whether to commence a cost recovery action, and against whom a cost recovery action will be filed, the military division in exercising its prosecutorial discretion will take into consideration the cause of the incident, the total amount of cost incurred in responding to the incident, the avoidability of the incident and such other factors as the military division deems appropriate.

(3) The remedy for the recovery of those emergency response costs identified in section 39-7109, Idaho Code, provided by this chapter shall be exclusive and shall not be used in conjunction with or in addition to any other remedy for recovery of such costs provided by applicable federal laws. Any person who receives compensation for the emergency response costs pursuant to any other federal or state law shall be precluded from recovering compensation for such costs pursuant to this chapter. Nothing in this chapter shall otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury or loss resulting from the release of any hazardous substance or for remedial action or the cost of remedial action for such release.

(4) It shall be the duty of the attorney general to commence any civil action brought by the military division pursuant to this chapter. At the request of a political subdivision of the state or a local governmental entity who has responded to or contained a hazardous substance incident, the attorney general may commence a civil action on their behalf pursuant to this chapter.

(5) Any person who renders assistance in response to a hazardous substance incident may file a civil action under the provisions of this chapter for recoverable costs which have not been reimbursed by the state.

(6) There is hereby created in the state treasury the hazardous substance emergency response fund. Recoveries by the state for reimbursed costs shall be deposited in ~~the general account~~ said fund to offset amounts paid as reimbursement.

Approved March 23, 2004.

CHAPTER 182
(H.B. No. 653)

AN ACT

RELATING TO DOMESTIC CERVIDAE; AMENDING THE HEADING FOR CHAPTER 35, TITLE 25, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994; AMENDING SECTION 25-3501, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION, TO PROVIDE THAT DOMESTIC CERVIDAE MAY BE OWNED, CONTROLLED OR HELD IN CAPTIVITY FOR CERTAIN PURPOSES ON FARMS OR RANCHES THAT HAVE BEEN REGISTERED WITH THE DIVISION OF ANIMAL INDUSTRIES, TO PROVIDE FOR THE HARVESTING OF DOMESTIC CERVIDAE AND TO AUTHORIZE CERTAIN ACTIVITY RELATING TO DOMESTIC CERVIDAE FOR THE AGENTS OF PRODUCERS; AMENDING CHAPTER 37, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-3703A, IDAHO CODE, TO PROVIDE FOR OFFICIAL PERMANENT IDENTIFICATION FOR DOMESTIC CERVIDAE; AMENDING SECTION 25-3504, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION, TO AUTHORIZE THE ADMINISTRATOR OF THE DIVISION OF ANIMAL INDUSTRIES TO MAKE, PROMULGATE AND ENFORCE RULES RELATING TO THE REGISTRATION OF DOMESTIC CERVIDAE FARMS AND RANCHES AND TO ENFORCE SPECIFIED PROVISIONS OF LAW; AMENDING CHAPTER 37, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-3705A, IDAHO CODE, TO SET FORTH CERTAIN DUTIES OF OWNERS AND OPERATORS OF DOMESTIC CERVIDAE FARMS AND RANCHES, TO AUTHORIZE THE DIVISION OF ANIMAL INDUSTRIES OR ITS AGENTS TO TAKE CERTAIN ACTIONS RELATING TO THE ESCAPE OF DOMESTIC CERVIDAE FROM FARMS OR RANCHES, TO PROVIDE FOR THE TAKING OF DOMESTIC CERVIDAE BY LICENSED HUNTERS UNDER SPECIFIED CONDITIONS AND TO PROVIDE AN EXCEPTION TO LIABILITY FOR SUCH TAKING; AMENDING CHAPTER 37, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-3705B, IDAHO CODE, TO PROVIDE FOR WILD UNGULATES; AMENDING SECTION 25-3508, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION AND TO REVISE FEE PROVISIONS; AND AMENDING SECTION 36-701, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That the Heading for Chapter 35, Title 25, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

CHAPTER 35~~7~~
DOMESTIC CERVIDAE FARMS

SECTION 2. That Section 25-3501, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3501~~3701. DOMESTIC CERVIDAE FARMING DEEMED AGRICULTURAL PURSUIT. It shall be lawful for any person, association or corporation to breed, own or control domestic cervidae, which are defined as fallow deer (dama dama), elk (cervus elaphus) or reindeer (rangifer tarandus), but shall not include red deer (urasian cervidae) or any subspecies or hybrids thereof, and hold such animal in captivity for breeding or other useful purposes on domestic cervidae farms or ranches, provided the premises have been registered with the division of animal industries. Reindeer (rangifer tarandus) shall not be held for domestic purposes north of the Salmon River. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing, harvesting or marketing of such animals or their products by the producer or his agent shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultu~~ral prod-~~ucts; the persons engaged in such agricultural pursuits shall be deemed farmers, cervidae farmers, cervidae breeders or cervidae ranchers; the premises within which such pursuit is conducted shall be deemed farms, cervidae farms, or cervidae ranches.

SECTION 3. That Chapter 37, 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 25-3703A, Idaho Code, and to read as follows:

25-3703A. OFFICIAL PERMANENT IDENTIFICATION. All domestic cervidae located in Idaho shall be identified with two (2) types of official permanent identification. At least one (1) of the official permanent identifications shall be visible from a minimum of one hundred fifty (150) feet.

SECTION 4. That Section 25-3504, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3504~~3704. RULES FOR REGISTERING PREMISES AND DISEASE PREVENTION. The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate, and enforce general and reasonable rules not inconsistent with law, for the registration of domestic cervidae farm or ranch premises, and for the prevention of the introduction or dissemination of diseases among domestic cervidae of this state, and to otherwise effectuate enforcement of the provisions of chapters 2, 3, 4, ~~and~~ 6 and 37, title 25, Idaho Code, applicable to domestic cervidae.

SECTION 5. That Chapter 37, 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 25-3705A, Idaho Code, and to read as follows:

25-3705A. ESCAPE OF DOMESTIC CERVIDAE. (1) It is the duty of the owners and operators of domestic cervidae farms or ranches to:

(a) Take all reasonable actions to prevent the escape of domestic cervidae located on such farms or ranches;

(b) Ensure that perimeter fences and gates are built and maintained in a manner that will prevent the escape of domestic cervidae;

(c) Notify the division of animal industries upon the discovery of the escape of domestic cervidae; and

(d) Take reasonable actions to bring under control domestic cervidae that escape.

(2) Notwithstanding any provision of law to the contrary, the division of animal industries or its agent is authorized to take necessary actions to bring under control any domestic cervidae that have escaped the control of the owner or operator of the domestic cervidae farm or ranch where the domestic cervidae were located.

(3) Any domestic cervidae, that have escaped the control of the owner or operator of a domestic cervidae farm or ranch for more than seven (7) days, taken by a licensed hunter in a manner which complies with title 36, Idaho Code, and the rules and proclamations of the Idaho fish and game commission shall be considered a legal taking and neither the licensed hunter, the state, nor any state agency shall be liable to the owner for killing the escaped domestic cervidae.

SECTION 6. That Chapter 37, 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 25-3705B, Idaho Code, and to read as follows:

25-3705B. WILD UNGULATES. The Idaho department of fish and game shall cooperate with the division of animal industries and the owner or operator of any domestic cervidae farm or ranch, where any wild ungulates are found within the perimeter fences of the domestic cervidae farm or ranch, in the development of a site specific written herd plan to determine the disposition of the wild ungulates.

SECTION 7. That Section 25-3508, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-~~3508~~3708. FEES. There is hereby imposed, on domestic cervidae, a fee, not to exceed five dollars ($5.00) per head per year and shall be due on January 1 of each year. The fee shall be used by the Idaho department of agriculture, division of animal industries, for the prevention, control and eradication of diseases of domestic cervidae, the inspection of domestic cervidae and domestic cervidae farms or ranches, and administration of the domestic cervidae program. All moneys collected under this provision shall be deposited in the livestock disease control and tuberculosis indemnity fund and used for the domestic cervidae program.

SECTION 8. That Section 36-701, Idaho Code, be, and the same is hereby amended to read as follows:

36-701. WILDLIFE HELD CAPTIVE WITHOUT LICENSE OR PERMIT UNLAWFUL -- EXCEPTIONS. (a) No person shall engage in any propagation or hold in

captivity any species of big game animal found wild in this state, unless the person has been issued a license or permit by the director as hereinafter provided.

(b) All other species of mammals, birds or reptiles that are found in the wild in this state and are not species of special concern or threatened and endangered species, may be held in captivity without permit so long as the possessor retains proof that such wildlife was lawfully obtained. Such proof shall be maintained and presented to department representatives in accordance with section 36-709, Idaho Code.

(c) Exceptions.

1. No such license or permit shall be required of any municipal, county, state or other publicly owned zoo or wildlife exhibit or of any traveling circus, menagerie or trained act of wild animals not permanently located within the state of Idaho nor of any bona fide pet store displaying lawfully acquired wildlife for sale nor of any fur farm regulated and inspected pursuant to chapter 30, title 25, Idaho Code, nor of any domestic cervidae farm regulated and inspected pursuant to chapter 357, title 25, Idaho Code.

2. Except for the provisions of subsection (d) of this section and section 36-709, Idaho Code, relating to inspection and records of same, nothing in this chapter shall be so construed as to apply to any exotic wildlife, or domestic fur farm operated under the provisions of title 25, Idaho Code, or any tropical fish or other aquaria or ornamental fish which the commission determines do not pose a threat to native fish if released into the public waters of the state.

3. Except for the provisions of section 36-709(b), Idaho Code, relating to inspection of facilities, nothing in this chapter shall be so construed as to apply to any domestic cervidae farm.

(d) Wildlife Import -- Export -- Release Permits -- Fees. No person shall import into this state or export out of this state or release in the wild any species of wildlife except by permit issued by the director and in accordance with rules promulgated by the commission. The fee per occurrence for each permit shall be as specified in section 36-416, Idaho Code. No fee shall be charged for a department benefit permit.

Approved March 23, 2004.

CHAPTER 183
(H.B. No. 663)

AN ACT

RELATING TO TAXATION OF FOREST LANDS; AMENDING SECTION 63-1703, IDAHO CODE, TO PROVIDE THAT IN THE EVENT PAYMENT IS OFFERED OR MADE FOR TAXATION OF FOREST LANDS, IT SHALL BE ACCEPTED BY THE COUNTY TREASURER AND APPLIED IN THE MANNER OF PAYMENT OF OTHER PROPERTY TAX AND TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 63-1703, Idaho Code, be, and the same is hereby amended to read as follows:

63-1703. CERTAIN FOREST LANDS TO BE DESIGNATED FOR TAXATION BY OWNER -- LIMITATIONS. For the purposes of appraisal, assessment and taxation under the provisions of this chapter, all forest lands in parcels of five (5) or more acres but less than five thousand (5,000), whether contiguous or not, as long as such parcels are held in common ownership, must be designated by the forest landowner to be subject to the provisions of either subsection (a) or (b) of this section. A forest landowner cannot have parcels designated under the provisions of both subsections (a) and (b) of this section at one (1) time. If the forest landowner fails to make a designation, his forest lands shall be subject to appraisal, assessment and taxation under the provisions of section 63-1702, Idaho Code. Once a designation is made by the forest landowner, such designation must remain in effect until the designation period expires, unless the forest lands are transferred to another owner using a different taxing category; in such case, the taxing category of the transferred forest lands shall be the same as that maintained by the new owner.

A forest landowner may change the designation of all forest lands in common ownership at the end of any designation period, subject to the recapture of any deferred taxes due as a result of such change. After January 1 and by December 31 of the tenth year of each designation period the forest landowner must notify the county assessor of any change in forest land designation. Failure to notify the county assessor will result in the continuation of the landowner's present designation until the end of the next designation period.

Any substantial change in the use of forest lands not conforming with the definition of forest land in section 63-1701, Idaho Code, during such ten (10) year period under the designations made in subsection (a) or (b) shall be reported by the landowner to the county assessor within thirty (30) days of the change in use. Upon notification of the change in use, the assessor shall appraise, assess and tax those acres as provided by applicable laws and rules. Failure to notify the assessor of the change in use when forest lands have been designated as subject to the provisions of subsection (a) or (b) shall cause forfeiture of such designation, and cause that property to be appraised, assessed and taxed as provided in section 63-1702, Idaho Code.

Forest lands designated for assessment pursuant to the provisions of section 63-1706, Idaho Code, shall be subject to the recapture of deferred taxes upon removal of such designation, a substantial change in use, or ownership transfer, except that there shall be no recapture initiated upon ownership transfer of forest lands designated as subject to the provisions of section 63-1706, Idaho Code, to a landowner with forest lands already designated as subject to the provisions of section 63-1706, Idaho Code, prior to the transfer, or who so designates his lands to be subject to the provisions of section 63-1706, Idaho Code. In the event payment is offered or made, it shall be accepted by the county treasurer and applied in the manner of payment of other property tax.

The dollar amount of deferred taxes subject to recapture shall be determined by the county assessor by applying current tax levies against the current values that would have been in effect if the lands were subject to appraisal and assessment during the current year under the provisions of section 63-1705, Idaho Code, if there has been a change in ownership or a removal of designation, or section 63-1702, Idaho Code, if there has been a change in use with no change in ownership, which

amount shall be multiplied by the number of years that the lands have been subject to the designation under section 63-1706, Idaho Code. The amount of the deferred tax shall accrue through designation periods, up to a maximum of ten (10) years, and shall apply to the most recent ten (10) years in which the parcel has been designated under the provisions of section 63-1706, Idaho Code. A credit shall be allowed for taxes actually paid under the provisions of section 63-1706, Idaho Code, for an identical ten (10) year period, up to the total amount of the deferred taxes. All deferred amounts shall be a lien against the land. Deferred tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Deferred tax amounts shall be supplied by the county assessor to the county treasurer by May 15 of the year following conveyance or within thirty (30) days of removal of designation, or of learning of a change in use. All deferred tax amounts shall be due and payable to the county treasurer on demand and shall become delinquent if not paid by the demand due date specified by the county treasurer on the forms prescribed by the state tax commission. If the deferred tax is not paid as provided above, the payment becomes delinquent and subject to late charges, and interest in the amounts provided in sections 63-201(67) and 63-1001, Idaho Code, and subject to collection in the manner as set forth in chapter 10, title 63, Idaho Code. Estimated deferred tax amounts may be held by the county treasurer in a tax anticipation account from the date of conveyance until June 1 of the year following conveyance.

The county treasurer shall cause the deferred taxes and any penalty and interest paid pursuant to the provisions of this section to be apportioned to the various taxing authorities within which the property subject to the tax is located in the same manner as property taxes.

(a) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1705, Idaho Code, by filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1705, Idaho Code, shall become effective the first day of January following the year of designation.

(b) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1706, Idaho Code, by filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1706, Idaho Code, shall become effective the first day of January following the year of designation.

(c) All forest products or timber harvested from investment lands not designated as subject to the provisions of section 63-1702, 63-1705 or 63-1706, Idaho Code, and delivered to a point of utilization as logs or semiprocessed forest products (except those forest products harvested for the domestic use of the landowner under the provisions of section 63-1708, Idaho Code) shall be subject to the yield tax at the time of harvest in the same manner provided for in section 63-1706, Idaho Code.

Approved March 23, 2004.

CHAPTER 184
(H.B. No. 669)

AN ACT

RELATING TO THE DEPARTMENT OF LANDS; AMENDING SECTION 58-122, IDAHO CODE, TO REVISE PROCEDURES RELATING TO THE DUTY OF THE DIRECTOR IN CONTESTED CASES, TO PROVIDE THAT CERTAIN ACTIONS BY THE STATE BOARD OF LAND COMMISSIONERS RELATING TO THE DIRECTION, CONTROL OR DISPOSITION OF PUBLIC LANDS SHALL NOT BE CONSIDERED TO BE CONTESTED CASES AND TO PROVIDE FOR EXCEPTIONS.

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

SECTION 1. That Section 58-122, Idaho Code, be, and the same is hereby amended to read as follows:

58-122. CONTESTED CASES -- PROCEDURE. It shall be the duty of the director of the department of lands in any or all contested cases, at the direction of the board, to appoint hearing officers, receive evidence, issue subpoenas and to hold contested case hearings in accordance with sections 67-5240 through 67-5271, Idaho Code, when hearings are necessary and witnesses may be required to be examined~~, to set a date for hearing such cases. The director shall duly advise the contestants and their accredited attorneys of the date set for such hearing, and on the date appointed the director is hereby empowered to administer oaths and to hear and receive evidence, after the manner and procedure established by the United States in the district land offices, or in accordance with the rules that are or may be adopted by the board governing such cases. All evidence given and provided in such cases before the director shall be at the contestant's own cost, and shall be fully transcribed and arranged, and shall form a part of the records of the office of the state board of land commissioners. The director shall, as soon as convenient after such hearings, present a full transcript of the proceedings to the state board of land commissioners, who shall render a decision in accordance therewith~~ Provided however, that when the state board of land commissioners is exercising its duties and authorities concerning the direction, control or disposition of the public lands of the state pursuant to sections 7 and 8, article IX, of the constitution of the state of Idaho, such actions shall not be considered to be contested cases as defined in subsection (6) of section 67-5201, Idaho Code, and section 67-5240, Idaho Code, unless the board, in its discretion, determines that a contested case hearing would be of assistance to the board in the exercise of its duties and authorities.

Approved March 23, 2004.

CHAPTER 185
(H.B. No. 677)

AN ACT

RELATING TO THE REGULATION OF FOOD ESTABLISHMENTS; AMENDING SECTION 39-1602, IDAHO CODE, TO PROVIDE THAT CERTAIN AGRICULTURAL EQUIPMENT SHALL NOT BE CONSIDERED FOOD ESTABLISHMENTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 39-1602, Idaho Code, be, and the same is hereby amended to read as follows:

39-1602. DEFINITIONS. As used in this chapter:

(1) "Food establishment" means those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and location, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder including preparation, processing, storage, service, transportation vehicles, satellite locations, divisions and departments, and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. Individual divisions and departments on one (1) premises and under common ownership shall as a whole be considered a single food establishment. The term "food establishment" does not include:

(a) Private homes where food is prepared or served for individual family consumption;

(b) Fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis. Food shall not be considered to be served on a regular basis if the food is served for a period not to exceed five (5) consecutive days on no more than three (3) occasions per year for foods which are not potentially hazardous, or if the food is served no more than one (1) meal a week for all other foods;

(c) Bed and breakfast establishments with ten (10) or fewer beds;

(d) Establishments which offer only factory-sealed foods that are not potentially hazardous; ~~and~~

(e) Agricultural markets; and

(f) Agricultural equipment used for the extraction or harvest of an agricultural product including, but not limited to, mint stills.

(2) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of clostridium botulinum. Included is any food of animal origin, either raw or heat treated and any food of plant origin which has been heat treated or which is raw seed sprouts; cut melons; and garlic and oil mixtures. The term "potentially hazardous food" does not include:

(a) Air-dried hard-boiled eggs with shells intact;

(b) Foods with a water activity (aw) value of eighty-five hundredths (0.85) or less;
(c) Foods with a pH (hydrogen ion concentration) level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit;
(d) Foods in unopened hermetically-sealed containers which have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;
(e) Foods for which laboratory evidence, acceptable to the regulatory authority, demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of clostridium botulinum cannot occur;
(f) Milk, half-and-half cream, butter products, frozen dairy desserts and other fluid milk products, in the original unopened container; and
(g) Any other food items determined by the department of health and welfare not to be potentially hazardous.
(3) "Regulatory authority" means the director of the Idaho department of health and welfare or the director's designee.

Approved March 23, 2004.

CHAPTER 186
(H.B. No. 678)

AN ACT

RELATING TO CROP MANAGEMENT AREAS; AMENDING SECTION 22-2017, IDAHO CODE, TO PROVIDE FOR PETITIONS FOR THE ESTABLISHMENT OF CROP MANAGEMENT AREAS IN AREAS WHERE FEWER THAN TWENTY-FIVE REGISTERED ELECTORS RESIDE.

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

SECTION 1. That Section 22-2017, Idaho Code, be, and the same is hereby amended to read as follows:

22-2017. CROP MANAGEMENT AREAS. The legislature recognizes the fact that in order to produce crops that are free from plant pests, and to control such plant pests, it is frequently necessary to apply certain crop management practices over an area which may include several farms, orchards, nurseries or other crop producing entities. Such practices may include, but are not limited to, use of clean seed, destruction of infested or undesirable plants, use of chemicals and prohibiting introduction of host materials. The legislature further recognizes that it is in the public interest that the director be authorized to designate certain areas as crop management areas and to stipulate those practices which shall be followed in the management area insofar as they affect the particular crop.
(1) The director may provide for establishment of a crop management area after presentation of a petition signed by not less than twenty-five (25) registered electors residing within the confines of the pro-

posed crop management area. The petitioners shall give the petition to the county clerk of the county or counties who shall examine the signatures and certify the number of valid signatures of electors residing within the confines of the proposed crop management area and transmit the petition to the director. The director may establish a crop management area within the boundaries specified in the petition.

(2) In instances where there are less than twenty-five (25) registered electors residing within the confines of the proposed crop management area, a majority of those registered electors must sign the petition in order for the petition to be considered by the director. The petitioner(s) of the proposed crop management area shall present the petition to the county clerk of the county of the proposed crop management area. The county clerk of the county shall examine the signatures presented by the petitioner(s) and shall certify that the number of valid signatures constitutes a majority of electors residing within the confines of the proposed crop management area. The county clerk of the county shall then transmit the petition to the director. The director may establish a crop management area within the boundaries specified in the petition.

(3) In instances where there are no registered electors residing within the confines of the proposed crop management area, the petitioner(s) of the proposed crop management area shall present the petition to the county clerk of the county of the proposed crop management area. The county clerk of the county shall notify the director in writing certifying that there are no registered electors residing in the proposed crop management area. The county clerk of the county shall then transmit the petition to the director. The director may establish a crop management area within the boundaries specified in the petition.

(4) The director may make and enforce rules to maintain the management area. Rules may include, but shall not be limited to:

(a) Specification of the kind and quality of seed or other propagative material which may be planted in the area;

(b) Specification of treatments, chemical or otherwise, which shall be used to control pests or undesirable plants in the area;

(c) Transportation of vegetative material into, within or out of the area;

(d) Disposition of infested crops, undesirable plants or other material which may include destruction of the crops, plants or other material;

(e) Disposition of vegetative material planted in violation of the rules.

(~~2~~5) Disposition of infested or violative material in a crop management area shall be at the expense of the owner thereof.

Approved March 23, 2004.

CHAPTER 187
(H.B. No. 682)

AN ACT

RELATING TO BEEF CATTLE FEEDING OPERATIONS; AMENDING SECTION 22-4902, IDAHO CODE, TO PROVIDE ADDITIONAL LEGISLATIVE INTENT RELATING TO THE BEEF CATTLE ENVIRONMENTAL CONTROL ACT; AMENDING SECTION 22-4903,

IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-4904, IDAHO CODE, TO DEFINE A TERM, TO REVISE DEFINITIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 22-4906, IDAHO CODE, TO PROVIDE ADDITIONAL REQUIREMENTS FOR NUTRIENT MANAGEMENT PLANS; AND AMENDING SECTION 22-4907, IDAHO CODE, TO REVISE AUTHORITY GRANTED TO THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE RELATING TO THE INSPECTION OF BEEF CATTLE FEEDING OPERATIONS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 22-4902, Idaho Code, be, and the same is hereby amended to read as follows:

22-4902. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. (1) The legislature recognizes the importance of protecting state natural resources including, surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an ecologically sound, economically viable, and socially responsible beef cattle industry in the state. The beef cattle industry produces manure and process wastewater which, when properly used, supplies valuable nutrients and organic matter to soils and is protective of the environment, but may, when improperly stored and managed, create adverse impacts on natural resources, including waters of the state. This chapter is intended to ensure that manure and process wastewater associated with beef cattle operations are handled in a manner which protects the natural resources of the state.

(2) Further, the legislature recognizes that the beef cattle industry is potentially subject to various state and federal laws designed to protect state natural resources and that the Idaho department of agriculture is in the best position to administer and implement these various laws. It is therefore the intent of the legislature that the administration of this law by the department of agriculture fully meets the goals and requirements of the federal clean water act and state laws designed to further protect state waters and that administration of this chapter by the department of agriculture shall not be more stringent than or broader in scope than the requirements of the clean water act and applicable state and federal laws. The department shall have authority to administer all laws to protect the quality of water within the confines of a beef cattle animal feeding operation. In carrying out this chapter the department shall prioritize its resources on operations which have the greatest potential to significantly impact the environment and ensure that any requirements imposed under this chapter upon operators of beef cattle animal feeding operations are cost-effective and economically, environmentally and technologically feasible.

(3) Successful implementation of this chapter is dependent upon the department receiving adequate funding from the legislature and is dependent upon the department executing a memorandum of agreement with the United States environmental protection agency, the department of environmental quality and the Idaho cattle association which sets forth a working arrangement between the agencies to ensure compliance with this chapter and applicable state and federal laws, including the federal clean water act. Moreover, the legislature recognizes that it is important for the state to obtain a delegated national pollutant dis-

charge elimination system (NPDES) permit program from the EPA under the clean water act.

SECTION 2. That Section 22-4903, Idaho Code, be, and the same is hereby amended to read as follows:

22-4903. AUTHORITY AND DUTIES OF DIRECTOR CONCERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS. (1) The director of the department of agriculture through the division of animal industries is authorized to regulate beef cattle animal feeding operations to protect state natural resources, including surface water and ground water.

(2) In order to carry out its duties under this chapter, the department shall be the responsible state department to prevent any ground water contamination from beef cattle animal feeding operations as provided under section 39-120, Idaho Code.

(3) The director shall have the authority to exercise any other authorities delegated by the director of the department of environmental quality regarding the protection of ground water, surface water and other natural resources associated with confined animal feeding operations, and this shall be the authority for the director of the department of environmental quality to so delegate.

(4) The director of the department of environmental quality shall consult with the director of the department of agriculture before certi~~fying~~ discharges from beef cattle animal feeding operations as provided under 33 U.S.C. section 1341.

SECTION 3. That Section 22-4904, Idaho Code, be, and the same is hereby amended to read as follows:

22-4904. DEFINITIONS. When used in this ~~act~~ chapter:

(1) "Administrator" means the administrator, or his designee, for the animal industries division of the Idaho department of agriculture.

(2) "Beef cattle" means slaughter and feeder cattle or dairy heifers that are kept on or contiguous to the animal feeding operation and are owned or controlled by the animal feeding operation.

(~~2~~3) "Beef cattle animal feeding operation" means an animal feeding operation which confines slaughter and feeder cattle or dairy heifers as defined in 40 CFR 122.23 ~~and 40 CFR part 122, appendix B~~ (b)(1), (b)(2), (b)(4), (b)(6) or (b)(9).

(~~3~~4) "Best management practices" means practices, techniques or measures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state. Best management practices for water quality shall be adopted pursuant to the state water quality management plan, the Idaho ground water quality plan or this ~~act~~ chapter.

(~~4~~5) "Department" means the Idaho department of agriculture.

(~~5~~6) "Director" means the director of the Idaho department of agriculture or his designee.

(~~6~~7) "Manure" means animal excrement that may also contain bedding, spilled feed, water or soil.

(~~7~~8) "Modification" or "modified" means structural changes and alterations to the wastewater storage containment facility which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility.

(~~8~~9) "Noncompliance" means a practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge.

(~~9~~10) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(~~10~~11) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.

(~~11~~12) "Nutrient management standard" means the 1999 publication by the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590 or other equally protective standard approved by the director.

(~~12~~13) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(~~13~~14) "Process wastewater" means liquid containing beef cattle manure, process generated wastewater and any precipitation which comes into direct contact with livestock manure and facility products or byproducts.

(~~14~~15) "Unauthorized discharge" means a discharge of process wastewater or livestock manure to state surface waters that is not authorized by an NPDES permit or the release of process wastewater or livestock manure to waters of the state that does not meet the requirements of this ~~act~~ chapter or water quality standards.

(~~15~~16) "Wastewater storage and containment facilities" means the portion of an animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds.

(~~16~~17) "Waters of the state" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

SECTION 4. That Section 22-4906, Idaho Code, be, and the same is hereby amended to read as follows:

22-4906. NUTRIENT MANAGEMENT PLAN. Each beef cattle animal feeding operation shall submit a nutrient management plan to the director for approval. Beef cattle animal feeding operations that are operating on or before July 1, 2000, shall submit a nutrient management plan to the director for approval no later than January 1, 2005. Any new operation commencing operations after July 1, 2000, shall not operate prior to the director's approval of a nutrient management plan. An approved nutrient management plan shall be implemented and considered a best management

practice. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. Such plans shall be available to the administrator on request.

SECTION 5. That Section 22-4907, Idaho Code, be, and the same is hereby amended to read as follows:

22-4907. INSPECTIONS. (1) The director or his designee in the division of animal industries is authorized to enter and inspect any beef cattle animal feeding operation and have access to or copy any facility records deemed necessary to ensure compliance with this ~~act~~ chapter and the federal clean water act. The director shall comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access to:

(a) Enter and inspect at reasonable times ~~upon~~ the premises or land application site(s) of a ~~permitted facility or where records are kept~~ beef cattle animal feeding operation;

(b) ~~Have access to~~ Review and/or copy, at reasonable times, any records that must be kept under conditions of ~~the permit~~ this chapter;

~~(c) Inspect at reasonable times any facility or land application site; and~~

~~(d)~~ Sample or monitor at reasonable times, substances or parameters directly related to compliance with ~~the~~ an NPDES permit or this ~~act~~ chapter.

(2) All inspections and investigations conducted under the authority of this ~~act~~ chapter shall be performed in conformity with section 17, article I of the constitution of the state of Idaho. The state shall not, under the authority granted by this ~~act~~ chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or other authorized person.

Approved March 23, 2004.

CHAPTER 188
(H.B. No. 683)

AN ACT

RELATING TO THE IDAHO POTATO COMMISSION; REPEALING SECTION 22-1201, IDAHO CODE; AMENDING CHAPTER 12, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-1201, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION 22-1207, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE POTATO COMMISSION, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 22-1208, IDAHO CODE, TO AUTHORIZE AND DIRECT THE POTATO COMMISSION TO DISSEMINATE CERTAIN INFORMATION RELATING TO COMMODITY FACTS, BENEFITS AND PROMOTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-1213, IDAHO CODE, TO PROVIDE FOR THE DEPOSIT OF CERTAIN PENALTIES IN THE GENERAL FUND OF THE IDAHO POTATO COMMISSION; AMENDING SECTION 49-417C, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 22-1201, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 12, 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 22-1201, Idaho Code, and to read as follows:

22-1201. LEGISLATIVE INTENT. It is in the best interest of all the people of the state of Idaho that the abundant natural resources of Idaho be protected, fully developed, and uniformly distributed. The potato industry is one of the agricultural industries that contributes to the economic welfare of the state. It is the purpose of this chapter to promote the public health and welfare of the citizens of the state by providing means for the protection, promotion, study, research, analysis and development of markets relating to the growing and promotion of Idaho potato products and byproducts.

SECTION 3. That Section 22-1207, Idaho Code, be, and the same is hereby amended to read as follows:

22-1207. POWERS AND DUTIES OF COMMISSION. The powers and duties of the commission shall include the following:

(1~~.~~) To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and the performance of its duties under this ~~act~~ chapter.

(2~~.~~) To contract and be contracted with.

(3~~.~~) To employ and at its pleasure discharge ~~an advertising manager,~~ agents, ~~advertising agencies~~ personnel, and such other help as it deems necessary and to outline their powers and duties and fix their compensation.

(4~~.~~) To make in the name of the commission such ~~advertising contracts and other~~ agreements as may be necessary.

(5~~.~~) To keep books, records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.

(6~~.~~) To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this ~~act~~ chapter.

(7~~.~~) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States government, engaged in work or activity 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, product protection, promotion and reciprocal enforcement of these objectives.

(8) To investigate and prosecute in the name of the state of Idaho violations of this chapter or any suit or action for the collection of fees, taxes or penalties as hereinafter provided, or to protect brands, marks, packages, brand names, trademarks, certification marks or other intellectual property rights being promoted or used by the commission.

(9) To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.

(10) To define and describe such grade or grades of potatoes ~~that~~

~~may be advertised~~ in accordance with the provisions of this ~~act~~ chapter.

~~8.~~(11) To define and designate the character of the brands, labels, stencils, or other distinctive marks under which said potatoes may be ~~marketed~~ promoted in order to secure the greatest returns to producers. ~~and meet the requirements of their advertising campaign.~~

~~9.~~(12) To devise and require the application of either a seal, label, brand, package, or any other suitable device that will protect the identity of the original Idaho pack of potatoes as near to the final consumer as possible.

~~10.~~(13) Whenever and wherever it deems it to be necessary the commission shall use its offices to prevent any substitution of other potatoes for Idaho potatoes and to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes at any and all times at any and all points where they discover the same is being done and to require the disclosure of the growing area of origin upon potato containers by all persons doing business in the state of Idaho.

~~11.~~(14) To require all those using any of the Idaho potato trade or certification marks, or handling or packing potatoes grown in Idaho, to execute an agreement in the form prescribed by the commission to ensure compliance with the provisions of this chapter.

~~12.~~(15) To devise a suitable system for tracking shipments of Idaho potatoes and Idaho potato products to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes.

~~13.~~(16) To prevent the unlicensed use of the Idaho potato trade or certification marks including, but not limited to, the marks "Grown in Idaho," "Famous Idaho Potatoes" and "Idaho Potatoes."

~~14.~~(17) To make, conduct or carry on studies and research in connection with the raising, production and ~~marketing~~ promotion of potatoes, including study and research dealing with the industrial and other uses of potatoes and their ~~by-products~~ byproducts, and the extension and stabilization of markets for such commodities; to disseminate information with respect to such study and research as a part of the commission's ~~advertising,--publicity--and--sales~~ promotional activities authorized by this ~~act~~ chapter and to assist, aid and educate growers, dealers and handlers in the raising, production and ~~marketing~~ promotion of potatoes.

~~15.~~(18) To require all persons with their principal place of business located in the state of Idaho to pay a one hundred dollar ($100) annual license fee for use of any Idaho potato trade or certification mark and to require all persons with their principal place of business located outside of the state of Idaho to pay a three hundred dollar ($300) annual license fee for use of any Idaho potato trade or certification mark.

For the accomplishment of such ends the commission is hereby empowered to employ the necessary persons or contract for the performance of required services; to cooperate with any organization of growers in this state, whether organized by authority of law or voluntary, engaged in carrying on similar activities and to participate jointly with any such organization, by contract or otherwise, in financing such study and research or paying for the employment of persons or services required or in carrying out projects and programs as herein contemplated; provided, however, expenditures authorized by the commission for the purposes herein mentioned shall not exceed an amount equal to twelve and one-half percent (12 1/2%) of the tax collected on potatoes levied and imposed pursuant to section 22-1211, Idaho Code.

Provided, further, that none of the powers specified in subsection ~~14.~~(17) of this section shall be exercised, and no expenditure of revenue as provided in subsection ~~14.~~(17) of this section shall be authorized except upon the affirmative vote of six (6) or more of the members of the commission.

~~16.~~(19) The commission, in furtherance of its duties under this ~~act~~ chapter and under its rules, shall have the power to administer oaths, certify to official acts and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The commission may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the commission, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he had not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission and regularly served, the court shall thereupon order that said witness appear before the commission at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court. Provided that in proceedings before the commission where evidence is sought from witnesses who are not residents of this state, the commission is authorized to obtain subpoenas issued by the clerk of the district court. Subpoenas so requested shall be issued by the clerk of the district court under the seal of the court, shall state the name of the court and the title of the administrative action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. Subpoenas shall be used only to require attendance of a witness at a deposition or hearing. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

SECTION 4. That Section 22-1208, Idaho Code, be, and the same is hereby amended to read as follows:

22-1208. ~~ADVERTISING, PUBLICITY AND SALES PROMOTION~~ COMMODITY FACTS AND BENEFITS -- PROMOTION. The commission ~~shall plan and conduct a campaign for commodity advertising, publicity and sales promotion to increase the consumption of potatoes and may contract for any advertising, publicity and sales promotion service. To accomplish such purpose the commission shall have power and it shall be the duty of the commission~~ is authorized and directed to disseminate information:

(a) Relating to potatoes and the importance thereof in preserving

the public health, the economy thereof in the diet of the people and the importance thereof in the nutrition of children;

(b) Relating to the manner, method and means used and employed in the production, transportation, ~~marketing~~ promotion and grading of potatoes and to laws of the state regulating and safeguarding such production, transportation, ~~marketing~~ promotion and grading;

(c) Relating to the added cost to the producer and dealer in producing and handling potatoes to meet the high standards imposed by the state that insure a pure and wholesome product;

(d) Relating to the effect upon the public health which would result from a breakdown of the Idaho potato industry;

(e) Relating to the reasons why producers and dealers should receive a reasonable return on their labor and investment;

(f) Relating to the problem of furnishing the consumer at all times with an abundant supply of fine quality ~~of~~ potatoes at reasonable prices;

(g) Relating to factors of instability peculiar to the vegetable industry in general, and the potato industry in particular, such as unbalanced production, effect of the weather, influence of consumer purchasing power and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be created;

(h) Relating to the possibilities of increased consumption of Idaho potatoes~~.~~;

(i) Relating to such other, further and additional information as shall tend to promote increased consumption of Idaho potatoes, as may foster a better understanding and more efficient cooperation between producers, dealers and the consuming public~~.~~;

(j) Relating to branding, labeling, stenciling, sealing or packaging to promote and use ~~in all ways to advertise~~ Idaho potatoes and to protect their identity as far as possible to the final consumer.

SECTION 5. That Section 22-1213, Idaho Code, be, and the same is hereby amended to read as follows:

22-1213. PENALTY FOR VIOLATIONS. (1) Any person who shall violate or aid in the violation of any of the provisions of this chapter, any rules promulgated pursuant thereto, or the terms of any licensing agreement may be assessed a civil penalty by the commission or its duly authorized agent of not more than one thousand dollars ($1,000) for each offense and a civil penalty of not more than one thousand dollars ($1,000) for each day of continuing violation of such statute or rule or licensing agreement and shall be liable for investigatory costs and attorney's fees reasonably incurred by the commission in connection with the violation.

(2) For purposes of this section, each container of potatoes in violation of this chapter, rules or any licensing agreement, shall constitute a separate violation for each day the container is in violation thereof.

(3) Procedure. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code. If the commission or its agent is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commission or its

agent, it may enforce its penalty by action in the appropriate district court. Any person against whom the commission or its agent has assessed a civil penalty pursuant to this section may, within twenty-eight (28) days of the final agency action making the assessment, appeal the assessment in accordance with chapter 52, title 67, Idaho Code. All penalties collected pursuant to this section shall be paid into the general fund of the Idaho ~~advertising and development fund~~ potato commission. Nothing contained in this section shall be deemed to preclude the commission from pursuing any other civil or criminal remedies available to it as provided by law.

SECTION 6. That Section 49-417C, Idaho Code, be, and the same is hereby amended to read as follows:

49-417C. FAMOUS POTATOES LICENSE PLATES. (1) On and after January 1, 2001, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special famous potatoes license plates in lieu of regular license plates. Availability of famous potatoes license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the Idaho potato commission created in chapter 12, title 22, Idaho Code, and shall be used exclusively for the purposes described in subsection ~~14.~~(17) of section 22-1207, Idaho Code.

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

(4) The famous potatoes license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The distinguishing feature of the license plate shall be a representation of a prepared Idaho potato with a melting pat of butter. The design and any slogan on the plate shall be acceptable to the Idaho potato commission and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho potato commission.

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

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

Approved March 23, 2004.

CHAPTER 189
(H.B. No. 700)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-114, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE PAYMENT OF SPECIFIED CLAIMS FROM THE BIG GAME PRIMARY DEPREDATION ACCOUNT; AMENDING SECTION 36-115, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE PAYMENT OF SPECIFIED CLAIMS FROM THE BIG GAME SECONDARY DEPREDATION ACCOUNT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-1108, IDAHO CODE, TO CLARIFY PROVISIONS RELATING TO COMPENSATION FROM THE BIG GAME PRIMARY DEPREDATION ACCOUNT FOR CERTAIN CROP LOSSES AND DAMAGE CLAIMS, TO PROVIDE FOR CERTAIN ADDITIONAL CLAIMS, TO REVISE PROCEDURES RELATING TO THE DETERMINATION AND PAYMENT OF CERTAIN DAMAGE CLAIMS AND TO REVISE PROCEDURES AND DUTIES RELATING TO SPECIFIED ARBITRATION PANELS; AND AMENDING SECTION 36-1109, IDAHO CODE, TO REVISE PROCEDURES RELATING TO THE DETERMINATION, PROCESSING AND PAYMENT OF CLAIMS FOR DAMAGE OR DESTRUCTION BY BLACK BEARS OR MOUNTAIN LIONS.

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

SECTION 1. That Section 36-114, Idaho Code, be, and the same is hereby amended to read as follows:

36-114. BIG GAME PRIMARY DEPREDATION ACCOUNT. (a) The big game primary depredation account is hereby established in the state treasury. Moneys in the account are subject to appropriation for the purposes recited in section 36-1108, Idaho Code. Interest earned on investment of idle moneys in the account shall be paid to the fish and game account.

(b) The state controller shall annually, as soon after July 1 of each year as practical, transfer into the account two hundred thousand dollars ($200,000) from the fish and game account. Unexpended and unencumbered balances in the big game primary depredation account existing on June 30 shall revert to the fish and game account.

(c) Moneys in the account may be appropriated only to:

1. Honor payment agreements made pursuant to section 36-1108(a)3., Idaho Code.

2. Make depredation damages payments pursuant to section 36-1108(b), Idaho Code.

3. Provide for reimbursement of expenses for members of the advisory committee established in section 36-122, Idaho Code.

(d) Any payment for damages pursuant to section 36-1108(b), Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director may order not more than one-~~third~~half (1/~~3~~2) of the amount of the approved claim that is to be paid from the big game primary depredation account to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game primary depredation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game primary depredation account is sufficient to pay the balance of all approved claims, the director shall promptly pay them. If the balance is not sufficient to pay the balance of all approved claims, the director shall pay a proportionate share to each claimant.

(C) The director shall encumber the balance of the moneys in the account, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars ($1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from either the big game primary depredation account or the big game secondary depredation account.

(B) The total amount that may be paid from the big game primary depredation account shall not exceed nine thousand dollars ($9,000) per approved claim.

(C) Approved claims that exceed ten thousand dollars ($10,000) total (one thousand dollars ($1,000) deductible and nine thousand dollars ($9,000) payment from the big game primary depredation account) shall be processed under the provisions of section 36-115, Idaho Code.

(D) Approved claims of any amount that involve damage to livestock, berries or honey by black bear or mountain lion shall be processed under the provisions of section 36-115, Idaho Code.

(E) Approved claims of any amount that involve damage to forage by antelope, deer, elk or moose shall be processed under the provisions of section 36-115, Idaho Code.

(F) Provided however, that for claims in subsequent and consecutive years for damage to standing or stored crops in the same location as the first occurrence, the one thousand dollar ($1,000) deductible shall be waived if the department failed to prevent property loss following the first occurrence.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

SECTION 2. That Section 36-115, Idaho Code, be, and the same is hereby amended to read as follows:

36-115. BIG GAME SECONDARY DEPREDATION ACCOUNT. (a) The big game secondary depredation account is hereby created in the state treasury. Moneys in the account are subject to appropriation for the purposes recited in section 36-1108(b), Idaho Code, section 36-114(d), Idaho Code, section 36-1109 and section 36-1110, Idaho Code. Moneys in the account shall be invested as provided in section 67-1210, Idaho Code, and interest earned on investment of idle moneys in the account shall be paid to the account. The big game secondary depredation account shall be under the administrative direction of the state controller.

(b) In addition to any moneys appropriated to the account from other sources, the state controller shall transfer the earned interest not to exceed two hundred ~~and~~ fifty thousand dollars ($250,000) from the fish and game account to the big game secondary depredation account each fiscal year until a total of one million two hundred fifty thousand dollars ($1,250,000) has been transferred to the account.

(c) The principal amount in the account shall not be appropriated, but only the interest earned on investment of the moneys in the account shall be available for appropriation. The state controller shall annually report to the legislature, the division of financial management, the director of the department of agriculture and the director of the department of fish and game the amount of interest earnings and the availability of such earnings for appropriation. However, should the balance in the account ever exceed three million dollars ($3,000,000), interest earnings that exceed the amount appropriated for any fiscal year shall be transferred to the fish and game set-aside account for habitat rehabilitation. Transferred funds shall be spent pursuant to an appropriation for the set-aside account.

(d) Any payment for damages pursuant to sections 36-1108(b) and 36-114(d), Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-~~third~~half (1/~~3~~2) of the amount of the approved claim that is to be paid from the big game secondary depredation account to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary depredation account.

(B) The balance of all unpaid approved claim amounts, including claims submitted under the provisions of sections 36-1109 and 36-1110, Idaho Code, shall be accumulated to a total as of June 30. If the balance in the big game secondary depredation account appropriation is sufficient to pay the balance of all approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of moneys appropriated from the big game secondary depredation account, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars ($1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from either the big game primary depredation account or from the big game secondary depredation account, but the owner or lessee is required to absorb only a single one thousand dollar ($1,000) deductible per claim, whether the claim is paid solely from the big game primary depredation account or from both depredation accounts.

(B) Provided however, that for claims in subsequent and consecutive years for damage to standing or stored crops in the same location as the first occurrence, the one thousand dollar ($1,000) deductible will be waived as provided in section 36-114(d)(2)(F), Idaho Code.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(e) Any claim for damages pursuant to section 36-1109, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order that not more than one-~~third~~half (1/~~3~~2) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary depredation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game secondary depredation account appropriation is sufficient to pay all approved claims, the director shall promptly pay them. If the balance is not sufficient to pay the balance of all approved claims, the director shall pay a proportionate share to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following condition applies: the amount of one thousand dollars ($1,000) must be

deducted from each such statement. Provided however, if an owner or caretaker suffers damage to or destruction of livestock in more than one (1) occurrence during the fiscal year, then only one (1) deductible must be subtracted from the claims and the deductible on subsequent claims will be waived. This deductible is a net loss to the owner or caretaker, and will not be compensated for from the big game secondary depredation account.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(f) Any claim for damages to forage pursuant to section 36-1110, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-~~third~~half (1/~~3~~2) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary depredation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game secondary depredation account appropriation is sufficient to pay all approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars ($1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from the big game secondary depredation account.

(B) The total amount of all claims for damages to forage that may be paid from the big game secondary depredation account shall not exceed twenty-five percent (25%) of the amount of interest earned from investments of moneys in that account in any one (1) fiscal year.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

SECTION 3. That Section 36-1108, Idaho Code, be, and the same is hereby amended to read as follows:

36-1108. CONTROL OF DAMAGE BY ANTELOPE, ELK, DEER OR MOOSE -- COMPENSATION FOR DAMAGES. (a) Prevention of depredation shall be a priority management objective of the department, and it is the obligation of landowners to take all reasonable steps to prevent property loss from wildlife or to mitigate damages by wildlife. When any antelope, elk, deer or moose is doing damage to or is destroying any property or is about to do so, the owner or lessee thereof may make complaint and report the facts to the director or his designee who shall, within seventy-two (72) hours, investigate the conditions complained of. If it appears that the complaint is well founded and the property of the complainant is being or is likely to be damaged or destroyed by such antelope, elk, deer or moose, the director may:

1. Send a representative onto the premises to control, trap, and/or remove such animals as will stop the damage to said property. Any animals so taken shall remain the property of the state and shall be turned over to the director.

2. Grant properly safeguarded permission to the complainant to control, trap and/or remove such animals. Any animals so taken shall remain the property of the state and shall be turned over to the director.

3. Make an agreement with the owner or lessee to allow continued use of lands by the animals where damage by them has occurred to stored, growing or matured crops on private property whether owned or leased. This agreement may be transacted only after department attempts to resolve the problem by other means have proven unsuccessful. The agreement made under the provisions of this subsection may provide for financial compensation to the owner or lessee. If made, financial compensation under the provisions of this subsection shall be governed by the provisions of section 36-114, Idaho Code, and shall not be in addition to any payments for <u>the same</u> crop losses from any other source. Compensation for damages under the provisions of this subsection shall be available for damages done to private lands, whether owned or leased, if the owner or lessee allowed hunters reasonable access to the property or through the property to public lands for hunting purposes during the preceding hunting season. This provision shall not negate the provisions of section 36-1602, Idaho Code, relating to the necessity of obtaining permission to enter private land. If necessary, the arbitration panel provided for in subsection (b) of this section shall determine the reasonableness of access allowed.

(b) 1. In order to establish eligibility for submission of claims for damages, persons suffering crop damages on privately owned or leased land caused by antelope, elk, deer or moose must:

(A) Notify the department within seventy-two (72) hours of discovery of damage.

(B) Follow up verbal notification with a written notice within ten (10) days of the discovery of damages.

(C) The department shall not be held liable or accountable for any damages occurring more than ten (10) days prior to the initial notification of damage. However, the department may extend the period up to thirty (30) days under exceptional circumstances.

The owner or lessee must have allowed hunters reasonable access to the property or through the property to public lands for hunting purposes during the preceding hunting season or the claim for damages shall be disallowed. Compensation for crop damages' claims shall not be in addition to any payments for the same crop losses from any other source and shall not include fence or other types of property damage. While fences and irrigation equipment are not subject to claim for payment, the department is allowed to provide support and assistance, including provision of materials to design, construct, and maintain fences for control of depredation. The notice of damages caused must be in written form, shall be in the form of a claim for damages substantially the same as required by section 6-907, Idaho Code, shall be attested to by the claimant under oath, and the claim shall be at least one thousand dollars ($1,000). The claim shall not be amended after it is filed, provided however, that a claimant may file an additional claim in the event additional damage occurs subsequent to filing the initial claim. The department shall prepare and make available suitable forms for notice and claim for damages. Claims may be submitted only for the fiscal year (July 1 through June 30) in which they occurred. Any person submitting a fraudulent claim shall be prosecuted for a felony as provided in section 18-2706, Idaho Code. For purposes of this subsection, crop damages shall mean damage to plants grown or stored for profit and exclude ornamental plants.

2. Upon receipt by the department, the department shall review the claim, and if approved, pay it as provided in section 36-114, Idaho Code, or order it paid as provided in section 36-115, Idaho Code. Failure on the part of the owner or lessee to allow on-site access for inspection and investigation of alleged losses shall void the claim for damages.

3. ~~If~~ In the event the owner or lessee and the department ~~finds that~~ fail to agree on the amount of damages ~~has indeed occurred, the department may pay the amount of the damages as claimed, or,~~ within fifteen (15) business days of the written claim, either party may ~~make a counter-offer to pay~~ elect to retain the services of an independent certified insurance adjuster licensed in the state of Idaho to view the affected property and determine the amount of damages. In the event the owner or lessee and the department fail to agree on the amount of damages and neither party elects to retain the services of an independent certified insurance adjuster, provisions of subsection (b)4. of this section shall apply. The independent certified adjuster shall complete his review and determination within ~~thirty~~ twenty (~~30~~20) days from the date he is retained, and will report his determination in writing by certified mail to the department and to the owner or lessee. Neither the owner or lessee, nor the department, shall disturb the affected property prior to review and determination by the independent insurance adjuster. Costs associated with the services of the ~~written claim~~ independent insurance adjuster shall be divided equally between the owner or lessee and

the department, subject to reapportionment of the costs by an arbitration panel pursuant to the provisions of subsection (b)4. of this section. If the department, or the owner or lessee rejects the ~~department's offer, which rejection or refusal must be in writing, the provisions of paragraph 4. shall apply. Any offer which is not accepted~~ determination of the adjuster, they shall notify the other party in writing of the rejection within ~~thirty~~ five (~~30~~5) business days of receipt ~~shall be deemed to be rejected~~ of the adjuster's determination. In the event that either party rejects the adjuster's determination, the provisions of subsection (b)4. of this section shall apply.

4. Within five (5) ~~working~~ business days of ~~the owner's or lessee's~~ a rejection of an ~~offer to pay~~ adjuster's determination of damages or failure of the owner or lessee and the department to agree on damages when a certified insurance adjuster is not used~~, or within five (5) working days after the department finds that no damage has in fact been sustained~~, the director must convene an arbitration panel. To convene an arbitration panel, the director must, within five (5) ~~working~~ business days, appoint the department's representative and notify the landholder of the appointment. The landholder(s) shall, within the next five (5) ~~working~~ business days following such notice from the department, appoint his representative and notify the department of the appointment. Within the next five (5) ~~working~~ business days, the department representative and the landholder must mutually appoint the third arbitrator. The arbitration panel shall consist of three (3) members, as follows:

(A) The director of the department of fish and game or his designee;

(B) The owner or his designee, or the lessee or his designee;

(C) One (1) member selected by the two (2) members above.

The panel shall convene within thirty (30) days of the selection of the third arbitrator, and render its decision within fourteen (14) days after the hearing. When convened, the arbitration panel shall have the same authority to make on-site inspections as the department. The owner or lessee shall be responsible for payment of the expenses of his appointee; the director shall pay the expenses of his appointee from the big game primary depredation account; and the expenses of the third member shall be a joint responsibility of the owner or lessee, and the department. Provided however, the panel is authorized to review the costs associated with retaining the independent insurance adjuster and to determine whether those costs should instead be borne solely by the owner or lessee, solely by the department, or be apportioned between the owner or lessee and the department. In cases where an independent insurance adjuster was used, the party electing to use the adjuster shall assume the insurance adjuster's determination of damage as their estimate of damage. The panel shall consider the claim submitted by the owner or lessee, and the estimate of damages ~~determined~~ submitted by the department, and shall select one (1) amount or the other as being the closest to the actual damages sustained by the claimant. The arbitration panel shall report its decision in writing to both the owner or lessee and to the department within ten (10) days of the decision, and the decision of the panel shall be binding on the owner or lessee and the department. The fish and game advisory committee shall develop

guidelines to govern arbitration procedures in accordance with chapter 52, title 67, Idaho Code.

(c) Any claim received by the department under the provisions of subsection (b) of this section must be processed by the department within sixty (60) calendar days of receipt. If the claim is approved for payment, payment must be made within forty-five (45) calendar days of such approval. Any damage claim determination by an independent insurance adjuster pursuant to subsection (b)3. of this section, accepted by the parties, must be paid by the department within forty-five (45) calendar days of the determination. If the claim is arbitrated, the arbitration must be completed within one hundred eighty (180) calendar days of filing the claim for such damages.

SECTION 4. That Section 36-1109, Idaho Code, be, and the same is hereby amended to read as follows:

36-1109. CONTROL OF DAMAGE BY BLACK BEARS OR MOUNTAIN LIONS -- COMPENSATION FOR DAMAGE. (a) Prevention of depredation shall be a priority management objective of the department, and it is the obligation of landowners to take all reasonable steps to prevent property loss from black bears or mountain lions or to mitigate damage by such. The director, or his representative, will consult with appropriate land management agencies and landusers before transplanting or relocating any black bear or mountain lion.

(b) When any black bear or mountain lion has done damage to or is destroying livestock on public, state, or private land, whether owned or leased, or when any black bear has done damage to or is destroying berries or honey on private land, the owner or his representative of such livestock shall, for the purposes of filing a claim, report such loss to a representative of the U.S. department of agriculture animal plant and health inspection services/animal damage control (APHIS/ADC) who shall, within seventy-two (72) hours, investigate the conditions complained of. For purposes of this section, livestock shall be defined as domestic cattle, sheep, and goats. If it appears that the complaint is well founded and livestock, berries or honey of the complainant has been damaged or destroyed by such black bear or mountain lion, APHIS/ADC shall so inform the ~~director or the department's regional office~~ owner or his representative of the extent of physical damage or destruction in question. The owner shall provide the director or the department's regional office with the APHIS/ADC determination of damages or destruction. The physical damages, without establishing a monetary value thereon, as determined by the APHIS/ADC representative shall be final, and shall be binding upon the owner or his representative and on the department.

(c) Any claim for damages must be in written form, shall be in the form of a claim for damages substantially the same as required in section 6-907, Idaho Code, shall be attested to by the claimant under oath, and the claim shall be for an amount of at least one thousand dollars ($1,000) in damages per occurrence. The department shall prepare and make available suitable forms for claims for damages. Claims may be submitted only for the fiscal year (July 1 through June 30) in which they occurred. Any person submitting a fraudulent claim shall be prosecuted for a felony as provided in section 18-2706, Idaho Code.

1. Upon receipt by the department, the department shall review the claim, and if approved, pay it as provided in section 36-115, Idaho

Code. Failure on the part of the owner or representative to allow on-site access shall negate the claim for damages.

2. If the department accepts the claim for damages as submitted by the owner or his representative, the department may approve the claim for payment, or may make a counter offer. If the owner or his representative rejects the department's counter offer, this rejection or refusal must be in writing and submitted within five (5) ~~working~~ business days. The value of the damage or destruction will then be determined ~~by arbitration as set forth in~~ pursuant to the provisions of subsection (b)3. of section 36-1108, Idaho Code, and, in circumstances so provided for by the provisions of subsection (b)3. of section 36-1108, Idaho Code, pursuant to the provisions of subsection (b)4. of section 36-1108, Idaho Code. Any claim received by the department under the provisions of this section must be ~~finally decided~~ processed by the department within sixty (60) calendar days of receipt. ~~by the department.~~ If the claim is approved for payment, the claim must be immediately forwarded to the department of administration for payment. Any damage claim determination by an independent insurance adjuster, accepted by the parties, must be paid by the department within forty-five (45) days of the determination. If the claim is arbitrated, the arbitration must be completed within one hundred eighty (180) days of filing the claim for such damages.

Approved March 23, 2004.

CHAPTER 190
(H.B. No. 739)

AN ACT

RELATING TO PROPERTY EXEMPT FROM TAXATION; AMENDING SECTION 63-602G, IDAHO CODE, TO PROVIDE A PROCEDURE FOR DETERMINATION AND COLLECTION OF PROPERTY TAX MONEYS THAT WERE IMPROPERLY CLAIMED OR APPROVED FOR THE FIFTY-FIFTY HOMEOWNER'S PROPERTY TAX EXEMPTION AND TO PROVIDE APPLICATION OF MONEYS COLLECTED TO THE THREE PERCENT PROPERTY TAX CAP.

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

SECTION 1. That Section 63-602G, Idaho Code, be, and the same is hereby amended to read as follows:

63-602G. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS. (1) During the tax year 1983 and each year thereafter, the first fifty thousand dollars ($50,000) of the market value for assessment purposes of residential improvements, or fifty percent (50%) of the market value for assessment purposes of residential improvements, whichever is the lesser, shall be exempt from property taxation.

(2) The exemption allowed by this section may be granted only if:

(a) The residential improvements are owner-occupied and used as the primary dwelling place of the owner as of January 1, provided that in the event the residential improvements are owner-occupied after

January 1 but before April 15, the owner of the property is entitled to the exemption. The residential improvements may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in an owner-occupied residential property, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

(ii) That the residential improvements are his primary dwelling place; and

(iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other residential improvements in the county.

(d) For the purpose of this section, the definition of owner shall be the same definition set forth in section 63-701(7), Idaho Code.

When an "owner," pursuant to the provisions of section 63-701(7), Idaho Code, is any person who as grantor, or whose spouse as grantor, created a revocable or irrevocable trust and was named as beneficiary of that trust, or who is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, he or she may provide proof of the trust, limited partnership, limited liability company, or corporation with an affidavit stating: (i) the name of the grantor, partner, member or shareholder; (ii) a statement that the grantor, or the grantor's spouse, is the beneficiary of the trust, or the person is a partner of the limited partnership, or a member of the limited liability company, or a shareholder of the corporation; (iii) the grantor, the grantor's spouse, partner, member or shareholder is the occupier of the residential property and uses the property as the primary dwelling place of the grantor, the grantor's spouse, partner, member or shareholder as of January 1; and (iv) if applicable, the person holds at least a five percent (5%) ownership in the limited partnership, limited liability company or corporation.

The affidavit shall include the attaching of the copies of those portions of the trust or other document which set forth the grantor, the grantor or the grantor's spouse as beneficiary and the signature page of the trust or other document; those portions of the articles of organization or operating agreement of the limited liability company indicating the person's membership in the company and the ownership percentage held by such person; those portions of the limited partnership agreement or other records of the limited partnership indicating that the person has been admitted to the partnership and the ownership percentage held by such person; or those portions of the articles of incorporation indicating that the person is

a shareholder of the corporation and the ownership percentage held by such person.

(e) Any owner may request in writing the return of all copies of any documents submitted with the affidavit set forth in paragraph (d) of this subsection that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(8), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(6), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner or beneficiary, partner, member or shareholder, as appropriate, still occupies the same residential improvements for which the owner made application.

(c) The residential improvements described in subsection (3)(b) of this section are owner-occupied or occupied by a beneficiary, partner, member or shareholder, as appropriate, and used as the primary dwelling place of the owner or beneficiary, partner, member or shareholder, as appropriate, as of January 1; provided however, that in the event the residential improvements are owner-occupied after January 1, but before April 15, the owner of the property is entitled to the exemption.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) Recovery of property tax exemptions allowed by this section but improperly claimed or approved.

(a) Upon discovery of evidence, facts or circumstances indicating any exemption allowed by this section was improperly claimed or approved, the county assessor shall decide whether the exemption claimed should be allowed and if not, notify the taxpayer in writing, assess a recovery of property tax and notify the county treasurer of this assessment.

(b) When information indicating that an improper claim for the exemption allowed by this section is discovered by the state tax commission, the state tax commission may disclose this information to the appropriate county assessor, board of county commissioners and county treasurer. Information disclosed to county officials by the state tax commission under this subsection may be used to decide the validity of any entitlement to the exemption provided in this section and is not otherwise subject to public disclosure pursuant to chapter 3, title 9, Idaho Code.

(c) The assessment and collection of the recovery of property tax must begin within the seven (7) year period beginning the date the assessment notice reflecting the improperly claimed or approved exemption was required to be mailed to the taxpayer.

(d) The taxpayer may appeal to the board of county commissioners the decision by the county assessor to assess the recovery of property tax within thirty (30) days of the date the county assessor sent the notice to the taxpayer pursuant to this section.

(e) A recovery of property tax shall be for each year the exemption allowed by this section was improperly claimed or approved up to the lesser of a maximum of seven (7) years or until the property was transferred to a bona fide purchaser for value. The amount of the recovery of property tax shall be calculated using the product of the amount of exempted value for each year multiplied by the levy for that year plus costs, late charges and interest for each year at the rates equal to those provided for delinquent property taxes during that year.

(f) Any recovery of property tax shall be due and payable no later than the date provided for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges and interest, beginning the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the current rate provided for property taxes.

(g) Recovered property taxes shall be billed, collected and distributed in the same manner as property taxes, except each taxing district or unit shall be notified of the amount of any recovered property taxes included in any distribution.

(h) Any unpaid recovered property taxes shall become a lien upon the real property in the same manner as provided for property taxes in section 63-206, Idaho Code, except such lien shall attach as of the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section.

(i) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as recovery of property tax shall be treated as property tax revenue.

(6) The legislature declares that this exemption is necessary and just.

(67) Residential improvements having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to the owner's, beneficiary's, partner's, member's or shareholder's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone by the owner, beneficiary, partner, member or shareholder, as appropriate, as defined in section 112 of the Internal Revenue Code, and such improvements would have otherwise qualified under this section, then the board of county commissioners of the county in which the residential improvements are located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

Approved March 23, 2004.

CHAPTER 191
(H.B. No. 745, As Amended in the Senate)

AN ACT

RELATING TO THE DIVERSION AND CONVEYANCE OF WATER; AMENDING SECTION 42-110, IDAHO CODE, TO GOVERN OWNERSHIP OF WATER WHILE IT IS DIVERTED; AMENDING SECTION 42-3802, IDAHO CODE, TO FURTHER DEFINE STREAM CHANNEL; AMENDING SECTION 42-3806, IDAHO CODE, TO CLARIFY THE RIGHT TO CLEAN A DRAIN; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-110, Idaho Code, be, and the same is hereby amended to read as follows:

42-110. RIGHT ~~OF DITCH OWNERS~~ TO DIVERT WATER. The proprietors of any ditch, canal or conduit, or other works for the diversion and carriage of water, whose right relative to the quantity of water they shall be entitled to divert by means of such works shall have been established by any valid claim, permit, license or decree of court, shall be entitled to such quantity measured at the point of diversion, subject, however, to all prior rights. Water diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used, or otherwise physically controlled by the appropriator.

SECTION 2. That Section 42-3802, Idaho Code, be, and the same is hereby amended to read as follows:

42-3802. DEFINITIONS. Whenever used in this act, the term:

(a) "Person" means any individual, partnership, company, corporation, municipality, county, state or federal agency, or other entity proposing to alter a stream channel.

(b) "Alter" means to obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape or direction of water flow of any stream channel within or below the mean high watermark thereof.

(c) "Board" means the Idaho water resource board.

(d) "Stream channel" means a natural watercourse of perceptible extent, with definite bed and banks, which confines and conducts continuously flowing water. Ditches, canals, laterals and drains that are constructed and used for irrigation or drainage purposes are not stream channels.

(e) "Department" means the Idaho department of water resources.

(f) "Director" means the director of the Idaho department of water resources.

(g) "Plans" means maps, sketches, engineering drawings, word descriptions and specifications sufficient to describe the extent, nature and location of the proposed stream channel alteration and the proposed method of accomplishing same.

(h) "Mean high watermark" means a water level corresponding to the natural or ordinary high watermark and is the line which the water impresses on the soil by covering it for sufficient periods of time to

deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes.

SECTION 3. That Section 42-3806, Idaho Code, be, and the same is hereby amended to read as follows:

42-3806. EXISTING RIGHTS UNAFFECTED -- WHERE PERMIT NOT REQUIRED. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from streams under existing or vested water right or water right permit for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws.

No permit shall be required from a water user or his agent to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, drain or lateral. No permit shall be required from a water user or his agent to remove any obstruction from any stream channel, if such obstruction interferes with, or is likely to interfere with, the delivery of, or use of, water under any existing or vested water right, or water right permit.

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

Approved March 23, 2004.

CHAPTER 192
(H.B. No. 751, As Amended)

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING SECTION 23-603, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE, TO SET FORTH PUNISHMENT FOR PERSONS WHO ARE EIGHTEEN YEARS OF AGE OR OLDER WHO DISPENSE ALCOHOL TO PERSONS UNDER THE AGE OF TWENTY-ONE YEARS, AND TO PROVIDE THAT MONEYS RECEIVED PURSUANT TO FINES SHALL BE DEPOSITED IN THE ALCOHOLISM TREATMENT FUND.

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

SECTION 1. That Section 23-603, Idaho Code, be, and the same is hereby amended to read as follows:

23-603. DISPENSING TO ~~MINOR~~ A PERSON UNDER THE AGE OF TWENTY-ONE YEARS. Any person who is eighteen (18) years of age or older who shall sell, give, or furnish, or cause to be sold, given, or furnished, alcohol beverage, including any distilled spirits, beer or wine, to a person under the age of twenty-one (21) years shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) per violation, or by imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. A second

or subsequent violation of this section by the same defendant shall constitute a ~~felony~~ misdemeanor and upon conviction thereof the defendant shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000) per violation, or imprisonment in the county jail for a period not to exceed one (1) year, or by both such fine and imprisonment. Notwithstanding the provisions of section 19-4705, Idaho Code, moneys received pursuant to such fines shall be deposited in the alcoholism treatment fund, as created in section 23-404, Idaho Code. Upon conviction of any person for a violation of the provisions of this section, the court shall notify the director of the Idaho state police. The director shall review the circumstances of the conviction, and if the dispensing took place at a licensed establishment or other retailer or distributor, the director may take administrative action he considers appropriate against the licensee or business including suspension of the license for not to exceed six (6) months, a fine, or both such suspension and fine.

Approved March 23, 2004.

CHAPTER 193
(H.B. No. 753)

AN ACT

RELATING TO INCOME TAX CREDITS FOR CHARITABLE CONTRIBUTIONS; AMENDING SECTION 63-3029C, IDAHO CODE, TO PROVIDE AN INCOME TAX CREDIT FOR CONTRIBUTIONS MADE TO THE WOMEN'S AND CHILDREN'S ALLIANCE OR ITS FOUNDATION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

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

63-3029C. INCOME TAX CREDIT FOR CERTAIN CHARITABLE CONTRIBUTIONS -- LIMITATION. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to the anchor house or its foundation, to the children's home society of Idaho, inc., to the Idaho youth ranch or its foundation, to kinderhaven or its foundation, to the women's and children's alliance or its foundation, to gem youth services or its foundation, to the hope house, inc. or its foundation, to the north Idaho children's home or its foundation, to a center for independent living located within the state of Idaho, to a nonprofit substance abuse center licensed by the department of health and welfare, or to a nonprofit rehabilitation facility located within the state of Idaho or its foundation.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liabil-

ity imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars ($100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars ($500), whichever is less.

(3) For the purposes of this section, "center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

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

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

(c) Is cross-disability.

(4) For the purposes of this section, "nonprofit rehabilitation facility" means only a facility that is accredited by the commission on accreditation of rehabilitation facilities or another accreditation organization recognized by the state of Idaho.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2004.

Approved March 23, 2004.

CHAPTER 194
(H.B. No. 763)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Agriculture the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General Fund	$ 468,400	$ 310,300		$ 17,900	$ 796,600
Administration and Accounting Services Fund	630,500	108,100	$ 28,900		767,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Facilities Maintenance Fund	95,700	64,400			160,100
Agriculture in the Classroom Fund		28,000			28,000
TOTAL	$ 1,194,600	$ 510,800	$ 28,900	$ 17,900	$ 1,752,200
II. ANIMAL INDUSTRIES:					
FROM:					
General Fund	$ 1,155,100	$ 215,400		$ 336,000	$ 1,706,500
Agricultural Fees - Livestock Disease Control Fund	507,400	254,200	$ 32,000		793,600
Agricultural Fees - Dairy Inspection Fund	780,400	252,700			1,033,100
Agricultural Fees - Egg Inspection Fund	86,900	25,000			111,900
Agricultural Fees - Commercial Fisheries Fund	6,000	4,200			10,200
Seminars and Publications Fund		96,500			96,500
Federal Grant Fund	362,100	415,000	6,000	1,275,000	2,058,100
TOTAL	$ 2,897,900	$1,263,000	$ 38,000	$1,611,000	$ 5,809,900
III. AGRICULTURAL RESOURCES:					
FROM:					
General Fund	$ 445,200	$ 440,300			$ 885,500
Agricultural Fees - Pesticides Fund	1,258,000	489,900	$143,300		1,891,200
Federal Grant Fund	440,300	167,700			608,000
TOTAL	$ 2,143,500	$1,097,900	$143,300		$ 3,384,700
IV. PLANT INDUSTRIES:					
FROM:					
General Fund	$ 621,100	$ 93,200		$ 92,000	$ 806,300
Agricultural Smoke Management Fund	50,000	30,000	$ 12,000		92,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Agricultural Inspection Fund	1,147,800	252,900	60,700	60,000	1,521,400
Agricultural Fees - Commercial Feed and Fertilizer Fund	658,100	162,700	69,600		890,400
Agricultural Fees - Honey Advertising Fund	400	16,000			16,400
Agricultural Fees - Organic Food Products Fund	87,900	30,600	2,000		120,500
Federal Grant Fund	241,100	80,300			321,400
TOTAL	$ 2,806,400	$ 665,700	$144,300	$ 152,000	$ 3,768,400
V. AGRICULTURAL INSPECTIONS:					
FROM:					
General Fund	$ 574,300	$ 197,500			$ 771,800
Agricultural Inspection Fund	124,800	48,800		$ 3,700	177,300
Weights and Measures Inspection Fund	206,000	20,000			226,000
Agricultural Fees - Fresh Fruit and Vegetable Inspection Fund	7,974,000	687,300	$169,500	413,200	9,244,000
TOTAL	$ 8,879,100	$ 953,600	$169,500	$ 416,900	$10,419,100
VI. MARKETING AND DEVELOPMENT:					
FROM:					
General Fund	$ 323,800	$ 201,600			$ 525,400
Agricultural Inspection Fund	35,000	100			35,100
Seminars and Publications Fund		234,600			234,600
USDA Publications Fund		63,700			63,700
Agricultural Loans Fund	13,300	15,000		$ 5,200	33,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Federal Grant Fund	55,600	25,000		41,700	122,300
TOTAL	$ 427,700	$ 540,000		$ 46,900	$ 1,014,600
VII. ANIMAL DAMAGE CONTROL:					
FROM:					
General Fund				$ 143,000	$ 143,000
Animal Damage Control Fund				100,000	100,000
Agricultural Fees - Sheep Industry Regulation Fund		$ 200		164,100	164,300
TOTAL		$ 200		$ 407,100	$ 407,300
VIII. SHEEP COMMISSION:					
FROM:					
General Fund	$ 54,200	$ 400			$ 54,600
Agricultural Fees - Sheep Industry Regulation Fund	72,300	29,300			101,600
Sheep and Goat Disease Indemnity Fund		20,300			20,300
TOTAL	$ 126,500	$ 50,000			$ 176,500
GRAND TOTAL	$18,475,700	$5,081,200	$524,000	$2,651,800	$26,732,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Agriculture is authorized no more than one hundred eighty-five and sixty hundredths (185.60) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 195
(H.B. No. 764)

AN ACT

APPROPRIATING MONEYS TO THE BOARD OF LAND COMMISSIONERS FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
ENDOWMENT FUND INVESTMENT BOARD:				
FROM:				
Miscellaneous Revenue Fund	$102,800	$ 46,000	$1,500	$150,300
Endowment Administrative Fund	235,900	160,500	3,500	399,900
TOTAL	$338,700	$206,500	$5,000	$550,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Endowment Fund Investment Board is authorized no more than four (4) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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, 2004, through June 30, 2005.

SECTION 4. It is legislative intent that for fiscal year 2005, the Endowment Fund Investment Board transfer $37,676,200 as follows: $22,957,800 from the Public School Earnings Reserve Fund to the Public School Income Fund; $760,800 from the Agricultural College Earnings Reserve Fund to the Agricultural College Income Fund; $2,814,900 from the Charitable Institutions Earnings Reserve Fund to the Charitable Institutions Income Fund; $2,741,300 from the Normal School Earnings Reserve Fund to the Normal School Income Fund; $1,134,200 from the Penitentiary Earnings Reserve Fund to the Penitentiary Income Fund; $3,136,900 from the Scientific School Earnings Reserve Fund to the Scientific School Income Fund; $1,499,400 from the Mental Hospital Earnings Reserve Fund to the Mental Hospital Income Fund; and $2,630,900 from the University Earnings Reserve Fund to the University Income Fund.

Approved March 23, 2004.

CHAPTER 196
(H.B. No. 767)

AN ACT

APPROPRIATING MONEYS TO THE SOIL CONSERVATION COMMISSION FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	$1,200,800	$ 757,100	$1,850,000	$3,807,900
Resource Conservation and Rangeland Development Fund		50,600		50,600
Revolving Loan Fund (SCC)		80,000		80,000
Federal Grant Fund	181,300	240,400	75,000	496,700
TOTAL	$1,382,100	$1,128,100	$1,925,000	$4,435,200

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, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 197
(H.B. No. 776)

AN ACT

RELATING TO AGRICULTURAL BURNING; AMENDING SECTION 22-4804, IDAHO CODE, TO INCREASE FEES RELATING TO THE REGISTRATION OF FIELDS FOR AGRICULTURAL BURNING IN DESIGNATED COUNTIES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 22-4804, Idaho Code, be, and the same is hereby amended to read as follows:

22-4804. REGISTERED COUNTIES -- AGRICULTURAL BURNING FEES -- ACCOUNT -- RULES -- RESEARCH -- MANAGEMENT PROGRAM. (1) Any person who registers a field for agricultural burning in Kootenai, Benewah, Boundary, Bonner, Shoshone, Latah, Clearwater, Nez Perce, Lewis or Idaho counties shall pay to the department a fee of ~~one~~ two dollars ($~~1~~2.00) per acre of cropland to be burned. The department shall remit all fees monthly to the state treasurer, who shall deposit the moneys in the state agricultural smoke management account which is hereby created.

(2) The department may use moneys from the agricultural smoke management account as appropriated annually by the legislature for:

(a) Research to:

(i) Develop alternative crops which do not require burning;

(ii) Improve burning and cultural practices for crops which may require burning;

(iii) Explore alternatives to burning; and

(iv) If appropriate, study and evaluate any public health impacts of burning; and

(b) Supplementation of appropriated general account moneys for implementation of agricultural smoke management programs referenced in section 22-4801, Idaho Code.

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

Approved March 23, 2004.

CHAPTER 198
(H.B. No. 780, As Amended in the Senate)

AN ACT

RELATING TO THE BOND LEVY EQUALIZATION SUPPORT PROGRAM; AMENDING SECTION 33-906, IDAHO CODE, TO FURTHER LIMIT UTILIZATION OF ASSISTANCE PURSUANT TO THE PROGRAM, TO PROVIDE THAT A SCHOOL DISTRICT SHALL NOT BE DEEMED TO BE REFINANCING EXISTING DEBT IN CERTAIN CIRCUMSTANCES, TO PROVIDE THAT AN OTHERWISE ELIGIBLE SCHOOL DISTRICT SHALL NOT BE DEEMED INELIGIBLE DUE TO THE SCHOOL DISTRICT'S ELIGIBILITY AND PRIOR PARTICIPATION IN SAFE SCHOOL PROGRAMS UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 33-906, Idaho Code, be, and the same is hereby amended to read as follows:

33-906. BOND LEVY EQUALIZATION SUPPORT PROGRAM. (1) Pursuant to section 33-906B, Idaho Code, school districts with a value index below one (1) shall be eligible to receive additional state financial assistance for the cost of annual bond interest and redemption payments made on bonds passed on or after September 15, 2002. However, any school dis-

trict shall receive no less than ten percent (10%) of the interest cost portion of the annual bond interest and redemption payment for bonds passed on or after September 15, 2002. The state department of education shall disburse such funds to school districts from moneys appropriated from the bond levy equalization fund. The department shall disburse the funds by no later than September 1 of each year for school districts in which voters have approved the issuance of qualifying bonds by no later than January 1 of that calendar year, and which are certifying a qualifying bond interest and redemption payment for the fiscal year in which the disbursement is made. For districts with a value index below one (1), the percentage of each annual bond interest and redemption payment that is paid by the state shall be determined by dividing the difference between one (1) and the school district's value index by one (1) provided that the state shall pay for no more than the interest cost portion of the annual bond interest and redemption payment, and each school district shall receive no less than ten percent (10%) of the interest cost portion of the qualifying bond interest and redemption payment.

(2) For the purposes of this section, the annual bond interest and redemption payment shall be determined by dividing the total payment amounts by the number of fiscal years in which payments are to be made. The interest cost portion of the annual bond interest and redemption payment shall be determined by dividing the total interest paid by the number of fiscal years in which payments are to be made. For school districts not qualifying for a state payment in the first year of the bond interest and redemption payment schedule, due solely to the January 1 eligibility deadline, the state department of education shall distribute an additional payment in the next fiscal year, in the amount of such funds that the school district would have otherwise qualified for in the current fiscal year.

(3) The provisions of this section may not be utilized to refinance existing debt or subsidize projects previously subsidized by state grants; provided however, that any school district that has issued qualifying bonds prior to June 30, 2004, in conformance with this section shall not be deemed to be refinancing existing debt when the qualifying bonds are utilized to finance the acquisition of public school facilities previously leased or financed through means other than the issuance of general obligation bonds approved by a two-thirds (2/3) vote at an election called for that purpose subject to subsection (5) of this section.

(4) School districts shall annually report the status of all qualifying bonds to the state department of education by January 1 of each year, including bonds approved by the voters, but not yet issued. Information submitted shall include the following:

(~~1~~a) The actual or estimated bond interest and redemption payment schedule;

(~~2~~b) Any qualifying bond that has been paid off;

(~~3~~c) Other information as may be required by the state department of education.

(5) No school district eligible for participation in the bond levy equalization support program shall be deemed ineligible for participation due to that school district's eligibility and prior participation in the safe school facilities loan and grant program or the Idaho safe schools facilities program under section 33-804A, 33-1017 or 33-1613, Idaho Code, provided that:

(a) Such school district notifies the state department of education of its desire and eligibility to participate in the bond levy equalization support program; and

(b) Such school district shall receive no state financial assistance under the bond levy equalization support program until the amount to which it would otherwise have been entitled to receive shall equal the amounts received by the school district under the safe school facilities loan and grant program or the Idaho safe schools facilities program under section 33-804A, 33-1017 or 33-1613, Idaho Code.

Approved March 23, 2004.

CHAPTER 199
(H.B. No. 783)

AN ACT

APPROPRIATING MONEYS FROM THE IDAHO MILLENNIUM INCOME FUND TO THE STATE TREASURER FOR THE PURPOSE AND PROGRAM SPECIFIED FOR FISCAL YEAR 2005; APPROPRIATING MONEYS AND DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS FOR THE PURPOSES AND PROGRAMS SPECIFIED FOR FISCAL YEAR 2005; PROVIDING LEGISLATIVE INTENT TO THE CATASTROPHIC HEALTH CARE COST PROGRAM BOARD REGARDING CERTAIN EXPENDITURES; AND PROVIDING THAT CERTAIN UNEXPENDED AND UNENCUMBERED MONEYS SHALL BE REVERTED.

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

SECTION 1. There is hereby appropriated from the Idaho Millennium Income Fund to the State Treasurer $60,700 to be expended for trustee and benefit payments to the Idaho American Cancer Society for the period July 1, 2004, through June 30, 2005. This appropriation shall be for the use of the Magic Valley Youth Tobacco-Free Coalition to develop a statewide community tobacco control program.

SECTION 2. There is hereby appropriated and the State Controller is hereby directed to make cash transfers from the Idaho Millennium Income Fund to the following programs, at the request of the State Treasurer, not to exceed $1,879,000 for the period July 1, 2004, through June 30, 2005:

(a) $500,000 for the Catastrophic Health Care Cost Program for tobacco-related disease treatment as determined by a physician, by way of reducing the county deductible payment pursuant to Section 3 of this act.

(b) $500,000 for the Bureau of Health Promotion in the Department of Health and Welfare for targeted tobacco counter-marketing programs, specific to Idaho, and to be matched by private industry funds on at least a one-to-one basis.

(c) $515,000 for the Public Health Districts to continue tobacco use cessation programs statewide through the Public Health Districts of Idaho and other nonprofit entities such as hospitals, primary care clinics and voluntary organizations. The tobacco use cessation programs should be available to any Idaho citizen, with primary emphasis on youth and pregnant women.

(d) $270,000 for the Idaho Supreme Court for its youth courts and status offender services programs as they relate to addressing tobacco and/or substance abuse issues.

(e) $94,000 for Law Enforcement Programs in the Idaho State Police to offset the cost of youth tobacco investigations.

SECTION 3. It is legislative intent that the Catastrophic Health Care Cost Program Board use the funds appropriated in Section 2(a) of this act to temporarily reduce the $10,000 deductible paid by counties for the costs of caring for indigent persons with tobacco-related diseases. The Catastrophic Health Care Cost Program Board shall be vested with the authority to define and determine which cases qualify for the reduced county deductible, subject to the provisions of this section. Notwithstanding the provisions of Chapter 35, Title 31, Idaho Code, the Catastrophic Health Care Cost Program Board is hereby granted the authority to enact these reductions for the period July 1, 2004, through June 30, 2005, provided that the additional fiscal impact of these reductions on the Catastrophic Health Care Cost Program shall not exceed the amount appropriated in Section 2(a) of this act.

SECTION 4. Notwithstanding any other provision of law to the contrary, on June 30, 2005, any remaining unexpended and unencumbered moneys appropriated in Section 2 of this act shall be reverted to the Idaho Millennium Income Fund. The State Controller shall then transfer the balance in the Idaho Millennium Income Fund to the Idaho Millennium Fund.

Approved March 23, 2004.

CHAPTER 200
(H.B. No. 784)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2005; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; DECLARING FINDINGS AND INTENT OF THE LEGISLATURE; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO OUT-OF-STATE PLACEMENTS.

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

SECTION 1. There is hereby appropriated to the Department of Correction the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. OPERATIONS DIVISION:					
A. OPERATIONS ADMINISTRATION:					
FROM:					
General Fund	$ 432,900	$ 3,568,900			$ 4,001,800
Miscellaneous Revenue Fund		36,200			36,200
Federal Grant Fund		175,500			175,500
TOTAL	$ 432,900	$ 3,780,600			$ 4,213,500
B. OFFENDER PROGRAMS:					
FROM:					
General Fund	$ 548,900	$ 1,051,500			$ 1,600,400
Miscellaneous Revenue Fund		57,400			57,400
Federal Grant Fund	354,300	585,000			939,300
TOTAL	$ 903,200	$ 1,693,900			$ 2,597,100
C. COMMUNITY SUPERVISION:					
FROM:					
General Fund	$10,186,300	$ 2,010,800			$ 12,197,100
Parolee Supervision Fund	2,547,100	508,300	$ 80,100		3,135,500
Federal Grant Fund	60,000	228,800			288,800
TOTAL	$12,793,400	$ 2,747,900	$ 80,100		$ 15,621,400
D. COMMUNITY WORK CENTERS:					
FROM:					
General Fund	$ 2,540,600	$ 53,800			$ 2,594,400
Inmate Labor Fund	164,500	1,083,400			1,247,900
Miscellaneous Revenue Fund		27,200			27,200
TOTAL	$ 2,705,100	$ 1,164,400			$ 3,869,500
E. IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$15,105,000	$ 2,133,000			$ 17,238,000
Miscellaneous Revenue Fund	385,800	101,100			486,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Penitentiary Endowment Fund		1,205,300			1,205,300
Federal Grant Fund	53,600				53,600
TOTAL	$15,544,400	$ 3,439,400			$ 18,983,800
F. IDAHO CORRECTIONAL INSTITUTION - OROFINO:					
FROM:					
General Fund	$ 5,866,900	$ 1,251,600	$ 6,400		$ 7,124,900
Inmate Labor Fund	779,500	628,300	95,800		1,503,600
Miscellaneous Revenue Fund	96,400	54,500			150,900
Federal Grant Fund	45,600	57,700			103,300
TOTAL	$ 6,788,400	$ 1,992,100	$102,200		$ 8,882,700
G. NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:					
FROM:					
General Fund	$ 3,042,500	$ 1,009,700			$ 4,052,200
Miscellaneous Revenue Fund	42,700	143,500			186,200
TOTAL	$ 3,085,200	$ 1,153,200			$ 4,238,400
H. SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$ 4,964,700	$ 1,454,300			$ 6,419,000
Inmate Labor Fund	903,100	490,400	$373,600		1,767,100
Miscellaneous Revenue Fund	40,900	48,700			89,600
Federal Grant Fund	238,400	5,400			243,800
TOTAL	$ 6,147,100	$ 1,998,800	$373,600		$ 8,519,500
I. IDAHO MAXIMUM SECURITY INSTITUTION - BOISE:					
FROM:					
General Fund	$ 7,330,100	$ 1,609,900			$ 8,940,000
Miscellaneous Revenue Fund	93,700	54,300			148,000
TOTAL	$ 7,423,800	$ 1,664,200			$ 9,088,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
J. ST. ANTHONY WORK CAMP:					
FROM:					
General Fund	$ 1,381,700	$ 270,100			$ 1,651,800
Inmate Labor Fund	564,900	470,600	$ 9,800		1,045,300
Miscellaneous Revenue Fund		6,200			6,200
TOTAL	$ 1,946,600	$ 746,900	$ 9,800		$ 2,703,300
K. POCATELLO WOMEN'S CORRECTIONAL CENTER:					
FROM:					
General Fund	$ 3,801,000	$ 910,400			$ 4,711,400
Inmate Labor Fund	228,600	26,800			255,400
Miscellaneous Revenue Fund	198,200	20,600			218,800
Federal Grant Fund		52,300			52,300
TOTAL	$ 4,227,800	$ 1,010,100			$ 5,237,900
L. SOUTH BOISE WOMEN'S CORRECTIONAL CENTER:					
FROM:					
General Fund	$ 771,700	$ 375,300			$ 1,147,000
Miscellaneous Revenue Fund		7,100			7,100
TOTAL	$ 771,700	$ 382,400			$ 1,154,100
DIVISION TOTAL	$62,769,600	$21,773,900	$565,700		$ 85,109,200
II. SUPPORT DIVISION:					
A. SUPPORT SERVICES:					
FROM:					
General Fund	$ 4,629,400	$ 2,246,800			$ 6,876,200
Parolee Supervision Fund	120,300	25,600			145,900
Miscellaneous Revenue Fund	119,300	495,200			614,500
Federal Grant Fund	58,400	292,900		$1,750,000	2,101,300
TOTAL	$ 4,927,400	$ 3,060,500		$1,750,000	$ 9,737,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
B. MEDICAL SERVICES CONTRACT:					
FROM:					
General Fund		$12,321,500			$ 12,321,500
Miscellaneous Revenue Fund		77,500			77,500
TOTAL		$12,399,000			$ 12,399,000
DIVISION TOTAL	$ 4,927,400	$15,459,500		$1,750,000	$ 22,136,900
III. PRIVATELY-OPERATED STATE PRISON:					
FROM:					
General Fund		$18,029,900			$ 18,029,900
Inmate Labor Fund		404,000			404,000
TOTAL		$18,433,900			$18,433,900
IV. COMMISSION OF PARDONS AND PAROLE:					
FROM:					
General Fund	$ 1,326,200	$ 279,200			$ 1,605,400
Miscellaneous Revenue Fund		20,300			20,300
TOTAL	$ 1,326,200	$ 299,500			$ 1,625,700
GRAND TOTAL	$69,023,200	$55,966,800	$565,700	$1,750,000	$127,305,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Correction is authorized no more than one thousand four hundred twenty-six and eight-tenths (1,426.8) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is the finding of the Legislature that there is an appropriate segment of the offender population that can be safely managed in the community with adequate supervision and appropriate treatment services. The population targeted for these programs shall be offenders eligible for parole who would otherwise be granted parole if not for the lack of community services, and probationers and parolees who would otherwise be violated back to prison due to the lack of community services. All offenders eligible for parole who are considered for placement in the community shall meet public safety standards set by the

Commission of Pardons and Parole. The Commission of Pardons and Parole shall clearly remain the approving authority for parole eligibility under these circumstances, and shall be informed of actions to maintain parole violators in the community with services.

SECTION 4. It is the intent of the Legislature that the Department of Correction, while managing inmate population growth, shall first maximize the use of funded beds in state institutions, followed by the use of county jail beds before seeking placements out of state. The Department is also encouraged to seek efficiencies and opportunities to expand bed space within state-owned facilities upon approval of the Board of Correction and the Governor if the population growth exceeds funded capacity. The Department shall report back to the Joint Finance-Appropriations Committee during the interim if expansion of these facilities becomes necessary.

Approved March 23, 2004.

CHAPTER 201
(H.B. No. 789)

AN ACT

APPROPRIATING MONEYS TO THE STATE TREASURER FOR FISCAL YEAR 2005; PROVIDING FOR THE RECOVERY OF BANKING SERVICES COSTS TO THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$ 911,700	$307,600	$1,219,300
State Treasurer LGIP Fund	164,800	137,000	301,800
Treasurer's Office - Professional Services Fund	230,100	123,400	353,500
TOTAL	$1,306,600	$568,000	$1,874,600

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, 2005, 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. There is hereby reappropriated to the State Treasurer the unexpended and unencumbered balance of any appropriation made to the State Treasurer from the State Treasurer LGIP Fund for fiscal year 2004, to be used for nonrecurring expenditures only for the period July 1, 2004, through June 30, 2005.

SECTION 4. 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, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 202
(H.B. No. 790)

AN ACT

APPROPRIATING MONEYS TO THE EXECUTIVE OFFICE OF THE GOVERNOR FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
I. GOVERNOR'S OFFICE ADMINISTRATION:			
General Fund	$1,172,400	$255,400	$1,427,800
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:			
Federal Grant Fund	$ 163,600		$ 163,600
IV. ACTING GOVERNOR PAY:			
FROM:			
General Fund	$ 19,200		$ 19,200
GRAND TOTAL	$1,355,200	$260,300	$1,615,500

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, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 203
(H.B. No. 791)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. DIVISION OF FINANCIAL MANAGEMENT:			
FROM:			
General Fund	$1,846,500	$179,000	$2,025,500
Miscellaneous Revenue Fund	24,500	6,800	31,300
TOTAL	$1,871,000	$185,800	$2,056,800

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, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 204
(H.B. No. 799, As Amended)

AN ACT

RELATING TO TAXATION; AMENDING SECTION 63-3029B, IDAHO CODE, RELATING TO THE ELECTION FOR A PROPERTY TAX EXEMPTION IN LIEU OF THE INVESTMENT TAX CREDIT, TO CLARIFY THE ELECTION IS AVAILABLE FOR QUALIFIED PROPERTY PLACED IN SERVICE IN CALENDAR YEAR 2003, TO CLARIFY A LOSS YEAR, TO EXCLUDE TAXPAYERS WHOSE RATES OF RETURN ARE REGULATED ACCORDING TO FEDERAL OR STATE LAW, TO LIMIT PUBLIC DISCLOSURE OF TAX INFORMATION EXCHANGED BETWEEN THE STATE TAX COMMISSION AND COUNTY OFFICIALS, TO PROVIDE FOR RECAPTURE OF THE PROPERTY TAX BENEFIT OF PROPERTY CEASING TO QUALIFY FOR THE INVESTMENT TAX CREDIT OR FOR THE ELECTION, TO PROVIDE THAT ALL MONEYS COLLECTED BY THE STATE TAX COMMISSION FOR AN ERRONEOUSLY TAKEN INVESTMENT TAX CREDIT SHALL BE REMITTED TO THE COUNTY WHERE THE PROPERTY WAS LOCATED THAT WAS NOT A QUALIFIED INVESTMENT OR CEASED TO QUALIFY DURING THE RECAPTURE PERIOD, TO PROVIDE FOR DISTRIBUTION OF MONEYS TO TAXING DISTRICTS WITHIN THE COUNTY AND TO PROVIDE APPLICATION OF THESE MONEYS TO THE THREE PERCENT PROPERTY TAX CAP; AMENDING SECTION 9-340D, IDAHO CODE, TO PROVIDE FOR CERTAIN INFORMATION GIVEN TO COUNTY OFFICIALS BY THE STATE TAX COMMISSION TO BE EXEMPT FROM DISCLOSURE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

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

63-3029B. INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

(a) The tax credit carryovers; and

(b) The tax credit for the taxable year.

(2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.

(3) As used in this section "qualified investment" means certain depreciable property which:

(a) (i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain regulated companies in section 46(f) of the Internal Revenue Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight; or

(ii) Is qualified broadband equipment as defined in section 63-3029I, Idaho Code; and

(b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) Has a situs in Idaho.

(4) (a) For qualified investments placed in service in ~~taxable~~

~~years beginning in~~ 2003 and thereafter, ~~the~~ a taxpayer, other than a person whose rate of charge or rate of return, or both, is regulated or limited according to federal or state law, may elect, in lieu of the credit provided by this section, a two (2) year exemption from all taxes on personal property on the qualified investment. The exemption from personal property tax shall apply to the year the election is filed as provided in this section and the immediately following year. The election provided by this paragraph is available only to a taxpayer whose Idaho taxable income, before application of net operating losses carried back or forward, in the second preceding taxable year in which the investment is placed in service is negative.

(b) The election shall be made in the form prescribed by the state tax commission and shall include a specific description and location of all qualified investments placed into service and located in the jurisdiction of the assessing authority, a designation of the specific assets for which the exemption is claimed, and such other information as the state tax commission may require. The election must be made by including the election form with the listing of personal property required by section 63-302, Idaho Code, or, in the case of operating property assessed under chapter 4, title 63, Idaho Code, with the operator's statement required by section 63-404, Idaho Code~~, for the calendar year immediately following the taxable year in which the property was placed in service~~. Once made the election is irrevocable. If no election is made, the election is not otherwise available. A copy of the election form must also be attached to the original income tax return due for the taxable year in which the claim was made.

(c) The state tax commission and the various county assessors are authorized to exchange information as necessary to properly coordinate the exemption provided in this subsection. Information disclosed to county officials under this subsection may be used only to determine the validity or amount of a taxpayer's entitlement to the exemption provided in this section, and is not otherwise subject to public disclosure as provided in section 9-340D, Idaho Code.

(d) In the event that an investment in regard to which the election under this subsection was made is determined by the state tax commission:

(i) ~~T~~to not be a qualified investment, or ~~ceases~~

(ii) To have ceased to qualify during the recapture period, or

(iii) To be otherwise not qualified for the election,

the taxpayer shall be subject to ~~a penalty equal to the amount of the claimed investment~~ recapture of the property tax benefit.

(e) The benefit to be recaptured in subsection (4)(d) of this section shall be computed in the manner required in subsection (7) of this section and such recapture amount shall be subject to assessment in the same manner as a deficiency in tax under this chapter. For purposes of calculating the recapture, the property tax benefit shall be:

(i) In the case of locally assessed property located in a single county or nonapportioned centrally assessed property, the market value of exempted property times the average property tax levy for that county in the year or years for which the exemption was claimed.

(ii) In the case of other centrally assessed property and property located in more than one (1) county, the market value of exempted property times the average urban property tax levy of the state as determined by the state tax commission ~~times two--(2)~~ in each of the years for which the exemption was claimed.

(f) All moneys collected by the state tax commission pursuant to this subsection, which amounts are continuously appropriated for this purpose, shall be deposited with the state treasurer and placed in the state refund account, as provided by section 63-3067, Idaho Code, to be remitted to the county within which the property was located that was not a qualified investment or ceased to qualify during the recapture period. The county shall distribute this remittance to all appropriate taxing districts based on the proportion each appropriate taxing district's levy is to the total of all the levies of the taxing districts for the tax code area where the property was located for each year the exemption was granted. If any taxing district is dissolved or disincorporated, the proportionate share of the remittance to be distributed to that taxing district shall be deposited in the county current expense fund.

(g) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection shall be treated as property tax revenue by taxing districts.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, the amount of the credit allowed shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(6) If the sum of 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 (5) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carryover to the fourteen (14) succeeding taxable years. In the case of a group of corporations filing a combined report under section 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, 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 (5) of this section, instead of carried over. 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 qualified investment property for which the unused credit was granted still maintains Idaho situs. 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) Any recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of the recapture period, shall be determined according to the applicable recapture provisions of the Internal Revenue Code. In the case of a unitary group of corporations, the increase in tax due to the recapture of investment tax credit must be reported by the member of the group who earned the credit regardless of which member claimed the credit against tax.

(8) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the Internal Revenue Code shall be disregarded.

(9) For purposes of this section, property has a situs in Idaho during a taxable year if it is used in Idaho at any time during the taxable year. Property not used in Idaho during a taxable year does not have a situs in Idaho in the taxable year during which the property is not used in Idaho or in any subsequent taxable year. No credit or carryover of credit is permitted under this section if the credit or carryover relates to property that does not have a situs in Idaho during the taxable year for which the credit or carryover is claimed. The Idaho situs of property must be established by records maintained by the taxpayer which are created reasonably contemporaneously with the use of the property.

(10) In the case of property used both in and outside Idaho, the taxpayer, electing to claim the credit provided in this section, must elect to compute the qualified investment in property with a situs in Idaho for all such investments first qualifying during that year in one (1), but only one (1), of the following ways:

(a) The amount of each qualified investment in a specific asset shall be separately computed based on the percentage of the actual use of the property in Idaho by using a measure of the use, such as total miles or total machine hours, that most accurately reflects the beneficial use during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service; provided, that the asset is placed in service more than ninety (90) days before the end of the taxable year. In the case of assets acquired, constructed, reconstructed, erected or placed into service within ninety (90) days prior to the end of the taxable year in which the investment first qualifies, the measure of the use of that asset within Idaho for that year shall be based upon the percentage of use in Idaho during the first ninety (90) days of use of the asset;

(b) The investment in qualified property used both inside and outside Idaho during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service shall be multiplied by the percent of the investment that would be included in the numerator of the Idaho property factor determined pursuant to section 63-3027, Idaho Code, for the same year.

(11) Only for the purposes of subsections (3)(a) and (8) of this section, references to sections of the "Internal Revenue Code" mean the sections referred to as they existed in the Internal Revenue Code of 1986 prior to November 5, 1990.

SECTION 2. That Section 9-340D, Idaho Code, be, and the same is hereby amended to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and simi-

lar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location,

acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho canola and rapeseed commission and pertaining to the individual production records of canola or rapeseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark

usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, 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 23, 2004.

CHAPTER 205
(H.B. No. 806)

AN ACT

RELATING TO ANIMAL DISEASE CONTROL; AMENDING CHAPTER 2, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-207B, IDAHO CODE, TO AUTHORIZE THE DIVISION OF ANIMAL INDUSTRIES TO PROMULGATE RULES FOR THE IDENTIFICATION OF LIVESTOCK, POULTRY OR FISH AND FOR THE REGISTRATION OF PREMISES WHERE LIVESTOCK, POULTRY OR FISH ARE HELD AND TO PROVIDE THAT CERTAIN DATA AND INFORMATION COLLECTED BY THE DIVISION OF ANIMAL INDUSTRIES OR THE STATE BRAND BOARD SHALL NOT BE CONSIDERED A PUBLIC RECORD AND SHALL BE EXEMPT FROM PUBLIC DISCLOSURE; AND AMENDING SECTION 9-340D, IDAHO CODE, TO PROVIDE THAT ALL DATA AND INFORMATION COLLECTED BY THE DIVISION OF ANIMAL INDUSTRIES OR THE STATE BRAND BOARD PURSUANT TO CERTAIN PROVISIONS OF LAW AND RULES SHALL BE EXEMPT FROM PUBLIC DISCLOSURE.

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 25-207B, Idaho Code, and to read as follows:

25-207B. IDENTIFICATION OF LIVESTOCK, POULTRY OR FISH -- RULES FOR DISEASE CONTROL. (1) In order to provide for disease control and increase the traceability of infected or exposed animals or fish, the division of animal industries, in cooperation with the state brand board, is authorized to promulgate rules for the identification of live-

stock, poultry or fish and the registration of premises where such animals or fish are held.

(2) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of this section, or rules promulgated hereunder, shall not be considered a public record and shall be exempt from public disclosure requirements as provided in section 9-340D, Idaho Code.

SECTION 2. That Section 9-340D, Idaho Code, be, and the same is hereby amended to read as follows:

9-340D. RECORDS EXEMPT FROM DISCLOSURE -- TRADE SECRETS, PRODUCTION RECORDS, APPRAISALS, BIDS, PROPRIETARY INFORMATION. The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho canola and rapeseed commission and pertaining to the individual production records of canola or rapeseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic for its own use. As used in this subsection, "computer program" means a series of

instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(a) The original data including, but not limited to, numbers, text, voice, graphics and images;

(b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

Approved March 23, 2004.

CHAPTER 206
(H.B. No. 823)

AN ACT
APPROPRIATING MONEYS TO THE BOARD OF TAX APPEALS FOR FISCAL YEAR 2005; 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 Board of Tax Appeals in the Department of Revenue and Taxation the following amounts to be expended according to the designated expense classes from the listed fund for the period July 1, 2004, through June 30, 2005:

FOR:	
Personnel Costs	$267,600
Operating Expenditures	64,000
TOTAL	$331,600
FROM:	
General Fund	$331,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Board of Tax Appeals is authorized no more than four (4) full-time equivalent positions at any point during the period July 1, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 207
(H.B. No. 824)

AN ACT
APPROPRIATING MONEYS TO THE STATE TAX COMMISSION FOR FISCAL YEAR 2005; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the State Tax Commission in the Department of Revenue and Taxation the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. GENERAL SERVICES:				
FROM:				
General Fund	$ 3,826,400	$2,666,700	$ 70,000	$ 6,563,100
Administration and Accounting Fund	14,500	30,700	2,400	47,600
Multistate Tax Compact Fund		3,900		3,900
Administration Services for Transportation Fund	410,200	283,400	57,200	750,800
Abandoned Property Trust-Unclaimed Property Fund		44,400		44,400
Seminars and Publications Fund		28,400		28,400
TOTAL	$ 4,251,100	$3,057,500	$129,600	$ 7,438,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
II. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	$ 9,424,100	$1,526,700		$10,950,800
Multistate Tax Compact Fund	1,172,200	429,600		1,601,800
Administration and Accounting Fund	15,100	22,800		37,900
Administration Services for Transportation Fund	1,442,800	307,400		1,750,200
Abandoned Property Trust-Unclaimed Property Fund	418,300	123,900		542,200
TOTAL	$12,472,500	$2,410,400		$14,882,900
III. REVENUE OPERATIONS:				
FROM:				
General Fund	$ 2,771,200	$1,330,500		$ 4,101,700
Administration and Accounting Fund	131,300	75,200		206,500
Administration Services for Transportation Fund	470,500	190,900		661,400
Seminars and Publications Fund		18,300		18,300
Abandoned Property Trust-Unclaimed Property Fund	63,700			63,700
TOTAL	$ 3,436,700	$1,614,900		$ 5,051,600
IV. COUNTY SUPPORT:				
FROM:				
General Fund	$ 2,297,000	$ 602,900		$ 2,899,900
Seminars and Publications Fund		96,200		96,200
TOTAL	$ 2,297,000	$ 699,100		$ 2,996,100
GRAND TOTAL	$22,457,300	$7,781,900	$129,600	$30,368,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Tax Commission is authorized no more than four hundred ten and five-tenths (410.5) full-time equivalent positions at any point during

the period July 1, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 208
(H.B. No. 837)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR FISCAL YEAR 2005; 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; AND PROHIBITING THE DEPARTMENT OF ENVIRONMENTAL QUALITY FROM TRANSFERRING APPROPRIATIONS OUT OF THE AIR QUALITY PROGRAM.

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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION AND SUPPORT SERVICES:					
FROM:					
General Fund	$ 1,522,600	$ 778,700			$ 2,301,300
Air Quality Permitting Fund	178,300	220,800			399,100
Public Water System Supervision Fund	293,400	45,000	$ 2,000		340,400
Department of Environmental Quality Fund (Receipts)	85,400	17,200	2,000		104,600
Department of Environmental Quality Fund (Federal)	1,859,700	1,173,500	16,000		3,049,200
TOTAL	$ 3,939,400	$ 2,235,200	$ 20,000		$ 6,194,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. AIR QUALITY:					
FROM:					
General Fund	$ 1,767,700	$ 308,700			$ 2,076,400
Air Quality Permitting Fund	1,096,400	332,500	$ 12,000		1,440,900
Department of Environmental Quality Fund (Receipts)	76,700	168,500			245,200
Department of Environmental Quality Fund (Federal)	1,321,100	314,400	26,000	$ 40,600	1,702,100
TOTAL	$ 4,261,900	$ 1,124,100	$ 38,000	$ 40,600	$ 5,464,600
III. WATER QUALITY:					
FROM:					
General Fund	$ 4,626,800	$ 1,837,300		$1,812,300	$ 8,276,400
Public Water System Supervision Fund	858,100	158,400	$ 6,000	330,200	1,352,700
Water Pollution Control Fund				190,800	190,800
Department of Environmental Quality Fund (Receipts)	254,700	75,600	2,000	50,600	382,900
Department of Environmental Quality Fund (Federal)	3,690,500	2,105,600	34,000	2,633,200	8,463,300
TOTAL	$ 9,430,100	$ 4,176,900	$ 42,000	$5,017,100	$18,666,100
IV. WASTE MANAGEMENT AND REMEDIATION:					
FROM:					
General Fund	$ 1,927,300	$ 334,400		$ 32,100	$ 2,293,800
Water Pollution Control Fund		1,000,000			1,000,000
Environmental Remediation Fund	177,100	599,600		60,200	836,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Department of Environmental Quality Fund (Receipts)	381,700	430,600	$ 2,000	50,800	865,100
Bunker Hill Trust Fund				300,000	300,000
Department of Environmental Quality Fund (Federal)	2,583,400	9,177,300	14,000	15,200	11,789,900
TOTAL	$ 5,069,500	$11,541,900	$ 16,000	$ 458,300	$17,085,700
V. INEEL OVERSIGHT:					
FROM:					
General Fund	$ 189,600	$ 8,500			$ 198,100
Department of Environmental Quality Fund (Federal)	942,600	374,900	$ 44,000	$ 585,800	1,947,300
TOTAL	$ 1,132,200	$ 383,400	$ 44,000	$ 585,800	$ 2,145,400
GRAND TOTAL	$23,833,100	$19,461,500	$160,000	$6,101,800	$49,556,400

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, 2004, through June 30, 2005, 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, 2004, through June 30, 2005.

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. Notwithstanding the provisions of Section 67-3511(2), Idaho Code, the Department of Environmental Quality shall not transfer fiscal year 2005 legislative appropriations out of the Air Quality Program to any other program.

Approved March 23, 2004.

CHAPTER 209
(H.B. No. 841)

AN ACT

RELATING TO APPROPRIATIONS; TO EXEMPT THE EXECUTIVE OFFICE OF THE GOVERNOR FROM CERTAIN PROVISIONS OF IDAHO CODE FOR FISCAL YEAR 2004; AND DECLARING AN EMERGENCY.

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

SECTION 1. The appropriations made for the Executive Office of the Governor in Section 1, Chapter 195, Laws of 2003, and Subsection 26 of Section 2, Chapter 380, Laws of 2003, are hereby exempted from the provisions of Section 67-3511(2), Idaho Code, for the period July 1, 2003, through June 30, 2004.

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

Approved March 23, 2004.

CHAPTER 210
(H.B. No. 842)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2005 FOR AGRICULTURAL FIELD BURNING AND AGRICULTURAL SMOKE MANAGEMENT.

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

SECTION 1. In addition to the appropriation made in Section 1 of House Bill No. 763, as enacted by the Second Regular Session of the Fifty-seventh Idaho Legislature, there is hereby appropriated to the

Department of Agriculture the following amount to be expended for the designated program for agricultural field burning and agricultural smoke management according to the designated expense classes from the listed fund for the period July 1, 2004, through June 30, 2005:

PLANT INDUSTRIES:

FOR:	
Personnel Costs	$35,000
Operating Expenditures	25,000
TOTAL	$60,000
FROM:	
Agricultural Smoke Management Fund	$60,000

Approved March 23, 2004.

CHAPTER 211
(S.B. No. 1257)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1361, IDAHO CODE, TO REVISE PROVISIONS RELATING TO WAIVER OF A DEATH BENEFIT OF A MEMBER OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM BY A DESIGNATED BENEFICIARY AND THE CONSEQUENCES OF SUCH WAIVER.

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

SECTION 1. That Section 59-1361, Idaho Code, be, and the same is hereby amended to read as follows:

59-1361. COMPUTATION OF DEATH BENEFITS -- METHOD OF PAYMENT -- OPTIONAL DEATH BENEFIT. (1) The death benefit of an active or inactive member not vested at time of death shall equal the excess, if any, of the member's accumulated contributions at the time the benefit becomes payable over the aggregate of all benefit payments ever made to the member.

(2) The death benefit of an early or service retired member shall equal the excess, if any, of the member's accumulated contributions at the time the member retired over the aggregate of all retirement allowance payments ever made to the member, the member's named contingent annuitant, and the optional death benefit recipient, if any.

(3) The death benefit of a vested member who, at the time of death is either active, inactive, or a disability retiree, shall equal the excess, if any, of two hundred percent (200%) of the member's accumulated contributions at the time of death over the aggregate of all benefit payments ever made to the member and the optional death benefit recipient, if any.

(4) The death benefit, if any, will be paid to the member's designated beneficiary who is surviving the member at the time the benefit becomes payable. If no beneficiary has been designated or the designated beneficiary has predeceased the member, the death benefit will be paid to the surviving spouse, and if there is no surviving spouse it will be paid in accordance with the laws of descent and distribution of the state of Idaho as they may then be in effect. The <u>designated</u> beneficiary

may waive, in writing as required by the board, any death benefit otherwise payable. ~~and have it paid to the member's surviving spouse~~ If the designated beneficiary waives the death benefit, it will be paid as if the designated beneficiary predeceased the member.

(5) When the surviving spouse of a vested member is entitled to a death benefit under subsection (3) of this section, the surviving spouse may elect either an allowance as provided in option 1 under section 59-1351, Idaho Code, or a one (1) time lump sum death benefit payment as provided in subsection (3) of this section. The initial retirement allowance upon which such optional retirement allowance is based shall be calculated as if the member had retired immediately before his death. If the member is not then eligible to receive a service or early retirement allowance, such initial retirement allowance shall equal the actuarial equivalent of the retirement allowance payable when the member would first be eligible for service or early retirement, calculated as if he had separated from service immediately before his death.

Approved March 23, 2004.

CHAPTER 212
(S.B. No. 1259)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1319, IDAHO CODE, TO ELIMINATE THE REQUIREMENT THAT THE SOCIAL SECURITY NUMBER OF A MEMBER BE SPECIFIED IN AN APPROVED DOMESTIC RETIREMENT ORDER, TO REQUIRE THAT THE ACCOUNT NUMBER OF A MEMBER BE SPECIFIED IN AN APPROVED DOMESTIC RETIREMENT ORDER, TO ELIMINATE THE REQUIREMENT THAT THE SOCIAL SECURITY NUMBER OF AN ALTERNATE PAYEE BE SPECIFIED IN AN APPROVED DOMESTIC RETIREMENT ORDER AND TO REQUIRE THAT THE SOCIAL SECURITY NUMBER OF AN ALTERNATE PAYEE BE PROVIDED TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM BOARD PRIOR TO A DOMESTIC RETIREMENT ORDER BEING APPROVED BY THE EXECUTIVE DIRECTOR OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OR HIS DESIGNEE.

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

SECTION 1. That Section 59-1319, Idaho Code, be, and the same is hereby amended to read as follows:

59-1319. APPROVED DOMESTIC RETIREMENT ORDERS -- REQUIREMENTS. (1) An approved domestic retirement order must meet the following requirements:

(a) Clearly specify that such order applies to the retirement system;

(b) Clearly specify the effective date of the order, which is the date of divorce or the date of an earlier property settlement agreement incorporated into the initial divorce decree, the name, ~~social security~~ account number, date of birth, sex, and last known mailing address of the member and the name, ~~social security number,~~ date of birth, sex, and last known mailing address of the alternate payee covered by the order;

(c) Provide for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the member are reduced by law;
(d) For benefits as defined in chapter 13, title 59, Idaho Code, for members who are not retired members: (i) clearly specify the amount or percentage of the member's taxed and tax deferred accumulated contributions which are to be credited to the segregated account or the manner in which such amount or percentage is to be determined, and (ii) clearly specify the member's months of credited service, either by specific amount or percentage, to be transferred by the retirement system to the segregated account or the manner in which such amount or percentage is to be determined. The months of credited service transferred to the alternate payee shall be proportional to the accumulated contributions attributable to such months of credited service. Months of credited service transferred shall be whole months and not partial months;
(e) For benefits as defined in chapter 13, title 59, Idaho Code, for retired members, clearly specify the amount or percentage of the member's benefit being paid that the retirement system is to pay to the alternate payee, or the manner in which such amount or percentage is to be determined; and
(f) For benefits as defined in chapter 14, title 72, Idaho Code, clearly specify the amount or percentage of the member's benefit paid at the time of retirement which the retirement system is to pay to the alternate payee, or the manner in which such percentage is to be determined.
(2) An approved domestic retirement order cannot:
(a) Require the retirement system to provide any type or form of benefit or any option not otherwise provided under the retirement system;
(b) Require the retirement system to provide increased benefits determined on the basis of actuarial value;
(c) Require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be an approved domestic retirement order or a court order entered prior to July 1, 1998;
(d) Require any action on the part of the retirement system contrary to its governing statutes or rules other than the direct payment of the benefit awarded to an alternate payee;
(e) Segregate or attempt to segregate the right to reinstate previous credited service as provided in section 59-1360, Idaho Code, unless such credited service has been fully reinstated by full payment of contributions and interest as provided in section 59-1360, Idaho Code;
(f) Purport to award to the alternate payee any future benefit increases that are provided or required by the legislature, except as provided in subsections (6) and (7) of section 59-1320, Idaho Code; or
(g) Require the payment of benefits to an alternate payee before the date on which the alternate payee attains the earliest retirement age under the retirement system. However, an alternate payee may take a lump sum distribution any time prior to receiving a lifetime annuity payment.
(3) In no event shall an approved domestic retirement order cause

the retirement system to pay any benefit or any amount of benefit greater than would have been paid had the member's account not been segregated.

(4) A party to any domestic retirement order issued prior to July 1, 1998, which distributes benefits defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, may move the court to modify such order to comply with the requirements of this section and section 59-1320, Idaho Code, provided that modifications be limited to issues related to the distribution of benefits defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, and that the value of the distribution is not materially changed.

(5) The alternate payee's social security number shall be provided to the board before a domestic retirement order is approved under section 59-1320, Idaho Code, in a manner prescribed by the board.

Approved March 23, 2004.

CHAPTER 213
(S.B. No. 1280, As Amended)

AN ACT

RELATING TO CHILD SUPPORT ENFORCEMENT; AMENDING SECTION 56-203F, IDAHO CODE, TO REDESIGNATE THE SECTION, TO AUTHORIZE THE DEPARTMENT OF HEALTH AND WELFARE TO ESTABLISH A FINANCIAL DATA MATCH PROCESS WITH FINANCIAL INSTITUTIONS AND TO SPECIFY THE TERMS AND CONDITIONS OF THE PROCESS; AMENDING TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 32, IDAHO CODE, TO GOVERN THE FINANCIAL DATA MATCH PROCESS FOR PURPOSES OF CHILD OR SPOUSAL SUPPORT ENFORCEMENT, TO DEFINE TERMS, TO SPECIFY GROUNDS FOR WITHHOLDING ASSETS, TO SPECIFY CONTENT OF AN ASSET WITHHOLDING ORDER, TO GOVERN ISSUANCE OF THE ASSET WITHHOLDING ORDER, TO GOVERN DELIVERY OF AN ASSET WITHHOLDING ORDER AND ACCEPTANCE OF JURISDICTION, TO PROVIDE REQUIREMENTS FOR NOTICE, TO SPECIFY DUTIES OF THE FINANCIAL INSTITUTIONS, TO GOVERN CONDITIONS WHEN NO REQUEST FOR HEARING IS FILED, TO GOVERN CONDITIONS WHEN A REQUEST FOR HEARING TO CONTEST AN ASSET WITHHOLDING IS FILED, TO SPECIFY THE BASIS TO CONTEST AN ASSET WITHHOLDING ORDER, TO GOVERN THE ORDER FROM A HEARING, TO GOVERN CONDITIONS OF DEFAULT AND TO REGULATE THE LIABILITY OF FINANCIAL INSTITUTIONS.

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

SECTION 1. That Section 56-203F, Idaho Code, be, and the same is hereby amended to read as follows:

~~56-203F~~32-1601. CHILD SUPPORT ENFORCEMENT -- ~~AGREEMENTS WITH~~ FINANCIAL ~~INSTITUTIONS~~ DATA MATCH PROCESS. (1) ~~The legislature finds that the federal government has unreasonably mandated that the department must make certain agreements with financial institutions in this state for the purposes of improving the effectiveness of child support enforcement. The legislature also finds that the current system for child support enforcement in this state has historically performed well, and recent statutory changes have further improved it, and that the mandated system will do little to improve such collections.~~ This ~~section~~ chapter

is enacted to bring the state into compliance with the requirements of P.L. 104-193, sec. 372, and title IV-D of the social security act and to make the financial institution data match process an effective enforcement tool for use in enforcing past due child support and spousal support.

(2) The department ~~is hereby authorized to establish a work group comprised of~~ shall:

~~(a) Representatives of the types of financial institutions identified in 42 U.S.C. section 669a(d)(1);~~

~~(b) Representatives of "public utilities," "cooperatives," and "municipalities" as defined in section 61-332A, Idaho Code, and "telephone corporations" as defined in section 62-603, Idaho Code, and cable companies as defined in section 61-538, Idaho Code;~~

~~(c) Representatives of the department, which shall comprise no more than one third (1/3) of the total members of the work group.~~

~~(3) The work group shall:~~

(a) ~~Identify those minimum statutory changes and terms of agreements among the entities represented which are necessary to bring the state into~~ Establish and maintain a financial institution data match process with financial institutions in compliance with 42 U.S.C. section 666(a)(17);

(b) Define the type of information in the hands of financial institutions ~~and utilities which is not otherwise available and~~ pursuant to the agreements with financial institutions which, if available to the department, would ~~actually and verifiably~~ improve the effectiveness of child support collection;

(c) ~~As a term of each proposed agreement, i~~Limit authority to engage ~~match functions~~ the matching process and access to all information received to ~~the smallest number of upper management~~ specialized staff in the department ~~as is possible; (d)~~ and dDevelop written protocol within the department for the foregoing~~, delineating which functions would be performed by which personnel and under what circumstances~~;

(ed) Limit ~~engagement of contracted~~ data ~~match functions~~ matching by the department to those obligors who are in arrears in an amount equal to or greater than the total support owing for at least ninety (90) days, or two thousand dollars ($2,000), whichever is less;

(fe) Provide for ~~annual~~ statistical verification of the improvement to child support enforcement in this state which results from use of the data match ~~functions contained in the proposed agreements~~ process with the financial institutions;

(gf) Design the data match ~~system~~ process identified herein in such a manner that it will be the least intrusive, least expensive and most confidential ~~system~~ process reasonably possible;

(hg) Develop a satisfactory contract term to protect the contracting entities from legal liability for disclosure of information as authorized by statute and to protect the public's right of action for wrongful disclosure~~.~~;

(~~4~~h) ~~The department is authorized to e~~Enter into agreements with ~~the entities identified in subsection (2) of this section~~ financial institutions, and pay reasonable compensation, ~~to such entities,~~ not to exceed actual costs incurred by ~~such entity~~ the financial institutions in developing the data match ~~system~~ process and conducting the data match.

(~~5~~3) Terms of an agreement between the department and ~~an entity may provide for~~ a financial institution shall require the ~~entity~~ financial institution to provide ~~the following information~~ to the department: on the name and address of each obligor ~~who meets the criteria of delinquency as provided in subsection (3)(e) of this section: name, address and place of employment, if available. The information shall only be used for locate purposes~~ identified in the matching process, the account number(s) or other means of identifying the asset, the amount and type of asset, the state in which the asset is located, and other information necessary for compliance with federal requirements.

(4) Assets identified under this section may be withheld, attached or garnished as provided by this chapter and otherwise as allowed by law.

(5) The assets which are subject to this section, regardless of location in this or other states, are those on deposit with or held by a financial institution.

(6) Assets in accounts with the obligor as sole owner or with the obligor and spouse as the only co-owners, are subject to withholding up to the lesser of one hundred percent (100%) of the asset or the amount of arrears owed by the obligor, as set forth in the asset withholding order plus any fees pursuant to section 32-1608(2), Idaho Code. Assets in other multiple party accounts are subject to withholding up to the lesser of a proportionate amount of the asset based upon the number of co-owners or the amount of arrears owed by the obligor, as set forth in the asset withholding order, plus any fees pursuant to section 32-1608(2), Idaho Code.

~~(6) Notwithstanding any other provisions of federal or state law, any entity, or officer, agency or employee of the entity, acting in good faith, shall be immune from any civil or criminal liability for disclosing any information to a state child support enforcement agency pursuant to a contractual obligation arising under an agreement contemplated in this section or if the accumulation of such information is required in state or federal law, rule or regulation. An entity shall not be required to give notice to an account holder or customer of the entity concerning whom the entity has provided information pursuant to this section. The state child support enforcement agency which obtains information from any entity may disclose such information only for the purpose of, and to the extent necessary to establish, modify or enforce a child support obligation of a delinquent obligor.~~

SECTION 2. That Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 16, Title 32, Idaho Code, and to read as follows:

CHAPTER 16
FINANCIAL INSTITUTION DATA MATCH PROCESS

32-1602. DEFINITIONS. As used in this chapter:

(1) "Arrears" means child or spousal support that is due, owing and unpaid pursuant to a support order.

(2) "Asset" means cash or cash value in or of a demand deposit account, checking or negotiable withdrawal order account, savings account, share account, share draft account, time deposit account or money market mutual fund account; and/or negotiable instruments includ-

ing stocks and bonds, annuities, investment accounts or funds, and the cash value of insurance.

(3) "Asset withholding order" means an administrative order issued by the department of health and welfare to a financial institution requiring the freezing and surrender of an asset in which an obligor has an interest.

(4) "Child support" means the obligation, pursuant to a support order, to provide for the needs of a child, including food, clothing, shelter, education, day care and health care. "Child support" also includes reimbursement to any agency for medical assistance, assistance paid to families with children, and interest owed on such support.

(5) "Co-owner" means a person having withdrawal rights on a multiple party account.

(6) "Department" means the Idaho department of health and welfare.

(7) "Financial institution" means a bank, credit union or other depository institution, benefit association, insurance company, safe deposit company, money market mutual fund and other entities defined in 42 U.S.C. 669a(d)(1).

(8) "Obligor" means any person obligated by support order to pay child or spousal support.

(9) "Owner" means a person or entity who, by the terms of the account, has a present right, subject to a proper request in compliance with terms of the account, to payment from the account.

(10) "Spousal support" means the obligation, pursuant to a support order, to provide for a spouse or a former spouse.

(11) "Support order" means a judgment, decree, or administrative order from any state, directing one (1) or more individuals to pay child support or spousal support.

32-1603. WITHHOLDING OF ASSETS -- GROUNDS AND ISSUANCE. When the department receives information from a data matching process that an obligor is an owner or co-owner of an asset held by a financial institution, the department may issue an asset withholding order. Any asset which is subject to a previously perfected security interest or right of set-off from the financial institution is subject to withholding only as to the unencumbered portion of the asset.

32-1604. CONTENT OF ASSET WITHHOLDING ORDER. An asset withholding order shall contain:

(1) The name of the obligor and any known co-owner or multiple party account holder;

(2) The address of the obligor as listed in the department's records;

(3) The account number or other means of identifying the asset subject to the withholding order;

(4) The amount of arrears owed by the obligor;

(5) Other information as determined by the department.

32-1605. RECEIPT AND ACCEPTANCE OF ASSET WITHHOLDING ORDER. (1) When an asset withholding order is received by a financial institution pursuant to this chapter, the financial institution shall immediately freeze the asset subject to the withholding order up to the maximum amount as set forth in section 32-1601(6), Idaho Code. Financial institutions shall accept the asset withholding order at any office of the

financial institution located in this state, or at a particular office in this state or another state designated by the financial institution for the service of attachment, execution and garnishment papers pursuant to section 8-507(b), Idaho Code.

If the financial institution has designated a particular office for service of attachment, execution and garnishment papers pursuant to section 8-507(b), Idaho Code, and the asset withholding order is received by another office of the financial institution, it is within the discretion of the financial institution to accept the order and promptly forward the order to the designated office; not accept the order and promptly forward the order to the designated office; or promptly return it to the department. If a financial institution has chosen to accept the order at a nondesignated office, the financial institution's duties pursuant to section 32-1608(1), Idaho Code, shall be effective upon acceptance at that office, and the time periods for the financial institution's duties pursuant to subsections (2) and (3) of section 32-1608, Idaho Code, shall begin to run upon receipt of the order at the designated office.

(2) Unless otherwise notified by the department pursuant to this chapter, the financial institution shall release the asset to the obligor on the seventy-sixth day after the financial institution receives the asset withholding order.

(3) The department shall provide the financial institution with copies of the order and notice required by section 32-1607, Idaho Code, to forward to the obligor and any co-owner.

32-1606. DELIVERY OF AN ASSET WITHHOLDING ORDER AND ACCEPTANCE OF JURISDICTION. (1) A financial institution shall accept an asset withholding order by any form of U.S. mail, commercial mail, delivery service, by facsimile or other electronic form of correspondence. If the asset withholding order is delivered electronically, the effective date shall be the date the electronic copy is received. An additional copy of the order shall also be sent to the financial institution by regular mail.

(2) If the financial institution elects to designate an out-of-state office to accept or process an asset withholding order, such election shall act as a waiver of any claim of defect in jurisdiction.

32-1607. NOTICE. Upon the issuance of an asset withholding order to the financial institution, the department shall, within one (1) business day, send to the obligor by certified mail, at the last known address in the department's records, a copy of the asset withholding order and a notice containing the following:

(1) The obligor's and/or the co-owner's right to a hearing;

(2) The request for a hearing must be in writing and received by the department within fourteen (14) days after the date of mailing the notice;

(3) That the asset subject to the withholding order will be applied to the arrears unless a timely request for hearing is made;

(4) That the asset will be released by the department if the obligor pays the arrears and the current support obligation in full; and

(5) The grounds to contest the asset withholding order:

(a) The amount of arrears;

(b) The validity of the order;

(c) The extent of the obligor's interest in the asset; and
(d) The amount which qualifies as a homestead exemption pursuant to section 55-1008, Idaho Code.

32-1608. DUTIES OF THE FINANCIAL INSTITUTION. (1) Upon receipt or acceptance of an asset withholding order issued by the department pursuant to this chapter, the financial institution shall immediately freeze the asset subject to the withholding order up to the maximum amount as set forth in section 32-1601(6), Idaho Code. The financial institution shall honor the terms of the account of the said asset, except when the terms conflict with compliance with this chapter. The financial institution shall freeze, release or surrender the asset as provided in this chapter.

(2) The financial institution shall be required to mail, within two (2) business days, copies of the asset withholding order and notice, provided by the department pursuant to section 32-1605(3), Idaho Code, to the obligor and to each co-owner, based on the records of the financial institution. A fee not to exceed five dollars ($5.00) per mailing may be assessed by the financial institution for sending the required copies of the documents. The fee can be withheld in addition to the amount ordered withheld. If funds are inadequate to cover the amount of the asset withholding order and the fees, the fees may be withheld from the asset before the remaining balance is applied to the withholding order.

(3) The financial institution shall complete and return to the department any asset verification form provided by the department within fourteen (14) days from the date of receipt of the asset verification form.

(4) Upon notification by the department that the obligor has not filed a request for hearing within the allowed time, the financial institution will release the asset promptly to the department by sending the funds to the department.

32-1609. NO REQUEST FOR HEARING. If the obligor or a co-owner has not filed a request for hearing within fourteen (14) days after the date the department mailed the notice to the obligor, the department shall notify the financial institution and the financial institution shall promptly surrender the amount of the asset that has been frozen to the department. The department shall apply this amount to the obligor's arrears.

32-1610. HEARING TO CONTEST ASSET WITHHOLDING. (1) Within five (5) business days of receiving a timely request for hearing, the department will schedule the administrative hearing date and notify the obligor and any co-owners by mail. Upon receiving the request for hearing, the department shall notify the financial institution that it must continue to hold the asset until an order is issued and the department provides instructions for the disposition of the asset pursuant to section 32-1612, Idaho Code.

(2) The department will hold an administrative hearing within thirty (30) days from the day the department receives the request for hearing.

32-1611. BASIS TO CONTEST THE ASSET WITHHOLDING ORDER. The obligor who owes the support or any co-owner of the asset that is subject to the asset withholding order may contest the order to withhold. Contests are limited to the following issues:

(1) The amount of the arrears;

(2) The validity of the order;

(3) The extent of the obligor's interest in the asset; or

(4) The amount which qualifies as a homestead exemption pursuant to section 55-1008, Idaho Code.

Issues that have been previously adjudicated may not be contested.

32-1612. ORDER FROM HEARING. (1) The department shall issue an order based upon the hearing that rejects the contest or supports the contest in whole or part. The parties may file an appeal with the district court within twenty-eight (28) days, notwithstanding the provisions of section 67-5243, Idaho Code.

(2) The department shall notify the financial institution in writing, within two (2) business days after the receipt of the order, as to the outcome of the hearing, and provide instructions to the financial institution as to the disposition of the asset that has been frozen.

32-1613. DEFAULT. (1) The allegations of the asset withholding order shall be deemed admitted and the department shall issue an order upholding the asset withholding order if the obligor or co-owner fails to appear at the hearing without good cause. The default and issuance of any subsequent order shall be entered pursuant to the department's rules governing contested case proceedings.

(2) The department shall notify the financial institution in writing, within two (2) business days after the receipt of the default order, and provide instructions to the financial institution as to the disposition of the asset that has been frozen.

32-1614. LIABILITY OF FINANCIAL INSTITUTION. Notwithstanding any other provisions of federal or state law, any financial institution, or officer, agent or employee of the financial institution, acting in good faith, shall be immune from all civil and criminal liability for withholding funds, freezing assets, turning over assets or otherwise complying or attempting to comply with the provisions of this chapter or for disclosing any information to a state child support enforcement agency pursuant to this chapter. A financial institution shall not be required to give notice to any owner or co-owner of the financial institution concerning whom the financial institution has provided information pursuant to the data match process. The state child support enforcement agency which obtains information from any financial institution may disclose such information only for the purpose of, and to the extent necessary to establish, modify or enforce a support obligation of an obligor.

Approved March 23, 2004.

CHAPTER 214
(S.B. No. 1288)

AN ACT
RELATING TO THE BOARD OF DENTISTRY; AMENDING SECTION 54-903, IDAHO CODE, TO DEFINE "EXTENDED ACCESS ORAL HEALTH CARE PROGRAM"; AND AMENDING SECTION 54-904, IDAHO CODE, TO SPECIFY STANDARDS FOR PRACTICE FOR DENTAL HYGIENISTS.

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

SECTION 1. That Section 54-903, Idaho Code, be, and the same is hereby amended to read as follows:

54-903. GENERAL DEFINITIONS. As used in this chapter:

(1) "Association" means the Idaho state dental association and the Idaho dental hygienists' association.

(2) "Board" means the state board of dentistry.

(3) "Dental assistant" is a person who need not be licensed under this chapter, but who is regularly employed by a dentist at his office, who works under the dentist's direct supervision, and is adequately trained and qualified according to standards established by the board to perform the dental services permitted to be performed by assistants by this chapter and applicable rules of the board.

(4) "Dental hygienist" is a person both qualified and annually licensed by the laws of Idaho to practice dental hygiene.

(5) "Dental specialist" is a dentist who limits his practice to a specialty recognized by the American dental association, who has graduated from a board approved post-graduate program in his specialty and is a person both qualified and annually licensed by the laws of Idaho to practice a dental specialty.

(6) "Dentist" is a person both qualified and annually licensed by the laws of Idaho to practice dentistry.

(7) "Direct supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist diagnose the condition to be treated, a dentist authorize the procedure to be performed, a dentist remain in the dental office while the procedure is performed, and that before dismissal of the patient, a dentist approves the work performed by the dental assistant or dental hygienist.

(8) "Extended access oral health care program" means and includes dental and dental hygiene treatment and services provided as part of a program conducted by or through a local, county, state or federal agency, hospital, long-term care facility, public health district, dental or dental hygiene school, tribal clinic, or migrant health center; or such other oral health care program approved on an annual basis by the board and conducted by or through a public or private entity, recognized under section 501(c)(3) of the federal Internal Revenue Code, to provide free or reduced fee dental and dental hygiene services to persons who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular dental and dental hygiene treatment in a private office.

(9) "General supervision" is supervision of a dental hygienist requiring that a dentist authorize the procedure which is carried out,

but not requiring that a dentist be in the office when the authorized procedure is performed.

(~~9~~10) "Indirect supervision" is supervision of a dental hygienist requiring that a dentist authorize a procedure and that a dentist be in the dental office while the procedure is performed by the hygienist.

SECTION 2. That Section 54-904, Idaho Code, be, and the same is hereby amended to read as follows:

54-904. AUTHORIZATION FOR PROCEDURES PERFORMED UNDER GENERAL SUPERVISION BY DENTAL HYGIENISTS. ~~---PRIVATE-OFFICE----PUBLIC-SETTING.~~ A dental hygienist is authorized to practice under general supervision when:

(1) In a private office where the dental hygienist works, a~~A~~ licensed dentist has diagnosed the condition to be treated~~,~~ and determined the procedure to be performed, ~~and~~ or has ~~delegated-with-written orders-to~~ authorized a qualified dental hygienist ~~the~~ to perform~~ance--of~~ the prescribed treatment; or

(2) In an extended access oral health care program, a~~A~~ supervisory dentist, who is employed or retained by or is a volunteer for the program, has ~~evaluated-the-dental-health-plan~~ determined the treatment to be provided and has ~~issued-written-orders-to~~ authorized a dental hygienist ~~employed-in-any-institutional-setting-where-dental-hygiene--services may--be--performed~~ holding a license with an extended access dental hygiene endorsement to provide the prescribed treatment.

Approved March 23, 2004.

CHAPTER 215
(S.B. No. 1289)

AN ACT

RELATING TO THE IDAHO DENTAL PRACTICE ACT; AMENDING CHAPTER 9, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-935, IDAHO CODE, TO PROVIDE A VOLUNTEER'S LICENSE, TO SPECIFY QUALIFICATIONS, TO GOVERN PERMISSIBLE PRACTICE AND TO PROVIDE IMMUNITY FROM LIABILITY.

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

SECTION 1. That Chapter 9, 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 54-935, Idaho Code, and to read as follows:

54-935. VOLUNTEER'S LICENSE — QUALIFICATIONS -- PERMISSIBLE PRACTICE -- IMMUNITY FROM LIABILITY. (1) Upon application and qualification, the board may issue, without examination, a volunteer's license to a dentist who is retired from the active practice of dentistry to enable the retired dentist to provide dental services at specified locations to persons who, due to age, infirmity, handicap, indigence or disability, are unable to receive regular dental treatment.

(2) For purposes of this section, a dentist previously holding a dental license with active status in Idaho or another state shall be considered to be retired if, prior to the date of application for a volunteer's license, he has surrendered or allowed his license with

active status to expire with the intention of ceasing to actively practice as a dentist for remuneration, he has converted his license with active status to a license with inactive status with the intention of ceasing to actively practice as a dentist for remuneration, or he has converted his license with active or inactive status to a license with retirement or similar status that proscribed the active practice of dentistry. A dentist whose dental license had been restricted, suspended, revoked, surrendered, resigned, converted, or allowed to lapse or expire as the result of disciplinary action or in lieu of disciplinary action being taken shall not be eligible for a volunteer's license.

(3) An application for a volunteer's license shall include, but not be limited to, the following:

(a) Verification of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association as of the date of the applicant's graduation;

(b) Verification from each state board in which the applicant was licensed that the applicant maintained his dental license in good standing without disciplinary action that restricted the applicant's license or resulted in the applicant's license being placed on probation, suspended, revoked or being surrendered, resigned or otherwise allowed to lapse or expire in lieu of disciplinary action;

(c) Verification that the applicant held a dental license in good standing in Idaho or another state as of the date upon which the dentist became retired;

(d) Verification that the applicant held an active status dental license in good standing in Idaho or another state within five (5) years of the date of application for a volunteer's license, provided, that the board may waive the five (5) year requirement in the event that the applicant demonstrates he possesses the knowledge and skills requisite to the practice of dentistry by successfully completing such examinations as are required by the board; and

(e) A notarized statement from the applicant on a form prescribed by the board, that the applicant will not provide any dental services to any person or at any location other than as permitted by this section and that the applicant will not accept any amount or form of remuneration, other than as reimbursement for the amount of actual expenses incurred as a volunteer dentist, for any dental services provided under the authority of a volunteer's license.

(4) For purposes of this section, the specified locations at which a dentist holding a volunteer's license may provide dental services shall be limited to the premises or sites of extended access oral health care programs. The dental services provided at an extended access oral health care program by a dentist holding a volunteer's license shall not require or include the administration of general anesthesia or conscious sedation to a patient unless otherwise specifically approved in advance by the board.

(5) A volunteer's license shall be valid for that period specified for dentists in section 54-920, Idaho Code, and may be renewed upon application of the licensee unless the license has been revoked in accordance with this section. The board shall maintain a register of all dentists who hold a volunteer's license. The board shall not charge an application or licensing fee for issuing or renewing a volunteer's license. A volunteer's license cannot be converted to a license with active, inactive, provisional or special status.

(6) The board may revoke a volunteer's license upon receiving proof satisfactory to the board that the holder of a volunteer's license provided dental services outside the permissible scope of the volunteer's license or that grounds existed for enforcement or disciplinary action against the holder of a volunteer's license under other sections of this chapter or the administrative rules promulgated under this chapter.

(7) When practicing dentistry within the permissible scope of a volunteer's license, the holder of a volunteer's license issued pursuant to this section shall be immune from liability for any civil action arising out of the provision of volunteer dental services. This section does not provide or extend immunity to a holder of a volunteer's license for any acts or omissions constituting negligence.

Approved March 23, 2004.

CHAPTER 216
(S.B. No. 1290)

AN ACT

RELATING TO RECOVERY OF MEDICAL ASSISTANCE; AMENDING SECTION 56-218, IDAHO CODE, TO CLARIFY WHEN MEDICAL ASSISTANCE MAY BE RECOVERED AND TO SPECIFY WHEN THE CAUSE OF ACTION ACCRUES TO VOID A TRANSFER WITHOUT ADEQUATE CONSIDERATION.

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

SECTION 1. That Section 56-218, Idaho Code, be, and the same is hereby amended to read as follows:

56-218. RECOVERY OF CERTAIN MEDICAL ASSISTANCE. (1) Except where exempted or waived in accordance with federal law medical assistance pursuant to this chapter paid on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance may be recovered from the individual's estate, and the estate of the ~~surviving~~ spouse, if any, for such aid paid to either or both; provided, however, that claim for such medical assistance correctly paid to the individual may be established against the estate of either spouse, but there shall be no adjustment or recovery thereof until after the death of the ~~surviving~~ spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c. Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court.

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

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

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

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

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

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

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

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

(a) The only asset of the estate provides the primary source of support for other family members; or

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

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

(8) The cause of action to void a transfer without adequate consideration established in this section shall not be deemed to have accrued until the department discovers, or reasonably could have discovered, the facts constituting the transfer without adequate consideration.

Approved March 23, 2004.

CHAPTER 217
(S.B. No. 1292)

AN ACT

RELATING TO THE BOARD OF DENTISTRY; AMENDING SECTION 54-903, IDAHO CODE, TO PROVIDE THAT A DENTAL ASSISTANT MAY WORK UNDER THE DIRECT, INDIRECT OR GENERAL SUPERVISION OF A DENTIST AND TO REDEFINE "GENERAL SUPERVISION" AND "INDIRECT SUPERVISION" TO INCLUDE THE SUPERVISION OF DENTAL ASSISTANTS.

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

SECTION 1. That Section 54-903, Idaho Code, be, and the same is hereby amended to read as follows:

54-903. GENERAL DEFINITIONS. As used in this chapter:

(1) "Association" means the Idaho state dental association and the Idaho dental hygienists' association.

(2) "Board" means the state board of dentistry.

(3) "Dental assistant" is a person who need not be licensed under this chapter, but who is regularly employed by a dentist at his office, who works under the dentist's ~~direct~~ supervision, and is adequately trained and qualified according to standards established by the board to perform the dental services permitted to be performed by assistants by this chapter and applicable rules of the board.

(4) "Dental hygienist" is a person both qualified and annually licensed by the laws of Idaho to practice dental hygiene.

(5) "Dental specialist" is a dentist who limits his practice to a specialty recognized by the American dental association, who has graduated from a board approved post-graduate program in his specialty and is a person both qualified and annually licensed by the laws of Idaho to practice a dental specialty.

(6) "Dentist" is a person both qualified and annually licensed by the laws of Idaho to practice dentistry.

(7) "Direct supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist diagnose the condition to be treated, a dentist authorize the procedure to be performed, a dentist remain in the dental office while the procedure is performed, and that before dismissal of the patient, a dentist approves the work performed by the dental assistant or dental hygienist.

(8) "General supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist authorize the procedure which is carried out, but not requiring that a dentist be in the office when the authorized procedure is performed.

(9) "Indirect supervision" is supervision of a dental assistant or dental hygienist requiring that a dentist authorize a procedure and that a dentist be in the dental office while the procedure is performed by the assistant or hygienist.

Approved March 23, 2004.

CHAPTER 218
(S.B. No. 1323, As Amended in the House)

AN ACT

RELATING TO SCHOOL BUS DRIVERS; AMENDING SECTION 33-1509, IDAHO CODE, TO PROVIDE THAT THE STATE DEPARTMENT OF EDUCATION MAY ISSUE A MEDICAL WAIVER TO INDIVIDUALS WITH INSULIN DEPENDENT DIABETES MELLITUS IF THE DEPARTMENT DETERMINES THAT AN APPLICANT HAS MET THE REQUIREMENTS AS SPECIFIED, AND TO REQUIRE THE DEPARTMENT TO PROMULGATE RULES AS NECESSARY TO IMPLEMENT THE PROVISIONS FOR DETERMINING ELIGIBILITY AND ISSUING SUCH WAIVERS.

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

SECTION 1. That Section 33-1509, Idaho Code, be, and the same is hereby amended to read as follows:

33-1509. SCHOOL BUS DRIVERS -- DEFINITION -- QUALIFICATION -- DUTIES. For the purpose of this chapter the term "school bus driver" shall mean any person who at any time is operating a school bus while transporting pupils to or from school, or to or from approved school activities.

A board of trustees shall employ school bus drivers only upon prior application in writing and the board shall require of school bus drivers employed by others who transport pupils of their district under contract, the same information required in such written application. Each application shall contain at least the minimum information specified by the state department of education.

Any person employed as a school bus driver shall be over the age of eighteen (18) years, be of good moral character and not addicted to the use of intoxicants or narcotics. School bus drivers shall ~~be subject to~~ meet the physical examination standards of the federal motor carrier safety regulations. Provided however, that individuals with insulin-dependent diabetes mellitus, who are otherwise medically qualified under the physical examination standards of the federal motor carrier safety regulations, may request a waiver for this condition ~~and, in the discretion of the board of trustees, be issued a school bus driver's permit for intrastate transport of pupils to or from school, or to or from approved school activities. Applicants for a waiver under this section shall provide all information and accompanying documentation as required on a form approved by the state department of education.~~ from the state department of education. If the applicant meets the requirements as specified in subsections (1) through (7) of this section, the department shall grant a waiver. The department shall notify each applicant and each affected school district of its determination of eligibility with regard to each application for a waiver. An applicant shall:

(1) Document that he has no other disqualifying conditions including diabetes-related complications;

(2) Document that he has had no recurring, two (2) or more, hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(3) Document that he has had no recurrent hypoglycemic reactions

requiring the assistance of another person within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(4) Document that he has had no recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five (5) years. A period of one (1) year of demonstrated stability is required following the first episode of hypoglycemia;

(5) Document that he has been examined by a board-certified or board-eligible endocrinologist who has conducted a complete medical examination. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

(a) The date insulin use began;

(b) Diabetes diagnosis and disease history;

(c) Hospitalization records;

(d) Consultation notes for diagnostic examinations;

(e) Special studies pertaining to the diabetes;

(f) Follow-up reports;

(g) Reports of any hypoglycemic insulin reactions within the last five (5) years;

(h) Two (2) measures of glycosylated hemoglobin, the first ninety (90) days before the last and current measure;

(i) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken; and

(j) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

(6) Submit a signed statement from an examining endocrinologist indicating the following medical determinations:

(a) The endocrinologist is familiar with the applicant's medical history for the past five (5) years, either through actual treatment over that time or through consultation with a physician who has treated the applicant during that time;

(b) The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage the applicant's diabetes and what procedures should be followed if complications arise; and

(c) The applicant has the ability and has demonstrated willingness to properly monitor and manage the applicant's diabetes; and

(7) Submit a separate signed statement from an ophthalmologist or optometrist that the applicant has been examined and that the applicant does not have diabetic retinopathy and meets the vision standard in 49 CFR 391.41(b)(10), or has been issued a valid medical exemption. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable advancing disease of blood vessels in the retina, known as unstable proliferative diabetic retinopathy.

Before entering upon his duties, each school bus driver shall file with the board of trustees a current health certificate. ~~and, if applicable, a waiver request pursuant to this section with all required information and accompanying documentation.~~ Subsequent health certificates shall be filed with the frequency required by the federal motor carrier safety

regulations. School bus drivers shall be physically able to perform all job-related duties.

Each school bus driver shall at all times possess a valid and appropriate commercial driver's license, including endorsements as specified in section 49-105, Idaho Code, and ~~a school bus driver's permit issued by the board of trustees and,~~ if applicable, a waiver for insulin-dependent diabetes mellitus issued by the ~~board of trustees~~ state department of education. ~~The school bus driver's permit shall be in a form approved by the state department of education and shall be carried on the school bus driver's person or be exhibited in full view when the holder thereof is operating any school bus with pupils therein.~~

~~The board of trustees may for cause, and after a hearing, revoke any school bus driver's permit or waiver for insulin dependent diabetes mellitus.~~

Each school bus driver shall maintain such route books and other records as may be required by the state department of education or by the board of trustees of the school district. The school bus driver shall report any pupil whose behavior is such as may endanger the operation of the vehicle, or who damages the same or any part thereof, or whose language is obscene.

It shall be the duty of each school bus driver to report any condition on, or bordering, his route which constitutes a hazard to the safety of the pupils being transported.

The state department of education shall promulgate rules as necessary for the determination of eligibility and issuance of a waiver to individuals with insulin dependent diabetes mellitus in accordance with the provisions of this section.

Approved March 23, 2004.

CHAPTER 219
(S.B. No. 1345)

AN ACT

RELATING TO SCHOOL PROPERTY; AMENDING SECTION 33-601, IDAHO CODE, TO PROVIDE THAT CERTAIN CONTRACTS SHALL NOT BE EXECUTED UNLESS IN COOPERATION WITH A COOPERATIVE AGENCY OR THROUGH A CONTRACT THAT HAS BEEN COMPETITIVELY BID BY THE STATE OF IDAHO, ONE OF ITS SUBDIVISIONS, OR AN AGENCY OF THE FEDERAL GOVERNMENT.

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

SECTION 1. That Section 33-601, Idaho Code, be, and the same is hereby amended to read as follows:

33-601. REAL AND PERSONAL PROPERTY -- ACQUISITION, USE OR DISPOSAL OF SAME. The board of trustees of each school district shall have the following powers and duties:

1. To rent to or from others, school buildings or other property used, or to be used, for school purposes.

2. To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment,

or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in section 33-118A, Idaho Code, no such contract shall be executed which entails the expenditure of twenty-five thousand dollars ($25,000) or more without notice first being given by publishing twice in the manner required by subsections g. and h. of section 33-402, Idaho Code, unless in cooperation with ~~the division of purchasing or~~ a cooperative agency established pursuant to chapter 23, title 67, and/or sections 33-315 through 33-318, Idaho Code, or through a contract that has been competitively bid by the state of Idaho, one (1) of its subdivisions, or an agency of the federal government. The board of trustees may let the contract to the lowest responsible bidder, or reject any bid, or reject all bids and publish notice for bids, as before. If, thereafter, no satisfactory bid is received, the board may proceed under its own direction.

3. To designate and purchase any real property necessary for school purposes or in the operation of the district, or remove any building, or dispose of any real property. Prior to, but not more than one (1) year prior to, any purchase or disposal of real property, the board shall have such property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

4. (a) To convey, except as provided by paragraph (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection 6. of this section, any of the transactions authorized in this subsection shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised pursuant to this section, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and

conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections g. and h. of section 33-402, Idaho Code, except that when the appraised value of the property is less than one thousand dollars ($1,000), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids or at public auction.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property. In no case shall any real property of the school district be sold for less than its appraisal.

The board of trustees may sell personal property, with an estimated value of less than one thousand dollars ($1,000), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property. If the board, by a unanimous vote of those members present, finds that the property has an estimated value of less than five hundred dollars ($500) and is of insufficient value to defray the costs of arranging a sale, the property may be disposed of in the most cost-effective and expedient manner by an employee of the district empowered for that purpose by the board.

(b) Real and personal property may be exchanged hereunder for other property. Provided, however, that aside from the provisions of this paragraph, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any other school district, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made. Prior to any transfer or conveyance of any real or personal property pursuant to this paragraph 4.(b), the board shall have the property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real or personal property.

5. To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

6. To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to

authorize the removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

7. To authorize the use of any school building of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

8. To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in section 7-701, Idaho Code.

9. If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section.

Approved March 23, 2004.

CHAPTER 220
(S.B. No. 1346, As Amended)

AN ACT
RELATING TO CHARTER SCHOOLS; AMENDING SECTION 33-5206, IDAHO CODE, TO PROVIDE CRITERIA GOVERNING THE ATTENDANCE AREA OF A CHARTER SCHOOL.

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

SECTION 1. That Section 33-5206, Idaho Code, be, and the same is hereby amended to read as follows:

33-5206. REQUIREMENTS AND PROHIBITIONS UPON APPROVAL OF A CHARTER SCHOOL. (1) In addition to any other requirements imposed in this chapter, a charter school shall be nonsectarian in its programs, affiliations, admission policies, employment practices, and all other operations, shall not charge tuition, levy taxes or issue bonds, and shall not discriminate against any student on any basis prohibited by the federal or state constitutions or any federal, state or local law. Admission to a charter school shall not be determined according to the place of residence of the student, or of the student's parent or guardian within the district, except that a new or conversion charter school established under the provisions of this chapter shall adopt and maintain a policy giving admission preference to students who reside within the attendance area of that school. The attendance area of a charter school, as described in the petition, shall be composed of compact and contiguous area. For the purposes of this section, if services are available to students throughout the state, the state of Idaho is considered a compact and contiguous area.

(2) No board of trustees shall require any employee of the school district to be involuntarily assigned to work in a charter school.

(3) Certified teachers in a charter school shall be considered public school teachers. Educational experience shall accrue for service in a charter school and such experience shall be counted by any school district to which the teacher returns after employment in a charter school.

(4) No board of trustees shall require any student enrolled in the school district to attend a charter school.

(5) Upon approval of the petition by the board of trustees, the petitioner shall provide written notice of that approval, including a copy of the petition, to the state board of education. For the purpose of implementing the provisions of section 33-5203(2), Idaho Code, the state board of education shall assign a number to each petition it receives. Petitions shall be numbered based on the chronological order in which notice of the approved petition is received by the state board of education.

(6) Each charter school shall annually submit a report to the local board of trustees which approved its charter. In the case of a new charter school whose charter was granted by the state board of education pursuant to section 33-5207, Idaho Code, the annual report shall be submitted to the state board of education. The report shall contain the audit of the fiscal and programmatic operations as required in section 33-5205(3)(j), Idaho Code, a report on student progress based on the charter school's student educational standards identified in section 33-5205(3)(b), Idaho Code, and a copy of the charter school's accreditation report.

Approved March 23, 2004.

CHAPTER 221
(S.B. No. 1350, As Amended)

AN ACT

RELATING TO PUBLIC SCHOOL TEACHERS; AMENDING SECTION 33-1209, IDAHO CODE, TO PROVIDE FOR PLACING REASONABLE CONDITIONS ON A CERTIFICATE, TO DELETE PROVISION FOR PLACING A LETTER OF REPRIMAND IN THE RECORD OF A CERTIFICATE HOLDER WHEN THE EXECUTIVE COMMITTEE HAS DETERMINED THERE ARE NOT SUFFICIENT GROUNDS FOR SUSPENDING OR REVOKING THE CERTIFICATE, TO PROVIDE FOR DISMISSAL OF AN ALLEGATION, TO PROVIDE GROUNDS FOR WHICH A CERTIFICATE SHALL NOT BE ISSUED AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 33-1209, Idaho Code, be, and the same is hereby amended to read as follows:

33-1209. PROCEEDINGS TO REVOKE, SUSPEND, ~~OR~~ DENY OR PLACE REASONABLE CONDITIONS ON A CERTIFICATE -- LETTERS OF REPRIMAND -- COMPLAINT -- SUBPOENA POWER -- HEARING. (1) The professional standards commission may conduct investigations on any signed allegation of unethical practice of any teacher brought by:

(a) An individual with a substantial interest in the matter, except a student in an Idaho public school; or

(b) A local board of trustees.

The allegation shall state the specific ground or grounds for revocation, suspension, placing reasonable conditions on the certificate, or issuance of a letter of reprimand. The executive committee of the professional standards commission shall review the circumstances of the case and determine whether probable cause exists to warrant the filing of a complaint and the requesting of a hearing.

(2) ~~If the executive committee determines there are not sufficient grounds for revocation or suspension, the committee may recommend to the chief certification officer that a letter of reprimand be sent to the certificate holder, and that a copy of such letter shall be made a permanent part of the record of the certificate holder.~~

~~(3)~~ Proceedings to revoke or suspend any certificate issued under section 33-1201, Idaho Code, or to issue a letter of reprimand or place reasonable conditions on the certificate shall be commenced by a written complaint against the holder thereof. Such complaint shall be made by the chief certification officer stating the ground or grounds for issuing a letter of reprimand, placing reasonable conditions on the certificate, or for revocation or suspension and proposing that a letter of reprimand be issued, reasonable conditions be placed on the certificate, or the certificate be revoked or suspended. A copy of the complaint shall be served upon the certificate holder, either by personal service or by certified mail.

(~~4~~3) Not more than thirty (30) days after the date of service of any complaint, the person complained against may request, in writing, a hearing upon the complaint. Any such request shall be made and addressed to the state superintendent of public instruction; and if no request for hearing is made, the grounds for suspension, or revocation, placing reasonable conditions on the certificate, or issuing a letter of reprimand stated in the complaint shall be deemed admitted. Upon a request for hearing, the chief certification officer, shall give notice, in writing, to the person requesting the hearing, which notice shall state the time and place of the hearing. The time of such hearing shall not be less than five (5) days from the date of notice thereof. Any such hearing shall be informal and shall conform with chapter 52, title 67, Idaho Code. The hearing will be held within the school district in which any teacher complained of shall teach, or at such other place deemed most convenient for all parties.

(~~5~~4) Any such hearing shall be conducted by three (3) or more panel members appointed by the chairman of the professional standards commission, a majority of whom shall hold a position of employment the same as the person complained against. One (1) of the panel members shall serve as the panel chair. The panel chair shall be selected by the chairman of the professional standards commission from a list of former members of the professional standards commission who shall be instructed in conducting administrative hearings. No commission member who participated in the probable cause determination process in a given case shall serve on the hearing panel. All hearings shall be held with the object of ascertaining the truth. Any person complained against may appear in person and may be represented by legal counsel, and may produce, examine and cross-examine witnesses, and, if he chooses to do so, may submit for the consideration of the hearing panel a statement, in writing, in lieu

of oral testimony, but any such statement shall be under oath and the affiant shall be subject to cross-examination.

(~~6~~5) The state superintendent of public instruction, as authorized by the state board of education, has the power to issue subpoenas and compel the attendance of witnesses and compel the production of pertinent papers, books, documents, records, accounts and testimony. The state board or its authorized representative may, if a witness refuses to attend or testify or to produce any papers required by such subpoena, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that a due notice has been given of the time and place of attendance of the witnesses, or the production of the papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the board, or its representative, or has refused to answer questions propounded to him in the course of the proceedings, and ask for an order of the court compelling the witness to attend and testify and produce the papers before the board. The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in the order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he has not attended and testified or produced the papers before the board or its representative. A copy of the order shall be served upon the witness. If it shall appear to the court that the subpoena was regularly issued by the board and regularly served, the court shall thereupon order that the witness appear before the board at the time and place fixed in the order and testify or produce the required papers. Upon failure to obey the order, the witness shall be dealt with for contempt of court. The subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the district courts of this state.

(~~7~~6) At the conclusion of any hearing dealing with the revocation, suspension, denial of a certificate, placing reasonable conditions on the certificate, or ~~to issue~~ issuing a letter of reprimand, the hearing panel shall submit to the chief certification officer, a concise statement of the proceedings, a summary of the testimony, and any documentary evidence offered, together with the findings of fact and a decision. The hearing panel may determine to suspend or revoke the certificate, or the panel may order that reasonable conditions be placed on the certificate or a letter of reprimand be sent to the certificate holder, or if there are not sufficient grounds, the allegation against the certificate holder is dismissed and is so recorded.

(~~8~~7) The hearing panel's decision shall be given to the person complained against and a copy of the panel's decision shall be made a permanent part of the record of the certificate holder.

(~~9~~8) The final decision of the professional standards commission shall be subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code, in the district court of the county in which the holder of a revoked certificate has been last employed as a teacher.

(~~10~~9) Whenever any certificate has been ~~refused or~~ revoked, suspended or has had reasonable conditions placed upon it, or an application has been denied, the professional standards commission may, upon a clear showing that the cause constituting grounds for ~~refusal or revocation~~ the listed actions no longer exists, issue a valid certificate. ~~or~~

~~reinstate--a revoked certificate either conditionally or unconditionally~~ Provided however, that no certificate shall be issued to any person who has been convicted of any crime listed in subsection 2. of section 33-1208, Idaho Code.

Approved March 23, 2004.

CHAPTER 222
(S.B. No. 1351, As Amended)

AN ACT

RELATING TO PUBLIC SCHOOL TEACHERS; AMENDING SECTION 33-1208, IDAHO CODE, TO PROVIDE THAT REASONABLE CONDITIONS MAY BE PLACED ON A CERTIFICATE, TO PROVIDE AN ADDITIONAL GROUND FOR DENIAL, REVOCATION, SUSPENSION OR PLACING REASONABLE CONDITIONS ON A CERTIFICATE, TO PROVIDE AN ADDITIONAL GROUND FOR WHICH A CERTIFICATE SHALL BE PERMANENTLY REVOKED OR AN APPLICATION DENIED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-1208, Idaho Code, be, and the same is hereby amended to read as follows:

33-1208. REVOCATION, SUSPENSION, ~~OR~~ DENIAL, OR PLACE REASONABLE CONDITIONS ON ~~OF~~ CERTIFICATE -- GROUNDS. 1. The state board of education may deny, revoke, ~~or~~ suspend, or place reasonable conditions on any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, upon any of the following grounds:

a. Gross neglect of duty;

b. Incompetency;

c. Breach of the teaching contract;

d. Making any material statement of fact in the application for a certificate, which the applicant knows to be false;

e. Revocation, suspension, denial or surrender of a certificate in another state for any reason constituting grounds for revocation in this state;

f. Conviction, finding of guilt, withheld judgment or suspended sentence, in this or any other state of a crime involving moral turpitude;

g. Conviction, finding of guilt, withheld judgment, or suspended sentence in this state or any other state for the delivery, manufacture or production of controlled substances or simulated controlled substances as those terms are defined in section 37-2701, Idaho Code;

h. A guilty plea or a finding of guilt, notwithstanding the form of the judgment or withheld judgment in this or any other state, of the crime of involuntary manslaughter, section 18-4006 2. or section 18-4006 3., Idaho Code;

i. Any disqualification which would have been sufficient grounds for refusing to issue or authorize a certificate, if the disqualification existed or had been known at the time of its issuance or authorization;

j. ~~Wilful~~ Willful violation of any professional code or standard of ethics or conduct, adopted by the state board of education;

k. The kidnapping of a child, section 18-4503, Idaho Code;

l. Conviction, finding of guilt, withheld judgment, or suspended sentence, in this state or any other state of any felony, the commission of which renders the certificated person unfit to teach or otherwise perform the duties of the certificated person's position.

2. The state board of education shall permanently revoke any certificate issued or authorized under the provisions of section 33-1201, Idaho Code, and shall deny the application for issuance of a certificate of a person who pleads guilty to or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child:

a. The aggravated assault of a child, section 18-905, Idaho Code, or the assault with intent to commit a serious felony against a child, section 18-909, Idaho Code.

b. The aggravated battery of a child, section 18-907, Idaho Code, or the battery with intent to commit a serious felony against a child, section 18-911, Idaho Code.

c. The injury or death of a child, section 18-1501, Idaho Code.

d. The sexual abuse of a child under sixteen (16) years of age, section 18-1506, Idaho Code.

e. The ritualized abuse of a child under eighteen (18) years of age, section 18-1506A, Idaho Code.

f. The sexual exploitation of a child, section 18-1507, Idaho Code.

g. Possession of photographic representations of sexual conduct involving a child, section 18-1507A, Idaho Code.

h. Lewd conduct with a child under the age of sixteen (16) years, section 18-1508, Idaho Code.

i. The sexual battery of a minor child sixteen (16) or seventeen (17) years of age, section 18-1508A, Idaho Code.

j. The sale or barter of a child for adoption or other purposes, section 18-1511, Idaho Code.

~~j~~k. The murder of a child, section 18-4003, Idaho Code, or the voluntary manslaughter of a child, section 18-4006 1., Idaho Code.

~~k~~l. The kidnapping of a child, section 18-4502, Idaho Code.

~~l~~m. The importation or exportation of a juvenile for immoral purposes, section 18-5601, Idaho Code.

~~m~~n. The abduction of a person under eighteen (18) years of age for prostitution, section 18-5610, Idaho Code.

~~n~~o. The rape of a child, section 18-6101 or 18-6108, Idaho Code.

The general classes of felonies listed in subsection 2. of this section shall include equivalent laws of federal or other state jurisdictions. For the purpose of this subsection, "child" means a minor or juvenile as defined by the applicable state or federal law.

3. The state board of education may investigate and follow the procedures set forth in section 33-1209, Idaho Code, for any allegation of inappropriate conduct as defined in this section, by a holder of a certificate whether or not the holder has surrendered his certificate without a hearing or failed to renew his certificate. In those cases where the holder of a certificate has surrendered or failed to renew his certificate and it was found that inappropriate conduct occurred, the board shall record such findings in the permanent record of the individual and shall deny the issuance of a teaching certificate.

4. Any person whose certificate may be or has been revoked, suspended or denied under the provisions of this section shall be afforded a hearing according to the provisions of section 33-1209, Idaho Code.

5. The state board may deny the issuance of a certificate for any reason that would be a ground for revocation or suspension.

Approved March 23, 2004.

CHAPTER 223
(S.B. No. 1353)

AN ACT

RELATING TO DRIVER TRAINING; AMENDING SECTION 33-1702, IDAHO CODE, TO REMOVE LANGUAGE SETTING FORTH ALTERNATIVE REQUIREMENTS FOR DRIVER TRAINING PROGRAMS; AMENDING SECTION 49-2101, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE THAT THE STATE BOARD OF EDUCATION SHALL ADOPT RULES TO PROVIDE STUDENTS WITH DRIVER EDUCATION WHILE STUDENTS ARE ENROLLED IN COMMERCIAL DRIVER TRAINING PROGRAMS; AMENDING SECTION 49-2102, IDAHO CODE, TO REVISE LICENSE APPLICATION REQUIREMENTS, TO SET FORTH STANDARDS FOR COURSES OF INSTRUCTION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 49-2103, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REMOVE LANGUAGE PROVIDING THAT BOARD RULES SHALL INCLUDE REQUIREMENTS CONCERNING PREVIOUS PERSONAL AND EMPLOYMENT RECORDS AND OTHER MATTERS THE BOARD MAY PRESCRIBE FOR PROTECTION OF THE PUBLIC, TO REQUIRE CRIMINAL BACKGROUND CHECKS AND TO PROVIDE THAT A PERSON IS AUTHORIZED TO TEACH IN ANY PRIVATE APPROVED DRIVER TRAINING PROGRAM ONCE HE OR SHE HAS BEEN CERTIFIED AS AN INSTRUCTOR.

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

SECTION 1. That Section 33-1702, Idaho Code, be, and the same is hereby amended to read as follows:

33-1702. MINIMUM STANDARDS FOR COURSES. (1) The state board of education and the transportation department shall cooperate in establishing, and amending as need arises, minimum standards for driver training programs reimbursable hereunder.

(2) Such standards shall require not less than thirty (30) clock hours of classroom instruction, six (6) hours observation time in a driver training car, and six (6) hours behind-the-wheel practice driving; but the state board of education may allow in lieu of not more than three (3) hours of such practice driving, such equivalent thereof in simulated practice driving as the said board may have, by uniform rules, approved. The board shall adopt standards necessary to allow completion of the thirty (30) clock hours of required classroom instruction through an approved correspondence course.

~~(3)--When an approved driver training course is provided by--a--private,--commercial--driver--training school,-the standards for the driver training program as specified in subsection (2) of this section--can--be satisfied if all of the following alternative requirements are met:~~

~~(a)--No more than four (4) students are in a class;-and~~

~~(b)--Not--less--than--thirty-(30)-hours-of-classroom-instruction-are provided;-and~~
~~(c)--Not-less-than-six-(6)-hours-behind-the-wheel--practice--driving are-required;-and~~
~~(d)--Not--less--than-six-(6)-hours-of-observation-time-are-completed with-a-parent-or-legal-guardian.~~

SECTION 2. That Section 49-2101, Idaho Code, be, and the same is hereby amended to read as follows:

49-2101. DUTIES OF THE STATE BOARD OF EDUCATION -- ~~REGULATIONS~~ RULES. (1) The state board of education shall adopt and prescribe ~~regulations~~ rules concerning the administration and enforcement of this chapter as are necessary to ~~protect-the-public.-The-state-board-of--education--shall--inspect-the-school-facilities-and-equipment-of-applicants and-licensees-and-examine-applicants-for-instructor's--licenses~~ provide students with driver education while students are enrolled in a commercial driver training program.

(2) The state board of education shall administer and enforce the provisions of this chapter.

SECTION 3. That Section 49-2102, Idaho Code, be, and the same is hereby amended to read as follows:

49-2102. SCHOOLS -- LICENSE REQUIRED -- CONTENTS OF APPLICATION FOR LICENSE. No commercial driver training school shall be established nor shall any existing school continue to operate, unless the school applies for and obtains from the state board of education a license in ~~a~~ the manner and form prescribed by the state board of education.

The application for license shall include a statement of the location of the school, ~~the-equipment,-courses-of-instruction,-instructors, previous-records-of-the-school-and--instructors,--financial--statements, schedule-of-fees-and-charges,-character-and-reputation-of-the-operators, insurance--and--such--other--matters-as-the-state-board-of-education-may prescribe-for-the-protection-of-the-public~~ a certificate of occupancy, a certificate of automobile insurance, a list of certified instructors, proof of an annual vehicle check, and a course of instruction for teen drivers aged fourteen and one-half (14 1/2) to seventeen (17) years which shall include the following standards:

(1) Not less than thirty (30) hours of classroom instruction;

(2) Not less than six (6) hours of behind-the-wheel practice driving; and

(3) Not less than six (6) hours of observation.

SECTION 4. That Section 49-2103, Idaho Code, be, and the same is hereby amended to read as follows:

49-2103. INSTRUCTORS -- LICENSE REQUIRED -- CONTENTS OF APPLICATION FOR LICENSE -- PUBLIC SCHOOL CONTRACTS. No person shall act as an instructor, unless the person applies for and obtains from the state board of education a license in the manner and form prescribed by the state board of education.

The ~~regulations~~ rules shall state the requirements for an instructor's license, including requirements concerning moral character,

physical condition, knowledge of the courses of instruction, motor vehicle laws and safety principles, ~~previous--personal--and--employment records,-and-other-matters-as-the-state-board-of-education-may-prescribe for-the-protection-of-the-public.-Provided,-however,-that~~ and a criminal background check. ~~T~~the state board of education shall not require the possession of a valid Idaho teaching certificate as a condition for the issuance of an instructor's license.

Any commercial driver training school that contracts with a public school to provide a driver training class at or for a public school may be allowed to use the services of any or all of the certified instructors of that commercial driving school. Once a person has been certified as an instructor, that person is authorized to teach in any approved private driver training program.

Approved March 23, 2004.

CHAPTER 224
(S.B. No. 1373, As Amended)

AN ACT

RELATING TO THE IDAHO EMPLOYER ALCOHOL AND DRUG-FREE WORKPLACE ACT; AMENDING CHAPTER 17, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1717, IDAHO CODE, TO PROVIDE CERTAIN ELIGIBILITY REQUIREMENTS FOR CONTRACTORS RELATING TO STATE CONSTRUCTION CONTRACTS AND TO REQUIRE THAT AFFIDAVITS VERIFYING COMPLIANCE WITH SPECIFIED PROVISIONS BE SUBMITTED WITH BIDS FOR STATE CONSTRUCTION CONTRACTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 17, Title 72, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 72-1717, Idaho Code, and to read as follows:

72-1717. STATE CONSTRUCTION CONTRACTS. (1) In order to be eligible for the award of any state contract for the construction or improvement of any public property or publicly owned buildings, contractors shall meet the following requirements:

(a) Provide a drug-free workplace program that complies with the provisions of this chapter and as otherwise constitutionally permitted for employees, including temporary employees, and maintain such program throughout the duration of the contract;

(b) Subcontract work under state construction contracts only to those subcontractors meeting the requirements of subsection (1)(a) of this section.

(2) Any contractor submitting a bid for a state construction contract, required to comply with the provisions of this section, shall submit an affidavit along with its bid on the project verifying its compliance with the provisions of this section.

SECTION 2. This act shall be in full force and effect on and after January 1, 2005.

Approved March 23, 2004.

CHAPTER 225
(S.B. No. 1391)

AN ACT

RELATING TO MECHANICS AND MATERIALMEN'S LIENS; AMENDING SECTION 45-525, IDAHO CODE, TO PROVIDE THAT THE STATUTE REQUIRING DISCLOSURES BY GENERAL CONTRACTORS TO OWNERS OR PURCHASERS OF RESIDENTIAL PROPERTY SHALL NOT APPLY TO INSTANCES IN WHICH A HOMEOWNER OR THE AGENT OF THE HOMEOWNER INITIATES THE CONTACT WITH THE GENERAL CONTRACTOR FOR PURPOSES OF PROVIDING REPAIRS NECESSARY TO MEET A BONA FIDE EMERGENCY OF THE HOMEOWNER OR TO MAKE NECESSARY REPAIRS TO AN ELECTRICAL, PLUMBING OR WATER SYSTEM OF THE HOMEOWNER; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 45-525, Idaho Code, be, and the same is hereby amended to read as follows:

45-525. GENERAL CONTRACTORS -- RESIDENTIAL PROPERTY -- DISCLOSURES. (1) Legislative intent. This section is intended to protect owners and purchasers of residential real property by requiring that general contractors provide adequate disclosure of potential liens.

(2) General contractor information. Prior to entering into any contract in an amount exceeding two thousand dollars ($2,000) with a homeowner or residential real property purchaser to construct, alter or repair any improvements on residential real property, or with a residential real property purchaser for the purchase and sale of newly constructed property, the general contractor shall provide to the homeowner a disclosure statement setting forth the information specified in this subsection. The statement shall contain an acknowledgment of receipt to be executed by the homeowner or residential real property purchaser. The general contractor shall retain proof of receipt and shall provide a copy to the homeowner or residential real property purchaser. The disclosure shall include the following:

(a) The homeowner or residential real property purchaser shall have the right at the reasonable expense of the homeowner or residential real property purchaser to require that the general contractor obtain lien waivers from any subcontractors providing services or materials to the general contractor;

(b) The homeowner or residential real property purchaser shall have the right to receive from the general contractor proof that the general contractor has a general liability insurance policy including completed operations in effect and proof that the general contractor has worker's compensation insurance for his employees as required by Idaho law;

(c) The homeowner or residential real property purchaser shall be informed of the opportunity to purchase an extended policy of title insurance covering certain unfiled or unrecorded liens; and

(d) The homeowner or residential real property purchaser shall have the right to require, at the homeowner's or residential real property purchaser's expense, a surety bond in an amount up to the value of the construction project.

(3) Subcontractor, materialmen and rental equipment information.

(a) A general contractor shall provide to a prospective residential real property purchaser or homeowner a written disclosure statement, which shall be signed by the general contractor listing the business names, addresses and telephone numbers of all subcontractors, materialmen and rental equipment providers having a direct contractual relationship with the general contractor and who have supplied materials or performed work on the residential property of a value in excess of five hundred dollars ($500). A general contractor is not required under this subsection to disclose subcontractors, materialmen or rental equipment providers not directly hired by or directly working for the general contractor. Such information shall be provided within a reasonable time prior to:

(i) The closing on any purchase and sales agreement with a prospective residential real property purchaser; or

(ii) The final payment to the general contractor by a homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.

(b) All subcontractors, materialmen and rental equipment providers listed in the disclosure statement are authorized to disclose balances owed to the prospective real property purchasers or homeowners and to the agents of such purchasers or homeowners.

(c) The general contractor shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this section if the error, inaccuracy or omission was not within the personal knowledge of the general contractor.

(4) Failure to disclose. Failure to provide complete disclosures as required by this section to the homeowner or prospective residential real property purchaser shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(5) Definitions. For purposes of this section:

(a) "General contractor" means a person who enters into an agreement in excess of two thousand dollars ($2,000) with:

(i) A homeowner or prospective residential real property purchaser for the construction, alteration or repair of residential real property; or

(ii) A prospective residential real property purchaser for the purchase and sale of newly constructed property.

The term "general contractor" does not include subcontractors, materialmen or rental equipment providers who do not have a direct contractual relationship with the homeowner or residential real property purchaser.

(b) "Residential real property" shall include owner and nonowner occupied real property consisting of not less than one (1) nor more than four (4) dwelling units.

(6) This section shall not apply to instances in which a homeowner or the agent of the homeowner initiates the contact with the general contractor for purposes of providing repairs necessary to meet a bona fide emergency of the homeowner or to make necessary repairs to an electrical, plumbing or water system of the homeowner.

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

Approved March 23, 2004.

CHAPTER 226
(S.B. No. 1409)

AN ACT
APPROPRIATING MONEYS TO THE SECRETARY OF STATE FOR FISCAL YEAR 2005; 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, 2004, through June 30, 2005:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General Fund	$1,665,400	$579,200	$5,000	$60,000	$2,309,600
II. COMMISSION ON UNIFORM LAWS:					
FROM:					
General Fund		$ 28,600			$ 28,600
GRAND TOTAL	$1,665,400	$607,800	$5,000	$60,000	$2,338,200

SECTION 2. 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, 2004, through June 30, 2005, 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 23, 2004.

CHAPTER 227
(S.B. No. 1416)

AN ACT
RELATING TO DRUG COURT PROGRAMS; AMENDING SECTION 6-904A, IDAHO CODE, TO PROVIDE FOR IMMUNITY UNDER THE TORT CLAIMS ACT UNDER CERTAIN CIRCUMSTANCES FOR A GOVERNMENTAL ENTITY OR EMPLOYEES FROM A CLAIM ARISING

FROM AN INJURY TO A PERSON OR PROPERTY WHEN THE PERSON IS BEING SUPERVISED AS PART OF COURT IMPOSED DRUG COURT PROGRAM; AMENDING SECTION 20-227, IDAHO CODE, TO PROVIDE FOR AN ARREST WITHOUT WARRANT FOR PERSONS UNDER DRUG COURT SUPERVISION UNDER CERTAIN CIRCUMSTANCES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 6-904A, Idaho Code, be, and the same is hereby amended to read as follows:

6-904A. EXCEPTIONS TO GOVERNMENTAL LIABILITY. A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, shall not be liable for any claim which:

1. Arises out of the assessment or collection of any tax or fee.

2. Arises out of injury to a person or property by a person under supervision, custody or care of a governmental entity or by or to a person who is on probation, or parole, or who is being supervised as part of a court imposed drug court program, or any work-release program, or by or to a person receiving services from a mental health center, hospital or similar facility.

SECTION 2. That Section 20-227, Idaho Code, be, and the same is hereby amended to read as follows:

20-227. ARREST OF PAROLEE, ~~OR~~ PROBATIONER OR PERSON UNDER DRUG COURT SUPERVISION WITHOUT WARRANT -- AGENT'S WARRANT -- DETENTION -- REPORT TO COMMISSION OR COURT. (1) Any parole or probation officer may arrest a parolee, ~~or~~ probationer, or person under drug court supervision without a warrant, or may deputize any other officer with power of arrest to do so, by giving such officer a written statement hereafter referred to as an agent's warrant, setting forth that the parolee, ~~or~~ probationer, or person under drug court supervision has, in the judgment of said parole or probation officer, violated the conditions of drug court or conditions of his parole or probation.

(2) Such written statement or agent's warrant, delivered with the parolee, ~~or~~ probationer, or person under drug court supervision by the arresting officer to the official in charge of the institution from which the parolee was released, the county jail or other place of detention, shall be sufficient warrant for the detention of the probationer, ~~or~~ parolee, or person under drug court supervision.

(3) The agent's warrant issued by the parole or probation officer shall be sufficient authorization for a local law enforcement officer to transport the probationer, ~~or~~ parolee, or person under drug court supervision to the appropriate jurisdiction to be housed pending appearance before the sentencing court or the commission.

(4) The parole and probation officer shall at once notify the commission, or the court, of the arrest and detention of the parolee, ~~or~~ probationer, or person under drug court supervision, and shall submit in writing a report showing in what manner the parolee, ~~or~~ probationer, or person under drug court supervision is alleged to have violated the condition of his or her parole, ~~or~~ probation, or drug court program.

(5) In counties where there are misdemeanor probation officers in addition to department of correction parole or probation officers, those officers shall have the same authority conferred upon department of correction parole or probation officers in this section, to arrest a misdemeanor probationer without a warrant for misdemeanor probation violations occurring in the officer's presence as otherwise provided in this section.

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

Approved March 23, 2004.

CHAPTER 228
(S.B. No. 1418)

AN ACT

RELATING TO THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING SECTION 56-1021, IDAHO CODE, TO REVISE THE DEFINITIONS OF "DO NOT RESUSCITATE PROTOCOL" AND "HEALTH CARE PROVIDER"; AMENDING SECTION 56-1026, IDAHO CODE, TO PROVIDE THAT EMERGENCY MEDICAL SERVICES PERSONNEL SHALL COMPLY WITH DNR PROTOCOL WHEN PRESENTED WITH EITHER DNR IDENTIFICATION OR, UPON TRANSFER, A WRITTEN DNR ORDER ISSUED DIRECTLY BY THE ATTENDING PHYSICIAN AND SHALL PROVIDE COMFORT CARE TO THE PERSON; AND AMENDING SECTION 56-1035, IDAHO CODE, TO REVISE THE DEPARTMENT'S RULEMAKING AUTHORITY AS IT PERTAINS TO EMERGENCY MEDICAL SERVICES PERSONNEL.

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

SECTION 1. That Section 56-1021, Idaho Code, be, and the same is hereby amended to read as follows:

56-1021. DEFINITIONS. As used in sections 56-1020 through 56-1035, Idaho Code:

(1) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient, including the physician responsible for monitoring and directing the activities of emergency medical services personnel.

(2) "Cardiopulmonary resuscitation" or "CPR" means measures to restore cardiac function or to support breathing in the event of cardiac or respiratory arrest or malfunction. "CPR" includes, but is not limited to, chest compression, delivering electric shock to the chest, or placing tubes in the airway to assist breathing.

(3) "Comfort care" means treatment given in an attempt to protect and enhance quality of life without artificially prolonging that life.

(4) "Decisional capacity" means the ability to provide informed consent to or refusal of medical treatment.

(5) "Department" means the department of health and welfare.

(6) "Do not resuscitate identification" or "DNR identification" means a standardized form of identification approved by the department,

that signifies that the possessor has a DNR order that has not been revoked or that the possessor's attending physician has issued a DNR order for the possessor and has documented the order in the possessor's medical file.

(7) "Do not resuscitate order" or "DNR order" means a documented directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(8) "Do not resuscitate protocol" or "DNR protocol" means a standardized method ~~of~~ or procedure~~, approved by the board of health and welfare and adopted in the rules of the department,~~ for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(9) "Emergency medical services personnel" means the personnel of a service engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians, advanced emergency medical technicians, and paramedics.

(10) "Health care provider" or "provider" means any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency and other medical personnel.

(11) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(12) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

SECTION 2. That Section 56-1026, Idaho Code, be, and the same is hereby amended to read as follows:

56-1026. ADHERENCE TO DNR PROTOCOL. (1) Emergency medical services personnel shall comply with ~~the~~ DNR protocol when presented with either DNR identification, or, upon transfer, a written DNR order issued directly by the attending physician and shall provide comfort care to the person.

(2) An attending physician shall take all reasonable steps to comply with the intent of the DNR identification.

SECTION 3. That Section 56-1035, Idaho Code, be, and the same is hereby amended to read as follows:

56-1035. RULEMAKING AUTHORITY. (1) The department shall adopt only those rules necessary to administer the provisions of sections 56-1020 through 56-1035, Idaho Code, ~~including appropriate protocols~~ as utilized by emergency medical services personnel.

(2) ~~Upon the adoption of a DNR protocol, t~~The department shall adopt a standard form of DNR identification to be used by emergency medical services personnel statewide.

Approved March 23, 2004.