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STATE OF IDAHO

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CHAPTER 261
(H.B. No. 168)

AN ACT
RELATING TO JUVENILE CORRECTIONS; AMENDING SECTION 20-504, IDAHO CODE, TO CLARIFY THE AUTHORITY OF THE DEPARTMENT IN THE EVENT THE COURT COMMITS THE JUVENILE TO THE CUSTODY OF THE DEPARTMENT OF JUVENILE CORRECTIONS.

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

SECTION 1. That Section 20-504, Idaho Code, be, and the same is hereby amended to read as follows:

20-504. DUTIES OF THE DEPARTMENT OF JUVENILE CORRECTIONS. (1) The department shall have jurisdiction over all juveniles committed to it pursuant to chapter 5, title 20, Idaho Code.

(2) The department is responsible for all juvenile offenders committed to it by the courts of this state for confinement. The department shall also establish minimum standards for detention, care and certification of approved detention facilities based upon such standards.

(3) The department shall establish and administer all secure residential facilities including the state juvenile corrections center.

(4) The department shall make all decisions regarding placement of juvenile offenders committed to it in the most appropriate program for supervision and treatment.

(5) The department shall establish an observation and assessment process for juvenile offenders committed to it by a court.

(6) The department shall establish liaison services with the counties.

(7) The department may establish and operate work programs designed to employ juvenile offenders in public service work projects for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

(8) The department is hereby authorized and may place juveniles committed to it pursuant to this chapter on a ranch, in a forestry camp or similar facility for care and for work, if possible; provided, that person, agency or association operating the facility has been approved and has otherwise complied with all applicable state and local laws. A juvenile placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads and on other works on or off the grounds of such facility and may be paid wages.

(9) The department shall establish minimum standards for the operation of all private residential and nonresidential facilities and programs which provide services to juvenile offenders. The standards shall be no more stringent than standards imposed for facilities operated by the department or for detention facilities operated by counties.

(10) The department shall assist counties in establishing meaningful programs for juveniles who either have been found to come under

the purview of this chapter or who have had their case informally diverted pursuant to section 20-511, Idaho Code, and who have not been committed to the legal custody of the department.

(11) The department shall have authority to adopt such administrative rules pursuant to the procedures provided in chapter 52, title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of this act.

(12) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with a private association or organization or other public agency or organization for the inspection and licensure of detention facilities.

(13) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with private providers or local governmental agencies for the confinement or other permanent or temporary placement of juveniles committed to its custody.

(14) The department shall have authority to apply for, receive and expend federal funds, subject to appropriation by the legislature. The department shall have authority to establish guidelines for and administer the distribution of state block grant funds to counties for the employment and training of county probation officers, the establishment of secure and nonsecure residential or nonresidential facilities and programs for juvenile offenders. The department may require that a county provide matching funds as a condition of receiving a block grant. The department, by rule, in cooperation with the courts and the counties, shall establish uniform standards, criteria and operating procedures for county juvenile probation services, as well as qualifications for and standards for the training of juvenile probation officers.

(15) All of the powers and duties imposed upon or granted to the director of the department of health and welfare or the board of health and welfare pursuant to chapter 18, title 16, Idaho Code, are hereby transferred to the director of the department of juvenile corrections. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law with respect to chapter 18, title 16, Idaho Code, and shall be the successor in law to all contractual obligations entered into by his predecessor in law.

Approved March 20, 1997.

CHAPTER 262
(H.B. No. 169)

AN ACT

RELATING TO JUVENILE CORRECTIONS; AMENDING SECTION 20-520, IDAHO CODE, TO CLARIFY THE AUTHORITY OF THE COURT IN THE EVENT THE COURT COMMITS THE JUVENILE TO THE CUSTODY OF THE DEPARTMENT OF JUVENILE CORRECTIONS, TO DELETE REVIEW REQUIREMENTS AND TO MAKE TECHNICAL

CORRECTIONS.

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

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

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

(a) Place the juvenile on formal probation for a period not to exceed three (3) years from the date of the order;

(b) Commit the juvenile to a period of detention, pursuant to this act, for a period of time not to exceed ninety (90) days for each unlawful or criminal act the juvenile is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by an adult, or where the juvenile has been adjudicated as an habitual status offender;

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

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

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

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

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

(~~h~~g) The court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he receive other special care, or that he submit to an alcohol or drug evaluation, if needed, and for such purposes may place the juvenile in a hospital or other suitable facility;
(~~i~~h) In support of an order under the provisions of this section, the court may make an additional order setting forth reasonable conditions to be complied with by the parents, the juvenile, his legal guardian or custodian, or any other person who has been made a party to the proceedings, including, but not limited to, restrictions on visitation by the parents or one (1) parent, restrictions on the juvenile's associates, occupation and other activities, and requirements to be observed by the parents, guardian or custodian;
(~~j~~i) The court may make any other reasonable order which is in the best interest of the juvenile or is required for the protection of the public, except that no person under the age of eighteen (18) years may be committed to jail, prison or a secure facility which does not meet the standards set forth in section 20-518, Idaho Code, unless jurisdiction over the individual is in the process of being waived or has been waived pursuant to section 20-508 or 20-509, Idaho Code. The court may combine several of the above-listed modes of disposition where they are compatible;
(~~k~~j) An order under the provisions of this section for probation or placement of a juvenile with an individual or an agency may provide a schedule for review of the case by the court;
(~~l~~k) Order the proceeding expanded or altered to include consideration of the cause pursuant to chapter 16, title 16, Idaho Code;
(~~m~~l) Order the case and all documents and records connected therewith transferred to the magistrate division of the district court for the county where the juvenile and/or parents reside if different ~~thanthe~~ than the county where the juvenile was charged and found to have committed the unlawful or criminal act, for the entry of a dispositional order;
(~~n~~m) Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the juvenile and the community;
(~~o~~n) The court shall assess a ten dollar ($10.00) charge against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter. All moneys raised pursuant to this subsection shall be transmitted by the court for deposit in the juvenile corrections account which is created in section 20-542, Idaho Code~~.~~;
(~~p~~o) Additionally, the court shall assess a fee of sixty cents (60¢) per hour of community service against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter and the court is ordering community service. Such fee is to be remitted by the court to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service pursuant to this chapter~~.~~;
(p) Commit the juvenile to the legal custody of the department of juvenile corrections for an indeterminate period of time not to

exceed the juvenile's twenty-first birthday, unless extended jurisdiction is necessary to complete the competency development and accountability goals of the department;

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

(2) When an order is entered pursuant to this section, the juvenile shall be transported to the facility or program so designated by the court or the department, as applicable, by the sheriff of the county where the juvenile resides or is committed, or by an appointed agent. ~~Any--order--of-commitment-to-the-department-to-a-program-other than-a-secure-facility-shall-be-subject-to-review-at-least-once--every six--(6)--months.~~ When committing a juvenile to the department, or another entity, the court shall at once forward to the department or entity a certified copy of the order of commitment.

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

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

Approved March 20, 1997.

CHAPTER 263
(H.B. No. 177, As Amended)

AN ACT

RELATING TO LICENSES TO RETAIL LIQUOR; AMENDING SECTION 23-903, IDAHO CODE, TO PROVIDE THAT NOTHING IN THE CHAPTER SHALL PROHIBIT THE ISSUANCE OF A RETAIL LIQUOR LICENSE TO OWNERS, OPERATORS, OR LESSEES OF FOOD, BEVERAGE OR LODGING FACILITIES IN STRUCTURES MEETING CERTAIN AGE AND LOCATION REQUIREMENTS.

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 department of law enforcement 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 <u>reconstruction, or a food, beverage and lodging</u>

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.

The provisions of section 23-910, Idaho Code, shall apply to licenses issued under the provisions of this subsection. 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 are not transferable.

Approved March 20, 1997.

CHAPTER 264
(H.B. No. 188)

AN ACT

RELATING TO THE PARENT RESPONSIBILITY ACT; AMENDING SECTION 32-1301, IDAHO CODE, TO PROVIDE FOR APPLICATION OF AN ORDINANCE ESTABLISHING THE OFFENSE OF FAILURE TO SUPERVISE A CHILD IF THE CHILD IS TRIED AS AN ADULT UNDER THE PROVISIONS OF THE JUVENILE CORRECTIONS ACT, TO PROVIDE FOR ISSUANCE OF A CITATION OR SUMMONS, TO PROVIDE FOR A WARNING ON THE FIRST OFFENSE BY SERVICE OF A COPY OF THE ORDINANCE, TO PROVIDE FOR MISDEMEANOR PENALTIES UPON A FIRST OR SUBSEQUENT CONVICTION OF THE OFFENSE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 32-1301, Idaho Code, be, and the same is

hereby amended to read as follows:

32-1301. CITIES AND COUNTIES MAY ENACT AND ENFORCE ORDINANCES FOR FAILURE TO SUPERVISE A CHILD. (1) Any county or city may by ordinance establish and enforce the offense of failure to supervise a child as provided in this section.

(2) The ordinance may provide that a person who is the parent, lawful guardian or other person, except a foster parent, lawfully charged with the care or custody of a child under sixteen (16) years of age commits the offense of failure to supervise a child if the child:

(a) Commits an act bringing the child within the purview of the juvenile corrections act, chapter 5, title 20, Idaho Code, or commits a crime for which the child is required to be tried as an adult, or for which jurisdiction under the juvenile corrections act is subject to waiver pursuant to chapter 5, title 20, Idaho Code; or

(b) Fails to attend school or is not comparably instructed, as provided in section 33-202, Idaho Code; or

(c) Violates a curfew law of the county or city enacting the ordinance authorized under this section.

(3) (a) A person shall not be subject to prosecution under an ordinance containing the provisions of subsection (2)(a) of this section if the person:

(i) Is the victim of the act bringing the child within the purview of the provisions of chapter 5, title 20, Idaho Code; or

(ii) Reported the act of the child to the local law enforcement agency, the juvenile court, the department of health and welfare or other appropriate authority as provided in the ordinance;

(b) A person shall not be subject to prosecution under an ordinance containing the provisions of subsections (2)(a), (b) or (c) of this section if the person shows to the satisfaction of the court that the person took reasonable steps to control the conduct of the child at the time the person is alleged to have failed to supervise the child.

(4) Except as provided in subsection (5) of this section, the ordinance may provide that in a prosecution for failure to supervise a child the court may order the person to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code, provided that the restitution ordered to be paid shall not exceed twenty-five hundred dollars ($2,500).

(5) The ordinance may provide that when a child commits any of the acts set forth in subsection (2) of this section, the parent, lawful guardian or other person lawfully charged with the care or custody of the child may be charged, by citation or summons, with the offense of failure to supervise a child, unless the person with lawful custody is a foster parent. Upon a first offense, the officer may serve a copy of the ordinance upon the parent, lawful guardian or other person, other than a foster parent, as a warning of the penalties. This

service shall be documented by the officer.

(6) An ordinance enacted pursuant to this section shall provide that if a person is found guilty or pleads guilty to the offense of failure to supervise a child, ~~and the person has not previously been found guilty or pled guilty to the offense of failure to supervise a child, the court:~~

~~(a) Shall warn the person of the penalty for any future conviction of failure to supervise a child and suspend the imposition of sentence;~~

~~(b) Shall not order the person to pay restitution.~~

~~(6) (a) The ordinance enacted pursuant to this section shall further provide that if the person is found guilty or pleads guilty to a second offense of failure to supervise a child and if the person has previously been found guilty or has pled guilty to the offense of failure to supervise a child,~~ the person shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars ($1,000). The ordinance may provide that, in lieu of imposing a fine, the court, with the consent of the person, may order the person to complete parenting classes or undertake other treatment or counseling, as approved by the court, and upon the person's completion of the classes, treatment or counseling to the satisfaction of the court, the court may discharge the person or if the person fails to complete the program to the satisfaction of the court, the court may impose the penalty provided in this section.

~~(b)~~ The ordinance may provide that any person violating the orders of the court entered under the ordinance shall be subject to contempt proceedings in accordance with chapter 6, title 7, Idaho Code, in addition to any other penalties authorized pursuant to this section.

(7) The ordinance may provide that the juvenile court has jurisdiction over a first offense of failing to supervise a child and that any subsequent offense shall be subject to the jurisdiction of the magistrate's division of the district court, or may provide that any offense of failing to supervise the child shall be subject to the jurisdiction of the juvenile court or to the jurisdiction of the magistrate's division of the district court.

(8) Conviction of a person under an ordinance enacted under the authority of this section shall not preclude any other action or proceedings against the person which may be undertaken pursuant to the provisions of chapter 5, title 20, Idaho Code, or other provisions of law.

Approved March 20, 1997.

CHAPTER 265
(H.B. No. 190)

AN ACT

RELATING TO JUVENILE CORRECTIONS; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-548, IDAHO CODE, TO PRO-

VIDE THAT JUVENILES COMMITTED TO THE DEPARTMENT OF JUVENILE CORRECTIONS AND COMPENSATED FOR WORK WHILE UNDER THE DEPARTMENT'S JURISDICTION ARE NOT STATE EMPLOYEES AND TO EXEMPT THEM FROM PROVISIONS OF THE WORKER'S COMPENSATION LAW.

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

SECTION 1. That Chapter 5, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-548, Idaho Code, and to read as follows:

20-548. COMPENSATION -- AMOUNT -- CREDITING ACCOUNT OF JUVENILE -- JUVENILES NOT EMPLOYEES. Each juvenile who is engaged in productive work under the jurisdiction of the director of the department of juvenile corrections may receive for this work such compensation as the director shall determine, to be paid out of any funds available in the department of juvenile corrections competency development account. After payment of restitution pursuant to section 20-538, Idaho Code, compensation shall be credited to the account of the juvenile to be used for payment of fines, reimbursement to the department of juvenile corrections for expenses directly related to that juvenile, and upon certain circumstances, payment to the juvenile upon release from the department of juvenile corrections.

No juvenile compensated under this act shall be considered an employee of the state or the department of juvenile corrections, nor shall any juvenile come within any of the provisions of the worker's compensation law, or be entitled to any benefits thereunder whether on behalf of himself or any other person.

Approved March 20, 1997.

CHAPTER 266
(H.B. No. 265, As Amended)

AN ACT

RELATING TO INITIATIVES AND REFERENDUMS; AMENDING SECTION 34-1801, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 18, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-1801, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE INTENT AND PURPOSE; AMENDING SECTION 34-1802, IDAHO CODE, TO REVISE THE TIME FOR GATHERING SIGNATURES AND TO REVISE THE TIME FOR SUBMISSION OF SIGNATURES TO THE COUNTY CLERK FOR INITIATIVE PETITIONS; AMENDING CHAPTER 18, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-1803B, IDAHO CODE, TO PROVIDE A PROCEDURE FOR REMOVAL OF SIGNATURES FROM INITIATIVE AND REFERENDUM PETITIONS; AMENDING SECTION 34-1805, IDAHO CODE, TO REVISE THE FORMULA FOR THE NUMBER OF SIGNATURES REQUIRED, TO PROVIDE THAT SIGNATURES MUST ALSO COME FROM AT LEAST TWENTY-TWO COUNTIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-1807, IDAHO CODE, TO PROVIDE THAT ANY PERSON WHO CIRCULATES ANY PETITION FOR AN INI-

TIATIVE OR REFERENDUM SHALL BE A QUALIFIED ELECTOR OF THE STATE OF IDAHO, TO DELETE LANGUAGE REGARDING RETENTION OF PETITIONS BY COUNTY CLERKS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-1809, IDAHO CODE, TO PROVIDE PROCEDURES FOR JUDICIAL REVIEW; AMENDING SECTION 34-1814, IDAHO CODE, TO PROVIDE THE EFFECT OF AND PENALTIES FOR FORGED SIGNATURES ON PETITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 18, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-1814A, IDAHO CODE, TO PROVIDE FOR NOTIFICATION WHEN PETITION CIRCULATORS RECEIVE COMPENSATION OR WHEN PETITION CIRCULATORS ARE VOLUNTEERS; AMENDING SECTION 34-1815, IDAHO CODE, TO PROVIDE THE EFFECT OF SPOKEN OR WRITTEN FALSE STATEMENTS, TO REQUIRE THAT BOTH THE SHORT TITLE AND THE GENERAL TITLE BE SHOWN TO SIGNERS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 18, TITLE 34, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 34-1823, IDAHO CODE, TO PROVIDE SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE AND TO PROVIDE APPLICATION.

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

SECTION 1. That Section 34-1801, Idaho Code, be, and the same is hereby amended to read as follows:

34-1801A. PETITION. The following shall be substantially the form of petition for any law proposed by the initiative:

WARNING

It is a felony for ~~any-one~~ anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable ...., Secretary of State of the State of Idaho:
"We, the undersigned citizens and qualified electors of the State of Idaho, respectfully demand that the following proposed law, to-wit: (setting out full text of measure proposed) shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular general election, to be held on the .... day of ...., A.D., ~~19..~~...., and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and ~~postoffice~~ post office are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City or Post Office

(Here follow twenty numbered lines for signatures.)

The petition for referendum on any act passed by the state legislature of the state of Idaho shall be in substantially the same form with appropriate title and changes, setting out in full the text of the act of the legislature to be referred to the people for their approval or rejection.

SECTION 2. That Chapter 18, 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 34-1801, Idaho Code, and to read as follows:

34-1801. STATEMENT OF LEGISLATIVE INTENT AND LEGISLATIVE PURPOSE. The legislature of the state of Idaho finds that there have been incidents of fraudulent and misleading practices in soliciting and obtaining signatures on initiative or referendum petitions, or both, that false signatures have been placed upon initiative or referendum petitions, or both, that difficulties have arisen in determining the identity of petition circulators and that substantial danger exists that such unlawful practices will or may continue in the future. In order to prevent and deter such behavior, the legislature determines that it is necessary to provide easy identity to the public of those persons who solicit or obtain signatures on initiative or referendum petitions, or both, and of those persons for whom they are soliciting and obtaining signatures and to inform the public concerning the solicitation and obtaining of such signatures. It is the purpose of the legislature in enacting this act to fulfill the foregoing statement of intent and remedy the foregoing practices.

SECTION 3. That Section 34-1802, Idaho Code, be, and the same is hereby amended to read as follows:

34-1802. INITIATIVE PETITIONS -- TIME FOR GATHERING SIGNATURES -- TIME FOR SUBMISSION OF SIGNATURES TO THE COUNTY CLERK -- TIME FOR FILING. (1) Except as provided in section 34-1804, Idaho Code, petitions for an initiative shall be circulated and signatures obtained beginning upon the date that the petitioners receive the official ballot title from the secretary of state and extending eighteen (18) months from that date or April 30 of the year that an election on the initiative will be held, whichever occurs earlier. The last day for circulating petitions and obtaining signatures shall be the last day of April in the year an election on the initiative will be held.

(2) The person or persons or organization or organizations under whose authority the measure is to be initiated shall submit the petitions containing signatures to the county clerk for verification pursuant to the provisions of section 34-1807, Idaho Code. The signatures required shall be submitted to the county clerk not later than the close of business on the first day of May in the year an election on the initiative will be held, or eighteen (18) months from the date the petitioner receives the official ballot title from the secretary of state, whichever is earlier.

(3) The county clerk shall, within sixty (60) calendar days of the deadline for the submission of the signatures, verify the signatures contained in the petitions, but in no event shall the time extend beyond the last day of June in the year an election on the initiative will be held.

(4) Initiative petitions with the requisite number of signatures attached shall be filed with the secretary of state not less than four (4) months before the election at which they are to be voted upon.

SECTION 4. That Chapter 18, 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 34-1803B, Idaho Code, and to read as follows:

34-1803B. INITIATIVE AND REFERENDUM PETITIONS -- REMOVAL OF SIGNATURES. (1) The signer of any initiative or referendum petition may remove his or her own name from the petition by crossing out, obliterating or otherwise defacing his or her own signature at any time prior to the time when the petition is presented to the county clerk for signature verification.

(2) The signer of any initiative or referendum petition may have his or her name removed from the petition at any time after presentation of the petition to the county clerk but prior to verification of the signature, by presenting or submitting to the county clerk 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 county clerk shall immediately strike the signer's name from the petition, and adjust the total of certified signatures on the petition accordingly. The statement shall be attached to, and become a part of the initiative or referendum petition.

SECTION 5. That Section 34-1805, Idaho Code, be, and the same is hereby amended to read as follows:

34-1805. SPONSORS TO PRINT PETITION -- NUMBER OF SIGNERS REQUIRED. After the form of the initiative or referendum petition has been approved by the secretary of state as in sections 34-1801A-- through 34-1822, Idaho Code, provided, the same shall be printed by the person or persons or organization or organizations under whose authority the measure is to be referred or initiated and circulated in the several counties of the state for the signatures of legal voters. Before such petitions shall be entitled to final filing and consideration by the secretary of state there shall be affixed thereto the signatures of legal voters equal in number to not less than ~~ten per cent~~ six percent (~~10~~6%) of the qualified electors of the state ~~based upon the aggregate vote cast for governor at the general election next preceding--the filing of such initiative or referendum petition~~ at the time of the last general election. Provided, that the petition must contain a number of signatures of qualified electors from each of twenty-two (22) counties equal to not less than six percent (6%) of the qualified electors at the time of the last general election in each of those twenty-two (22) counties.

SECTION 6. That Section 34-1807, Idaho Code, be, and the same is hereby amended to read as follows:

34-1807. CIRCULATION OF PETITIONS BY QUALIFIED ELECTORS -- VERIFICATION OF PETITION AND SIGNATURE SHEETS -- COMPARISON OF SIGNATURES WITH REGISTRATION OATHS AND RECORDS -- CERTAIN PETITIONS AND SIGNATURES VOID. Any person who circulates any petition for an initiative or referendum shall be a qualified elector of the state of Idaho. Each and every sheet of every such petition containing signatures shall be verified on the face thereof in substantially the following form, by

the person who circulated said sheet of said petition, by his or her affidavit thereon, and as a part thereof:

State of Idaho,

ss.

County of ....

I, ..., being first duly sworn, say: That I am a qualified elector of the State of Idaho: 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, post-office address and residence correctly, that each signer is a qualified elector of the State of Idaho, and a resident of the county of ....

Signed....

Post-office address ....

Subscribed and sworn to before me this .... day of .... ~~19~~....

(Notary Seal) Notary Public....

Residing at ....

In addition to said affidavit the county clerk shall carefully examine said petitions and shall attach to the signature sheets a certificate to the secretary of state substantially as follows:

State of Idaho

ss.

County of .....

To the honorable ...., Secretary of State for the State of Idaho: I, ..., County Clerk of .... County, hereby certify that .... signatures on this petition are those of qualified electors.

~~(~~Signed~~)~~ ....

County Clerk or Deputy.

(Seal of office)

The county clerk ~~shall not retain in his possession any such petition or any part thereof for a longer period than two (2) working days for the first 200 signatures thereon, and one (1) additional working day for each 200 additional signatures or fractions thereof, on the sheets presented to him, and at the expiration of such time he~~ shall deliver the ~~same~~ petition or any part thereof to the person from whom he received it with his certificate attached thereto as above provided. The forms herein given are not mandatory and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical error.

Any petition upon which signatures are obtained by a person not a qualified elector of the state of Idaho shall be void.

SECTION 7. That Section 34-1809, Idaho Code, be, and the same is hereby amended to read as follows:

34-1809. REVIEW OF INITIATIVE AND REFERENDUM MEASURES BY ATTORNEY GENERAL -- CERTIFICATE OF REVIEW PREREQUISITE TO ASSIGNMENT OF BALLOT TITLE -- BALLOT TITLE -- JUDICIAL REVIEW. After receiving a copy of the petition from the secretary of state as provided in section 34-1804, Idaho Code, the attorney general may confer with the petitioner and shall, within twenty (20) working days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate. The recommenda-

tions of the attorney general shall be advisory only and the petitioner may accept or reject them in whole or in part. The attorney general shall issue a certificate of review to the secretary of state certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the petitioner, and such certificate shall be issued whether or not the petitioner accepts such recommendations. The certificate of review shall be available for public inspection in the office of the secretary of state. Within fifteen (15) working days after the issuance of the certificate of review, the petitioner, if he desires to proceed with his sponsorship, shall file the measure, as herein provided, with the secretary of state for assignment of a ballot title and the secretary of state shall thereupon submit to the attorney general two (2) copies of the measure filed. Within ten (10) working days after receiving said copies the attorney general shall provide a ballot title therefor and return one of said copies to the secretary of state, together with the ballot title so prepared by him. A copy of the ballot title as prepared by the attorney general shall be furnished by the secretary of state with his approved form of any initiative or referendum petition, as provided herein, to the person or persons or organization or organizations under whose authority the measure is initiated or referred. Said ballot title shall be used and printed on the covers of the petition when in circulation; the short title shall be printed in type not less than twenty (20) points on the covers of all such petitions circulated for signatures. The ballot title shall contain: (1) Distinctive short title in not exceeding twenty (20) words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition. (2) A general title expressing in not more than two hundred (200) words the purpose of the measure. The ballot title shall be printed with the numbers of the measure on the official ballot. In making such ballot title the attorney general shall to the best of his ability give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure. Any person who is dissatisfied with the ballot title or the short title provided by the attorney general for any measure, may appeal from his decision to the Supreme Court by petition, praying for a different title and setting forth the reason why the title prepared by the attorney general is insufficient or unfair. No appeal shall be allowed from the decision of the attorney general on a ballot title unless the same is taken within twenty (20) days after said ballot title is filed in the office of the secretary of state; provided however, that this section shall not prevent any later judicial proceeding to determine the sufficiency of such title, nor shall it prevent any judicial decision upon the sufficiency of such title. A copy of every such ballot title shall be served by the secretary of state upon the person offering or filing such initiative or referendum petition, or appeal. The service of such decision may be by mail or telegraph and shall be made forthwith when it is received from the attorney general by the secretary of state. Said Supreme Court shall thereupon examine said measure, hear argument, and in its decision thereon certify to the secretary of state a ballot title and a short

title for the measure in accord with the intent of this section. The secretary of state shall print on the official ballot the title thus certified to him. Any qualified elector of the state of Idaho may, at any time after the attorney general has issued a certificate of review, bring an action in the Supreme Court to determine the constitutionality of any initiative.

SECTION 8. That Section 34-1814, Idaho Code, be, and the same is hereby amended to read as follows:

34-1814. WHO MAY SIGN PETITION -- EFFECT OF WRONGFUL SIGNING -- PENALTY FOR WRONGFUL SIGNING. Every person who is a qualified elector of the state of Idaho may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person wilfully violating any provision of this statute, shall, upon conviction thereof be punished by a fine not exceeding five thousand dollars ($5,000~~.00~~) or by imprisonment in the penitentiary not exceeding two (2) years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had. Any such wrongful signatures are null and void and shall not be counted as a qualified signature. Any person circulating a petition, who knows, or who in the exercise of reasonable care should know, that a signature is forged and who shall thereafter fail to strike through and thereby void such signature, and any person in a position of supervision of such person who suffers or permits a forged signature to remain on a petition shall pay a fine of not less than one thousand dollars ($1,000) for each such signature.

SECTION 9. That Chapter 18, 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 34-1814A, Idaho Code, and to read as follows:

34-1814A. PETITION CIRCULATORS RECEIVING COMPENSATION AND VOLUNTEERS. (1) It shall be unlawful for any person to solicit or to obtain signatures on a petition for an initiative or a referendum by employing or contracting with persons or for any person to employ or utilize the services of another person for hire or pursuant to contract to solicit or obtain signatures on a petition for an initiative or a referendum unless the initiative or referendum has the following on it in bold red type: "THIS INITIATIVE (OR REFERENDUM as the case may be) PETITION IS BEING CIRCULATED BY A PAID SIGNATURE GATHERER. THE SIGNATURE GATHERER IS EMPLOYED BY OR HAS CONTRACTED WITH ....., THE MAIN OFFICE OR HEADQUARTERS OF WHICH IS LOCATED AT (city and state)."

(2) If a person soliciting or obtaining signatures on a petition for an initiative or a referendum is a volunteer and receives no compensation for the soliciting or obtaining signatures on the petition, the petition for the initiative or referendum shall have the following on it in bold red type: "THIS INITIATIVE (OR REFERENDUM as the case

may be) PETITION IS BEING CIRCULATED BY AN UNPAID VOLUNTEER."

SECTION 10. That Section 34-1815, Idaho Code, be, and the same is hereby amended to read as follows:

34-1815. FALSE STATEMENTS SPOKEN OR WRITTEN CONCERNING PETITION UNLAWFUL -- FAILURE TO DISCLOSE MATERIAL PROVISIONS. It shall be unlawful for any person to wilfully or knowingly circulate, publish or exhibit any false statement or representation, whether spoken or written, or to fail to disclose any material provision in a petition, concerning the contents, purport or effect of any petition mentioned in sections 34-1801A-- through 34-1822, Idaho Code, for the purpose of obtaining any signature to any such petition, or for the purpose of persuading any person to sign any such petition. It shall be unlawful for any person to solicit or obtain any signature on a petition without first showing the signer both the short title and the general title as defined in section 34-1809, Idaho Code, so that the signer has an opportunity to read them before signing the petition.

Any signature obtained without compliance with this section is null and void.

SECTION 11. That Chapter 18, 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 34-1823, Idaho Code, and to read as follows:

34-1823. SEVERABILITY. In the event that any part of chapter 18, title 34, Idaho Code, shall for any reason be determined void or unenforceable in any part thereof, the remainder thereof shall remain in full force and effect.

SECTION 12. This act shall be in full force and effect on and after July 1, 1997, and this act shall apply to all initiative petitions that have been submitted with qualifying signatures pursuant to section 34-1804, Idaho Code, on and after July 1, 1997.

Approved March 20, 1997.

CHAPTER 267
(H.B. No. 344, As Amended)

AN ACT

RELATING TO GUIDE DOGS; REPEALING SECTION 18-5811, IDAHO CODE; AMENDING CHAPTER 58, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5811, IDAHO CODE, TO PROVIDE ACTIONS REQUIRED TO AVOID ACCIDENT OR INJURY TO DISABLED PERSONS, TO PROHIBIT INTENTIONAL ACTIONS AND TO PROVIDE PENALTIES; AMENDING CHAPTER 58, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5811A, IDAHO CODE, TO PROVIDE UNLAWFUL USE OF ASSISTANCE DEVICE OR ASSISTANCE DOG; REPEALING SECTION 18-5812, IDAHO CODE; AMENDING CHAPTER 58, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-5812, IDAHO

CODE, TO PROVIDE PENALTIES FOR BATTERY TO DISABLED PERSONS AND ASSISTANCE DOGS; AMENDING SECTION 18-5812A, IDAHO CODE, TO PROVIDE THAT A DISABLED PERSON SHALL NOT BE DENIED ADMITTANCE TO HOUSING FOR SALE OR RENT WHEN ACCOMPANIED BY AN ASSISTANCE DOG AND TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 18-5812B, IDAHO CODE, TO PROVIDE THAT A DISABLED PERSON SHALL NOT BE DENIED ACCESS TO PUBLIC FACILITIES OR PLACES WHEN ACCOMPANIED BY A DOG-IN-TRAINING UNLESS THE DOG IS NOT GROOMED OR UNLESS THE PERSON DOES NOT MAINTAIN CONTROL OF THE DOG, AND TO PROVIDE FOR LIABILITY OF DOGS-IN-TRAINING; AMENDING SECTION 56-701A, IDAHO CODE, TO DEFINE "ASSISTANCE DEVICE," "ASSISTANCE DOG," "DISABLED PERSON," "DOG-IN-TRAINING," "HEARING DOG," "PHYSICALLY IMPAIRED PERSON," "SERVICE DOG" AND "VISUALLY IMPAIRED PERSON" AND TO REDEFINE "GUIDE DOG"; AMENDING SECTION 56-704, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 56-704A, IDAHO CODE, TO PROVIDE IDENTIFICATION OF A DOG-IN-TRAINING AND TO PROVIDE PROPER NOMENCLATURE; REPEALING SECTION 56-705, IDAHO CODE; AMENDING CHAPTER 7, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-705, IDAHO CODE, TO PROVIDE CIVIL LIABILITY FOR INTENTIONAL VIOLATION OF STATUTES PROTECTING DISABLED PERSONS; AND AMENDING SECTION 67-5407, IDAHO CODE, TO DELETE PROVISIONS FOR ISSUANCE OF GUIDE DOG TAGS BY THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 18-5811, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 58, 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 18-5811, Idaho Code, and to read as follows:

18-5811. ACTION REQUIRED TO AVOID ACCIDENT OR INJURY TO DISABLED PERSON -- PROHIBITED INTENTIONAL ACTIONS -- PENALTIES. (1) Any person, whether a pedestrian, operating a vehicle or otherwise, who approaches an individual appearing to be a disabled person or lawfully using an assistance device or assistance dog, and who:

(a) Intentionally fails to stop, change course, speak or take such other action as is necessary to avoid any accident or injury to the disabled person, the assistance device or dog, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or by both.

(b) Intentionally startles or frightens such person's dog, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or by both.

(2) Any person who, without justification, intentionally interferes with the use of an assistance dog or assistance device by

obstructing, battering or intimidating the user or the dog, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than one thousand five hundred dollars ($1,500), or by both.

SECTION 3. That Chapter 58, 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 18-5811A, Idaho Code, and to read as follows:

18-5811A. UNLAWFUL USE OF ASSISTANCE DEVICE OR DOG. Any person, not being a disabled person or being trained to assist disabled persons, who uses an assistance device or assistance dog in an attempt to gain treatment or benefits as a disabled person, is guilty of a misdemeanor.

SECTION 4. That Section 18-5812, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Chapter 58, 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 18-5812, Idaho Code, and to read as follows:

18-5812. BATTERY TO DISABLED PERSONS AND ASSISTANCE DOGS -- PENALTIES. (1) Any person who:

(a) Permits any animal which is owned, harbored or controlled by him to cause injury to or the death of any assistance dog or dog-in-training, is guilty of a misdemeanor.

(b) Intentionally causes injury to or the death of any assistance dog or dog-in-training is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding five thousand dollars ($5,000), or by both.

(2) In addition to any other criminal or civil penalties provided for violation of this section, any person convicted under this section, regardless of the form of judgment, shall be ordered to make full restitution to the owner or custodian of such dog for all veterinary bills, replacement and other costs resulting from the injury or death of the dog.

SECTION 6. That Section 18-5812A, Idaho Code, be, and the same is hereby amended to read as follows:

18-5812A. ~~BLIND, PHYSICALLY~~ DISABLED ~~OR HEARING-IMPAIRED~~ PERSONS MAY BE ACCOMPANIED BY ~~GUIDE~~ ASSISTANCE DOGS -- PENALTY FOR INTENTIONAL VIOLATION. (1) A ~~blind, physically~~ disabled ~~or hearing-impaired~~ person shall not be denied the use of any common carrier or public transportation facility or admittance to any hotel, motel, cafe, elevator, housing for sale or rent, or any other public place within the state of Idaho by reason of his being accompanied by ~~a guide~~ an assistance dog ~~specially trained for such purpose~~. A ~~blind, physically~~ disabled ~~or hearing-impaired~~ person shall be entitled to have ~~a guide~~ an assis-

tance dog with him in such places and while using such facilities without being required to pay any additional charges for his ~~guide~~ assistance dog, but shall be liable for any damage caused by his ~~guide~~ assistance dog.

(2) Any person, firm, association or corporation or agent of any person, firm, association or corporation intentionally violating the provisions of this section shall be guilty of a misdemeanor.

SECTION 7. That Section 18-5812B, Idaho Code, be, and the same is hereby amended to read as follows:

18-5812B. PERSON MAY BE ACCOMPANIED BY AN ASSISTANCE DOG ~~BEING TRAINED--TO--BECOME--A-GUIDE-DOG-FOR-THE-BLIND,-PHYSICALLY-DISABLED-OR HEARING-IMPAIRED~~ -IN-TRAINING -- LIABILITY. (1) A person shall not be denied the use of any common carrier or public transportation facility or admittance to any hotel, motel, cafe, elevator, or any other public place within the state of Idaho by reason of being accompanied by a dog ~~which-is-being-specially-trained-and-socialized-for-the--purpose--of-being-a-guide-dog-for-the-blind,-physically-disabled-or-hearing-impaired.-Any-dog-being-trained-and-socialized-to-become--a--guide dog---for---the---blind,---physically--disabled--or--hearing--impaired~~ -in-training. Such dog-in-training shall be properly ~~harnessed--or~~ leashed so that the person may maintain control of the dog ~~and-the-dog shall--have--attached--to--its-collar-a-special-and---brightly-colored fluorescent-tag-issued-by-the-commission-for-the--blind--and--visually impaired--under--the--provisions-of-subsection-(i)-of-section-67-5407, Idaho-Code.-Additionally,-the-dog-shall-be-accompanying-the-person--as part--of--its-training-to-become-a-guide-dog-for-the-blind,-physically disabled-or-hearing-impaired.~~

(2) Access to public places for dogs-in-training may be temporarily denied if the dog is poorly groomed so as to create a health hazard or the person accompanying the dog cannot maintain control of the dog.

(3) ~~Any-person,-firm,--association,--partnership--or--corporation violating--the--provisions-of-this-section~~ The person accompanying the dog-in-training shall be ~~guilty-of-a-misdemeanor~~ liable for any damages or injuries caused by the dog, and any third party owner, lessor or manager of the public property shall in no way suffer liability for damages or injuries caused by the dog-in-training. If the person accompanying a dog-in-training is a minor, the parents of the child shall be liable.

SECTION 8. That Section 56-701A, Idaho Code, be, and the same is hereby amended to read as follows:

56-701A. DEFINITIONS. As used in this chapter and chapter 58, title 18, Idaho Code:

(1) "Assistance device" means a cane or walking stick, predominantly white or metallic in color, with or without red tip, or a manual or motorized wheelchair or similar scooter, or other similar devices that enhance the safety or mobility of a disabled person.

(2) "Assistance dog" means a dog that has been trained as a guide dog for a blind or visually impaired person, a hearing dog for a hear-

ing impaired person, or a service dog for a physically disabled person.

(3) "Disabled person" means a hearing, visually or physically impaired person.

(4) "Dog-in-training" means a dog being specifically trained to develop social, environmental and other skills needed for admission to a training school or other program for assistance dogs. Dogs-in-training shall wear a jacket, collar, scarf or other similar article identifying it as a dog-in-training.

(5) "Guide dog" means a dog that has been ~~properly-identified-as being-from-a-recognized-school-for-seeing-eye,-hearing--ear--or--guide dogs,--and-the-dog-is-properly-harnessed-or-leashed-so-that-the-blind, physically-disabled-or-hearing-impaired-person-may-maintain-control-of the-dog,-and-the-dog-has-attached-to-its-harness-or-collar--a--special and--brightly-colored-fluorescent-tag-issued-by-the-commission-for-the blind--and--visually--impaired--under--the---provisions---of---section 67-5407(i),--Idaho--Code.--A--"guide--dog-for-the-physically-disabled" means--any--dog--individually--trained--to--the--physically---disabled participant's-requirements-including,-but-not-limited-to,-minimal-protection--work,--rescue--work,-pulling-a-wheelchair-or-fetching-dropped items~~ specially trained to aid a particular blind or visually impaired person.

(6) "Hearing dog" means a dog that has been specially trained to aid a particular hearing impaired person.

(~~2~~7) "Hearing impaired person" means a person who has a hearing impairment manifested by a speech discrimination score of forty percent (40%) or more in the better ear with appropriate correction as certified by a licensed otologist, licensed audiologist, or the Idaho division of vocational rehabilitation.

(8) "Physically impaired person" means any person with any substantial physical disability which prevents normal participation in community or life activities as are available and participated in by persons with no such afflictions or conditions of the same age and sex.

(9) "Service dog" means a dog that has been specially trained to aid a particular physically disabled person with a physical disability other than sight or hearing impairment.

(10) "Visually impaired person" means any person who meets the definition provided in section 39-3202(3), Idaho Code.

SECTION 9. That Section 56-704, Idaho Code, be, and the same is hereby amended to read as follows:

56-704. RIGHT TO USE OF ~~GUIDE~~ ASSISTANCE DOG -- LIABILITY. Every ~~totally-or-partially-blind-or-hearing-impaired~~ disabled person shall have the right to be accompanied by ~~a-guide~~ an assistance dog, ~~especially-trained-for-the-purpose,~~ in any of the places listed in section 56-703, Idaho Code, without being required to pay an extra charge for the ~~guide~~ assistance dog; provided that he shall be liable for any damage done to the premises or facilities by his dog.

SECTION 10. That Section 56-704A, Idaho Code, be, and the same is hereby amended to read as follows:

56-704A. ~~PERSONS-TRAINING-DOGS--TO--BECOME--GUIDE--DOGS--FOR--THE BLIND,--PHYSICALLY--DISABLED--OR-HEARING-IMPAIRED---~~ RIGHTS OF PERSONS WITH DOGS-IN-TRAINING -- LIABILITY. Every person who is specially training or socializing a dog for the purpose of being ~~a-guide~~ an assistance dog ~~for-the-blind,-physically-disabled-or-hearing--impaired~~ shall have the right to be accompanied by the dog in any of the places listed in section 56-703, Idaho Code, without being required to pay an extra charge for the dog if the accompaniment is part of the dog's training or socialization to become ~~a-guide~~ an assistance dog ~~and--the dog--has-attached-to-its-collar-the-special-and-brightly-colored-fluorescent-tag-issued-by--the--commission--for--the--blind--and--visually impaired--under--the--provisions-of-subsection-(i)-of-section-67-5407, Idaho-Code~~. The person accompanying the dog-in-training shall carry and upon request display an identification card issued by a recognized school for assistance dogs or organization which serves disabled persons. The person shall be fully liable for any damages done to the premises or facilities by the dog and no liability to other persons shall be attached to the owner, lessor or manager of the property, arising out of activities permitted by this ~~act~~ chapter.

SECTION 11. That Section 56-705, Idaho Code, be, and the same is hereby repealed.

SECTION 12. That Chapter 7, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-705, Idaho Code, and to read as follows:

56-705. CIVIL LIABILITY FOR INTENTIONAL VIOLATION OF STATUTES PROTECTING DISABLED PERSONS. Civil action may be brought against any person intentionally violating the provisions of section 18-5811, 18-5811A, 18-5812 or 18-5812A, Idaho Code, with judgment awarded upon proof of the elements to a preponderance of the evidence. As a part of any such civil judgment, a successful plaintiff shall be awarded punitive damages in an amount equal to all other damages suffered by the plaintiff, but in no event less than five hundred dollars ($500). The failure of a disabled person to use an assistance device or assistance dog shall not be held to constitute nor be evidence of contributory negligence in any civil action.

SECTION 13. That Section 67-5407, Idaho Code, be, and the same is hereby amended to read as follows:

67-5407. DUTIES. The commission shall:

(a) Assist blind persons in achieving physical and psychological orientation, inform blind persons of available services, stimulate and assist the blind in achieving social and economic independence, and do all things which will ameliorate the condition of the blind.

(b) Provide intensive programs of case finding, education, vocational and other rehabilitation training, job findings and placement, physical restoration, and such other services and equipment as may assist in rendering blind persons more self-supporting and socially independent.

(c) Provide a business enterprise program including management, supervision and development services.

(d) Provide a program for the prevention of blindness and sight restoration as designed in this act. The commission shall pay for all necessary expenses incurred in connection with the diagnosis, treatment or surgery to prevent blindness or restore vision. Necessary expenses include the cost of getting service, the cost of services, medical and physician fees, hospital services, nursing services, maintenance while the applicant or recipient is away from the home, transportation to the physician or hospital and return to his home, and the cost of nursing home care when such care is necessary. These services will be provided to individuals without financial resources to procure such services for themselves.

(e) Establish rules ~~and regulations~~ in accordance with the provisions of the administrative procedure act.

(f) On or before December first in 1968, and each year thereafter, render a report to the legislature and to the governor of its activities, including recommendations for improvements therein.

(g) Enter into contracts and agreements with the federal government through its appropriate agency or instrumentality whereby the commission shall receive federal grants or other benefits for the prevention of blindness or for services to the blind, including medical eye care, instruction in the home, social adjustment and vocational and other rehabilitations, and shall act as the official state agency to collaborate with the federal government in the administration of any present or subsequent programs that may be set up for the purposes of providing services to or rehabilitating the blind.

~~(h)--Issue-a-special-and-brightly-colored-fluorescent--tag--at--no charge--to-any-person-training-and-socializing-a-dog-to-become-a-guide dog-for-the-blind,-hearing-impaired-or-physically-disabled-and-for-use at-times-when-that-person-takes-the-dog-into-places-listed-in--section 56-703,--Idaho--Code,--as--a--necessary--part-of-the-dog's-training-to become-or-for-utilization-as--a--guide--dog--for--the--blind,--hearing impaired--or---physically-disabled.-The-tags-shall-bear-an-identifying number.~~

~~(i)--Issue-a-special-and-brightly-colored-fluorescent--tag--at--no charge-to-persons-utilizing-a-guide-dog-as-defined-in-section-56-701A, Idaho--Code.--The-tags-shall-bear-an-identifying-number,-and-the-guide dog-shall-not-be-required-to-have-any-other-license-or--tag--that--may otherwise-be-required-by-a-city-or-county.~~

Approved March 20, 1997.

CHAPTER 268
(H.B. No. 346, As Amended)

AN ACT

RELATING TO CIGARETTE AND TOBACCO TAX DISTRIBUTIONS TO JUVENILE CORRECTIONS AND PUBLIC SCHOOLS; PROVIDING LEGISLATIVE INTENT; REPEALING SECTIONS 4, 5, 6 AND 9, CHAPTER 368, LAWS OF 1995 AND SECTION 5, CHAPTER 261, LAWS OF 1996; AMENDING SECTION 6, CHAPTER 261,

LAWS OF 1996, TO DELETE AN EFFECTIVE DATE; AMENDING SECTION 63-2506, IDAHO CODE, TO PROVIDE FOR APPROPRIATION OF A PORTION OF TAXES ON CIGARETTES TO THE PUBLIC SCHOOL INCOME FUND AND TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR DISTRIBUTION TO THE COUNTIES FOR COUNTY JUVENILE PROBATION SERVICES; AMENDING SECTION 63-2552A, IDAHO CODE, TO PROVIDE FOR APPROPRIATION OF A PORTION OF TAXES ON TOBACCO PRODUCTS TO THE PUBLIC SCHOOL INCOME FUND AND TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR DISTRIBUTION TO THE COUNTIES FOR COUNTY JUVENILE PROBATION SERVICES AND TO PROVIDE FOR RETURN TO THE PUBLIC SCHOOL INCOME FUND OF EXCESS FUNDS NOT REQUIRED FOR THE OPERATIONS NEEDS OF THE DEPARTMENT OF LAW ENFORCEMENT IN JUVENILE DRUG TESTING; AND DECLARING AN EMERGENCY.

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

SECTION 1. LEGISLATIVE INTENT. It is the purpose of this act to provide a continuing source of funds for county juvenile probation services and for substance abuse programs in the public schools. It is the Legislature's intent that the schools and county juvenile probation services establish substance abuse programs which will be available to youth through the schools or county juvenile probation services. It is not the intent of the Legislature to prohibit county juvenile probation services from utilizing their share of these funds to perform their other responsibilities under the Juvenile Corrections Act of 1995. The youth of Idaho will be best served in their communities through the combined efforts of public school administrators and county juvenile probation officers to provide an integrated system of programs designed to meet the needs of youth with substance abuse problems, including those youth requiring juvenile probationary services. It is the Legislature's intent that the schools and county juvenile probation services act in concert to deliver services to affected youth in the most efficient manner and avoid duplication and competition of programs.

It is the Legislature's further intent that all the funds designated for appropriation to the public school income fund and for the benefit of county juvenile probation services pursuant to Sections 63-2506 and 63-2552A, Idaho Code, be appropriated equally to them in accordance with the formulas therein provided if maximal use is being made of the funds to address the needs of youth in their communities.

SECTION 2. That Sections 4, 5, 6 and 9, Chapter 368, Laws of 1995, and Section 5, Chapter 261, Laws of 1996, be, and the same are hereby repealed.

SECTION 3. That Section 6, Chapter 261, Laws of 1996, be, and the same is hereby amended to read as follows:

SECTION 6. Sections 1, 2, 3 and 4 of this act shall be in full force and effect on and after July 1, 1996. ~~Section--5--of--this--act shall-be-in-full-force-and-effect-on-and-after-March-28,-1997.~~

SECTION 4. That Section 63-2506, Idaho Code, be, and the same is hereby amended to read as follows:

63-2506. IMPOSITION OF TAX. A tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes is hereby imposed at the rate of one and four-tenths cent (1.4¢) for each cigarette or twenty-eight cents (28¢) per package of twenty (20) cigarettes, which tax shall be paid by the wholesaler, and collected by the state tax commission. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be ~~distributed~~ subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be ~~distributed~~ subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for county juvenile probation services. ~~These~~ Appropriated 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. The remaining moneys collected and those moneys not appropriated under the provisions of this section shall be distributed as specified in section 63-2520, Idaho Code.

SECTION 5. That Section 63-2552A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2552A. ADDITIONAL TAX IMPOSED -- RATE. (1) In addition to the tax imposed in section 63-2552, Idaho Code, from and after July 1, 1994, there is levied and there shall be collected an additional tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of five per cent (5%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

(a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

(2) Each distributor, within twenty (20) days after July 1, 1994, shall file a report with the commission, in such form as the commission may prescribe, showing the tobacco products on hand on July 1, 1994, and the amount of tax due thereon. The tax imposed in this subsection shall be due and payable within twenty (20) days after July 1, 1994, and thereafter shall bear interest at the rate of one per cent (1%) per month.

(3) Fifty per cent (50%) of the tax collected pursuant to this section shall be ~~distributed directly~~ subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system of which amount two hundred fifty thousand dollars ($250,000) shall be remitted annually to the department of law enforcement to increase toxicology lab capacity in the bureau of forensic services for drug testing of juveniles, and fifty per cent (50%) shall be ~~distributed~~ subject to appropriation to the department of juvenile corrections for distribution quarterly to the counties to be utilized for county juvenile probation services, based upon the percentage the population of the county bears

to the population of the state as a whole. The moneys remitted to the department of law enforcement shall be reviewed annually and any money excess to the operations needs of the laboratory for juvenile drug testing will be returned to the public school income fund for substance abuse programs in the public school system. The laboratory may utilize this increased toxicology capacity for adult drug testing to the extent that timely testing for juveniles is not adversely impacted.

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 20, 1997.

CHAPTER 269
(S.B. No. 1136)

AN ACT

RELATING TO THE STATE SURFACE MINING LAW; AMENDING SECTION 47-1506, IDAHO CODE, TO PROVIDE FOR A RECLAMATION PLAN AND TO PROVIDE REQUIREMENTS FOR A RECLAMATION PLAN; AMENDING SECTION 47-1507, IDAHO CODE, TO PROVIDE A CORRECT TERM AND TO PROVIDE THAT THE DIRECTOR MAY CONDUCT HEARINGS; AMENDING SECTION 47-1508, IDAHO CODE, TO PROVIDE THAT IN THE EVENT A MATERIAL CHANGE IN CIRCUMSTANCES ARISES WHICH THE OPERATOR OR THE STATE BOARD OF LAND COMMISSIONERS BELIEVES REQUIRES A CHANGE IN AN APPROVED RECLAMATION PLAN, THE OPERATOR SHALL SUBMIT TO THE BOARD A SUPPLEMENTAL PLAN TO PROVIDE THAT THE BOARD SHALL SET FORTH ITS PROPOSED CHANGES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-1512, IDAHO CODE, TO REVISE PERFORMANCE BOND REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-1513, IDAHO CODE, TO PROVIDE THAT RECLAMATION PLANS APPROVED BY THE BOARD AS OF JANUARY 1, 1997, SHALL BE DEEMED TO BE IN FULL COMPLIANCE WITH THE REQUIREMENTS OF THIS ACT AND TO ALLOW THE BOARD OF LAND COMMISSIONERS TO REVIEW AND REVISE THE TERMS AND CONDITIONS OF ANY BOND WHEN MATERIAL CHANGES OCCUR.

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

SECTION 1. That Section 47-1506, Idaho Code, be, and the same is hereby amended to read as follows:

47-1506. OPERATOR -- DUTIES PRIOR TO OPERATION -- SUBMISSION OF MAPS AND PLANS. (a) Any operator desiring to conduct surface mining operations within the state of Idaho for the purpose of immediate or ultimate sale of the minerals in either the natural or processed state, shall submit to the board prior to commencing such surface mining operations a reclamation plan that contains the following:

(1) A map of the mine panel on which said operator desires to conduct surface mining operations, which sets forth with respect to said panel the following:

(i) The location of existing roads and anticipated access and main haulage roads planned to be constructed in conducting the surface mining operations.

(ii) The approximate boundaries of the lands to be utilized in the process of surface mining operations.

(iii) The approximate location and, if known, the names of all streams, creeks, or bodies of water within the area where surface mining operations shall take place.

(iv) The name and address of the person to whom notices, orders, and other information required to be given to the operator pursuant to this act may be sent.

(v) The drainage adjacent to the area where the surface is being utilized by surface mining operations.

(vi) The approximate boundaries of the lands that will become affected lands as a result of surface mining operations during the year immediately following the date that a reclamation plan is approved as to said panel, together with the number of acres included within said boundaries.

(vii) A description of foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices that will be used to control such nonpoint source impacts.

(viii) A description of foreseeable, site-specific impacts from acid rock drainage and the best management practices that will be used to mitigate the impacts, if any, from such acid rock drainage.

(2) Diagrams showing the planned location of pits, mineral stockpiles, overburden piles and tailings ponds on said panel.

(3) A ~~reclamation plan setting forth~~ description of the action which said operator intends to take to comply with the provisions of this act as to the surface mining operations conducted on such mine panel.

(b) Any operator who is not required to submit an operating plan for a surface mining operation to an entity of the federal government shall submit to the board, as part of the reclamation plan, an operating plan with regards to that surface mining operation. The operating plan shall include:

(1) Maps showing the location of existing roads and anticipated access and main haulage roads planned to be constructed for surface mining operations.

(2) The boundaries and acreage of the lands to be utilized in the process of surface mining operations.

(3) Maps showing the planned location of pits, mineral stockpiles, over burden piles and tailings ponds for the surface mining operations.

(4) The location and, if known, the names of all streams, creeks, or bodies of water within the area where surface mining operations shall take place.

(5) The drainage adjacent to the area where the surface is being utilized by surface mining operations.

(6) The approximate boundaries and acreage of the lands that will become affected during the first year of construction of surface mining operations.

(7) The board shall promulgate rules or guidelines to allow the content of a nonfederal operating plan to be determined based upon the type and size of the surface mining operation.

(c) No operator who is required to submit an operating plan for a surface mining operation to an entity of the federal government shall be required to submit an operating plan to the board. This provision shall apply to all lands, regardless of surface or mineral ownership, covered by the operating plan submitted to the entity of the federal government.

(d) No operator shall commence surface mining operations on any mine panel without first having a reclamation plan approved by the state board of land commissioners.

(~~c~~e) Any operator desiring to conduct exploration operations within the state of Idaho using motorized earth-moving equipment in order to locate minerals for immediate or ultimate sale in either the natural or the processed state shall notify the board by certified mail as soon after beginning exploration operations as possible and in any event within seven (7) days after beginning exploration operations. The letter shall include the following:

(1) The name and address of the operator;

(2) The location of the operation and the starting date and estimated completion date;

(3) The anticipated size of the operation, and the general method of operation.

The letter shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

SECTION 2. That Section 47-1507, Idaho Code, be, and the same is hereby amended to read as follows:

47-1507. RECLAMATION PLAN -- APPROVAL OR REJECTION BY BOARD -- HEARING. (a) Upon determination by the board that a reclamation plan or any amended plan submitted by an operator meets the requirements of this act, the board shall deliver to the operator, in writing, a notice of approval of such reclamation plan, and thereafter said plan shall govern and determine the nature and extent of the reclamation obligations of the operator for compliance with this act, with respect to the mine panel for which the plan was submitted.

(b) If the board determines that a reclamation plan or amended plan fails to fulfill the requirements of this act, it shall deliver to the operator, in writing, a notice of rejection of the reclamation plan and shall set forth in said notice of rejection the reasons for such rejection, the factual findings upon which such rejection is based, the manner in which the plan fails to fulfill said requirements, and the requirements necessary to comply with this act. Upon receipt of said notice of rejection, said operator may submit amended plans. Upon further determination by the board that the amended plan still does not fulfill the requirements of said section, it shall deliver to the operator, in writing, a notice of rejection of the amended reclamation plan in the same form as set out above.

(c) Weather permitting, the board shall deliver to the operator within sixty (60) days after the receipt of any reclamation plan or amended reclamation plan, the notice of rejection or notice of approval of said plan, as the case may be, provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this act, and the operator may commence and conduct his surface mining operations on the mine panel covered by such plan as if a notice of approval of said plan had been received from the board; provided, however, that if weather conditions prevent the board from inspecting the mine panel to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(d) For the purpose of determining whether a proposed reclamation plan or amended or supplemental reclamation plan complies with the requirements of this act, the board may, in its discretion, call for a public hearing. The hearing shall be held under such rules ~~and regulations~~ as promulgated by the board. Any interested person may appear at the hearing and give testimony. At the discretion of the board, the ~~commissioner~~ director may conduct the hearing and transmit a summary thereof to the board. Any hearing held shall not extend the period of time limit in which the board must act on a plan submitted.

SECTION 3. That Section 47-1508, Idaho Code, be, and the same is hereby amended to read as follows:

47-1508. AMENDED RECLAMATION PLAN -- SUPPLEMENTAL PLAN -- SUBMISSION. (a) In the event that a material change in circumstances arises which the operator, or the board, believes requires a change in an approved reclamation plan, including any amended reclamation plan, then the operator ~~may~~ shall submit to the board a supplemental plan setting forth the proposed changes and the board shall likewise set forth its proposed changes and stating the reasons therefor. Upon determination by the board that a supplemental reclamation plan or any amended supplemental plan submitted by the operator meets the requirements of this act, it shall deliver to the operator, in writing, a notice of approval of said supplemental plan, and thereafter said supplemental plan shall govern and determine the nature and extent of the reclamation obligations of the operator for compliance with respect to the mine panel for which the plan was submitted.

(b) If the board determines that a supplemental reclamation plan fails to fulfill the requirements of this act, it shall deliver to the operator, in writing, a notice of rejection of the supplemental reclamation plan and shall set forth in said notice of rejection the manner in which said plan fails to fulfill said requirements and shall stipulate the corrective requirements necessary to comply with said sections. Upon receipt of said notice of rejection, the operator may submit amended supplemental plans. Upon further determination by the board that an amended supplemental plan does not fulfill the requirements of said sections, it shall deliver to the operator, in writing, a notice of rejection of amended supplemental plan, and shall set forth in said notice of rejection the manner in which such amended

supplemental plan fails to fulfill said requirements, and shall stipulate the requirements necessary to comply with said sections.

(c) The board shall, weather permitting, deliver to the operator within sixty (60) days after the receipt of any supplemental reclamation plan or amended supplemental reclamation plan, the notice of rejection, setting forth in detail the reasons for such rejection and the factual findings upon which such rejection is based, or notice of approval of said plan as the case may be, provided, however, that if the board fails to deliver a notice of approval or notice of rejection within said time period, the plan submitted shall be deemed to comply with this act and the operator may commence and conduct or continue, as the case may be, his surface mining operations as if a notice of approval of said plan had been received from the board. If weather conditions prevent the board from inspecting the mine panel to obtain information needed to approve or reject a submitted plan, it may, in writing to the operator, extend the time not to exceed thirty (30) days after weather conditions permit such inspection.

(d) If an operator determines that unforeseen events or unexpected conditions require immediate changes in or additions to an approved plan, the operator may continue surface mining operations in accordance with the procedures dictated by the changed conditions, pending submission and approval of a supplemental plan, even though such operations do not comply with the approved plan, provided, however, that nothing herein stated shall be construed to excuse the operator from complying with the reclamation requirements of sections 47-1509 and 47-1510, Idaho Code, of this act. Notice of such unforeseen events or unexpected conditions shall be given to the board within ten (10) days after discovery thereof, and a proposed supplemental plan shall be submitted within thirty (30) days after discovery thereof.

SECTION 4. That Section 47-1512, Idaho Code, be, and the same is hereby amended to read as follows:

47-1512. PERFORMANCE BOND -- REQUISITES. (a) Prior to conducting any surface mining operations on a mine panel covered by an approved reclamation plan, an operator shall submit to the board a bond meeting the requirements of this section. The penalty of the initial bond filed prior to conducting any surface mining operations on a mine panel shall be in an amount determined by the board to be the estimated reasonable costs of reclamation required in this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year plus ten percent (10%) of such costs as to the acreage of affected land designated by the operator pursuant to section 47-1506(a)(1)(vi), Idaho Code, and subsection (b) of this section~~, but in no event shall any bond submitted pursuant to this act exceed eighteen hundred dollars ($1,800) for any given acre of such affected land~~. The determination of the bond amount shall constitute a final decision subject to judicial review as set forth in subsection (a) of section 47-1514, Idaho Code. In lieu of any bond required hereunder, the operator may deposit cash and governmental securities with the board, in an amount equal to that of the required bond, on the conditions as prescribed in this section.

(b) Prior to the time that lands designated to become affected lands on a mine panel, in addition to those designated pursuant to section 47-1506(a)(1)(vi), Idaho Code, become affected land, the operator shall submit to the board a bond meeting the requirements of section 47-1512(c), Idaho Code, and the penalty of such bond shall be in the amount necessary to insure the performance of the duties of the operator under this act as to such affected lands actually proposed to be mined within the next calendar year. If additional acreage is subsequently proposed to be mined by an operator, the penalty of such bond shall be in an amount determined by the board to be the estimated reasonable costs of reclamation required by this chapter, in the event of failure to reclaim by an operator, of affected lands proposed to be mined during the next calendar year plus ten percent (10%) of such costs. ~~Provided that in no event shall any bond submitted pursuant to this act exceed eighteen hundred dollars ($1,800) for any given acre of such affected land.~~

(c) Except as provided in this subsection, no bond submitted pursuant to this act shall exceed two thousand five hundred dollars ($2,500) for any given acre of such affected land. The board may require a bond in excess of two thousand five hundred dollars ($2,500) for any given acre of affected land only when the following conditions have been met:

(1) The board has determined that such bond is necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code.

(2) The board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary.

(3) The board has conducted a hearing where the operator is allowed to give testimony concerning the amount of the proposed bond. The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived, in writing, by the operator. Any hearing held shall not extend the period of time limit in which the board must act on a plan submitted.

(d) Any bond required under this act to be filed and maintained with the board shall be in such form as the board prescribes, payable to the state of Idaho, conditioned that the operator shall faithfully perform all requirements of this act and comply with all rules ~~and regulations~~ of the board in effect as of the date of approval of the reclamation plan approved for said lands made in accordance with the provisions of this act. An operator may at any time file a single bond in lieu of separate bonds filed or to be filed pursuant to this act, provided that the penalty of such single bond shall be equal to the total of the penalties of the separate bonds being combined into a single bond. Further, any bond provided to an entity of the federal government that also meets the requirements in this section shall be deemed to be sufficient surety for the purposes of this act.

(~~d~~e) A bond filed as above prescribed shall not be canceled by the surety, except after not less than ninety (90) days' notice to the board. Upon failure of the operator to make substitution of surety prior to the effective date of cancellation of the bond or within thirty (30) days following notice of cancellation by the board, whichever is later, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from con-

ducting operations upon the lands covered by such bond until such substitution has been made.

(~~e~~f) If the license to do business in this state of any surety, upon a bond filed with the board pursuant to this act, shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the board, shall substitute for such surety a good and sufficient corporate surety licensed to do business in this state or other surety acceptable to the board. Upon failure of the operator to make substitution of surety, the board shall have the right to issue a cease and desist order and seek injunctive relief to stop the operator from conducting operations upon the lands covered by such bond until such substitution has been made.

(~~f~~g) When an operator shall have completed all requirements under the provisions of this act as to any affected land, he shall notify the board. Within thirty (30) days after the receipt of such notice, the board shall notify the operator as to whether or not the reclamation performed meets the requirements of the reclamation plan pertaining to the land in question. Upon the determination by the board that the requirements of the reclamation plan in question have been met as to said lands, the amount of bond in effect as to such lands shall be reduced by an amount designated by the board to reflect the reclamation done.

(~~g~~h) An operator may withdraw any land previously designated as affected land within a mine panel, provided that it is not already affected land, and in such event, he shall notify the board and the amount of the bond in effect as to the lands in that mine panel shall be reduced by an amount designated by the board as the amount which would have been necessary to reclaim such lands.

SECTION 5. That Section 47-1513, Idaho Code, be, and the same is hereby amended to read as follows:

47-1513. OPERATOR'S FAILURE TO COMPLY -- FORFEITURE OF BOND -- PENALTIES -- RECLAMATION FUND. (a) Whenever the board determines that an operator has not complied with the provisions of this act, the board may notify the operator of such noncompliance, and may by private conference, conciliation, and persuasion, endeavor to remedy such violation. In the event of a violation referred to in subsections (d) and (e) of this section, the board may proceed without an administrative action, hearing or decision to exercise the remedies set forth in said subsections. Additionally, no administrative action, hearing or decision shall be required from the Idaho board of health and welfare prior to the board proceeding under subsections (d) and (e) of this section. In the event of the failure of any conference, conciliation and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt signed by the operator, an officer of a corporate operator, or the designated agent of the operator shall

constitute service. The operator shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the operator fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the operator, and the board may proceed to cancel the reclamation plan and forfeit the bond in the amount necessary to reclaim affected lands. Upon request for a hearing by an operator, the board shall schedule a hearing before a hearing officer appointed by the board at a time not less than thirty (30) days after the date the operator requests a hearing. The board shall issue subpoenas at the request of the director of the department of lands and at the request of the charged operator, and the matter shall be otherwise handled and conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall, pursuant to said hearing, enter an order in accordance with chapter 52, title 67, Idaho Code, which, if adverse to the operator, shall designate a time period within which corrective action should be taken. The time period designated shall be long enough to allow the operator, in the exercise of reasonable diligence, to rectify any failure to comply designated in said order. In the event that the operator takes such action as is necessary to comply with the order within the time period designated in said order, no further action shall be taken by the board to compel performance under the act.

(b) Upon request of the board, the attorney general shall institute proceedings to have the bond of an operator forfeited for the violation by the operator of an order entered pursuant to this section.

(c) The forfeiture of such bond shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this act. If the violation involves an operator that has not furnished a bond required by this act, or an operator that is not required to furnish a bond pursuant to this act, or an operator who violates this act by performing an act not included in the original approved reclamation plan, and such departure from the plan is not subsequently approved, such operator shall be subject to a civil penalty for his failure to comply with such order in the amount determined by the board to be the anticipated cost of reasonable reclamation of affected lands.

(d) Notwithstanding any other provisions of this act, the board may commence an action without bond or undertaking, in the name of the state of Idaho to enjoin any operator who is conducting operations without an approved reclamation plan required by section 47-1506, Idaho Code, or without the bond required by this act. The court, or a judge thereof at chambers, if satisfied from the complaint or by affidavits that such acts have been or are being committed, shall issue a temporary restraining order without notice or bond, enjoining the defendant, his agents, and employees from conducting such operations without said reclamation plan or bond. Upon a showing of good cause therefor, the temporary restraining order may require the defendant to perform reclamation of the mined area in conformity with sections 47-1509 and 47-1510, Idaho Code, pending final disposition of the action. The action shall then proceed as in other cases for injunc-

tions. If it is established at trial that the defendant has operated without an approved reclamation plan or bond, the court shall enter, in addition to any other order, a decree enjoining the defendant, his agents and employees from thereafter conducting such activities or similar actions in violation of this act. The board may, in conjunction with its injunctive procedures, proceed in the same or in a separate action to recover from an operator who is conducting surface mining or exploration operations without the required plan or bond, the cost of performing the reclamation activities required by sections 47-1509 and 47-1510, Idaho Code, from any such operator who has not filed a bond to cover the cost of the reclamation required.

(e) Notwithstanding any other provision of this act, the board may, without bond or undertaking and without any administrative action, hearing or decision, commence an action in the name of the state of Idaho (1) to enjoin a permitted surface mining operation when, under an existing approved plan, an operator violates the terms of the plan and where immediate and irreparable injury, loss or damage may result to the state and (2) to recover the penalties and to collect civil damages provided for by law.

(f) In addition to the procedures set forth in subsections (a), (d) and (e) of this section, and in addition to the civil penalty provided in subsection (c) of this section, any operator who violates any of the provisions of this act or rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this act, shall be liable to a civil penalty of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2,500) for each day during which such violation continues, and in addition may be enjoined from continuing such violation. Such penalties shall be recoverable in an action brought in the name of the state of Idaho by the attorney general in the district court for the county where the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides. All sums recovered shall be placed in the state treasury and credited to the surface mining reclamation fund, which is hereby created, to be used to reclaim affected lands and to administer this act.

(g) Any person who wilfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or wilfully fails, neglects, or refuses to comply with any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) or imprisonment not to exceed one (1) year or both.

(h) ~~Any--amendment--to-this-chapter-shall-not-affect-the-validity or-modify-the-amount;-terms-or-conditions-of-any-bond-in-effect-as--of the-effective-date-of-such-amendment~~ Reclamation plans approved by the board as of January 1, 1997, shall be deemed to be in full compliance with the requirements of this act. However, the board may periodically review, and revise if necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code, the amount, terms and conditions of any bond when there is a material change in the reclamation plan or a material change in the estimated reasonable costs of reclamation determined pursuant to section 47-1512, Idaho Code. Any

revision to the amount, terms and conditions of a bond due to a material change in the reclamation plan shall apply only to the affected lands covered by the material change in the reclamation plan.

Approved March 21, 1997.

CHAPTER 270
(S.B. No. 1189, As Amended)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1401, IDAHO CODE, TO PROVIDE FELONY VIOLATIONS; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE MINIMUM FINES FOR MISDEMEANOR VIOLATIONS, TO PROVIDE STATUTORY REFERENCES, TO PROVIDE FOR THE POSSIBILITY OF LIFETIME LICENSE REVOCATIONS FOR FELONIES AND FLAGRANT VIOLATIONS AND TO DESCRIBE FLAGRANT VIOLATIONS; AMENDING SECTION 36-1404, IDAHO CODE, TO PROVIDE REIMBURSEMENT RATES FOR CERTAIN ANIMALS UNLAWFULLY KILLED, POSSESSED OR WASTED AND TO PROVIDE FOR COMPOUNDING OF REIMBURSEMENT RATES.

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

SECTION 1. That Section 36-1401, Idaho Code, be, and the same is hereby amended to read as follows:

36-1401. VIOLATIONS. (a) Infractions. Any person who pleads guilty to or is found guilty of a violation of the following provisions of the fish and game code or the following rules promulgated pursuant thereto is guilty of an infraction:

1. Statutes

(A) Take, transport, use or have in possession bait fish as set forth in section 36-902(d), Idaho Code.

(B) Chumming as set forth in section 36-902(e), Idaho Code.

(C) Nonresident child under the age of fourteen (14) years fishing without a valid license and not accompanied by a valid license holder as set forth in section 36-401(a)2., Idaho Code.

(D) Use or cut a hole larger than ten (10) inches in the ice for ice fishing as set forth in section 36-1509(a), Idaho Code.

(E) Store fish without required tags/permits/statements as set forth in section 36-503, Idaho Code.

(F) Own, possess or harbor any dog found running loose and which is tracking, pursuing, harassing or attacking a big game animal as set forth in section 36-1101(b)6.(B), Idaho Code.

(G) Hunt migratory waterfowl without having in possession a signed federal migratory bird hunting stamp as set forth in section 36-1102(b)2., Idaho Code.

(H) Hunt migratory waterfowl without having in possession a signed Idaho migratory waterfowl stamp as set forth in sec-

tion 36-414(2), Idaho Code.

(I) Hunt upland game birds without having in possession an upland game permit as set forth in section 36-409(h), Idaho Code.

(J) Trap in or on, destroy or damage any muskrat house as provided in section 36-1103(c), Idaho Code.

2. Rules

(A) Fish from a raft or boat with motor attached in waters where motors are prohibited.

(B) Fish with hooks larger than allowed in that water.

(C) Fish with barbed hooks in waters where prohibited.

(D) Exceed any established bag limit for fish except anadromous fish bag limits, by two (2) fish.

(E) Fish with more than the approved number of lines or hooks.

(F) Fail to leave head and/or tail on fish while fish are in possession or being transported.

(G) Snag or hook fish other than in the head and fail to release, excluding anadromous fish.

(H) Fail to attend fishing line and keep it under surveillance at all times.

(I) Fail to comply with mandatory check and report requirements.

(J) Fail to leave evidence of sex or species attached as required on game birds.

(K) Hunt or take migratory game birds while in possession of shot other than steel shot in a steel shot zone.

(L) Fail to release, report or turn in nontarget trapped animals.

(M) Fail to complete required report on trapped furbearer.

(N) Fail to present required furbearer animal parts for inspection.

(O) Fail to attach identification tags to traps.

(P) Trap with illegal bait or bait set illegally.

(b) Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

(c) Felonies. Any person who pleads guilty to, is found guilty or is convicted of a violation of the following offenses shall be guilty of a felony:

1. Knowingly and intentionally selling or offering for sale or exchange, or purchasing or offering to purchase or exchange, any wildlife, or parts thereof, which has been unlawfully killed, taken or possessed.

2. Releasing into the wild, without a permit from the director, any of the following wildlife, whether native or exotic: ungulates, bears, wolves, large felines, swine, or peccaries.

3. Unlawfully killing, possessing or wasting of any combination of numbers or species of wildlife <u>within a twelve (12) month period</u> which has a single or combined reimbursable damage assessment of more than one thousand dollars ($1,000), as provided in

section 36-1404, Idaho Code.

4. Conviction within ~~five~~ ten (~~5~~10) years of three (3) or more violations of the provisions of this title, penalties for which include either or both a mandatory license revocation or a reimbursable damage assessment.

SECTION 2. That Section 36-1402, Idaho Code, be, and the same is hereby amended to read as follows:

36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Any person who pleads guilty to or is found guilty of an infraction of this code or rules promulgated pursuant thereto, shall be punished in accordance with the provisions of the Idaho infractions rules.

(b) Misdemeanor Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a misdemeanor under the provisions of this title or rules promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following animals, fish or birds shall be as indicated below:

Animal, Fish or Bird	Minimum Fine
Bighorn sheep, mountain goat and moose	$500
Elk	$300
~~Deer and pronghorn antelope~~ Any other big game animal	$200
Wild turkey, swan and sturgeon	$200
Chinook salmon	$100
Any other game bird, game fish or furbearer	$ 25

(c) Felony Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a felony under the provisions of this title shall be punished in accordance with section 18-112, Idaho Code. Provided further, that the judge hearing the case shall forthwith revoke for life, the hunting, fishing or trapping license and privileges of any person who, within a five (5) year period, pleads guilty to, is found guilty of or is convicted of three (3) or more felony violations of the provisions of this title.

(d) License Revocation. Any person entering a plea of guilty or being found guilty or convicted of violating any of the provisions of this title, or who otherwise fails to comply with the requirements of a citation in connection with any such offense, may, in addition to any other penalty assessed by the court, have his hunting, fishing, or trapping privileges revoked for such period of time as may be determined by the court not to exceed three (3) years, except that violations classified as felonies under section 36-1401, Idaho Code, or as flagrant violations as defined in subsection (e) of this section, shall authorize the court to impose license revocations for periods of time up to and including life, with said period beginning on the date of conviction, finding of guilt or the entry of the plea of guilty. Provided further, that the magistrate hearing the case shall forthwith revoke the hunting, fishing, or trapping privileges for a period of not less than one (1) year ~~from the date of such conviction, finding~~

~~of-guilt-or-the-entry-of-the-plea-of-guilty,-of-any-person-who-is-convicted--of,-found-guilty-of-or-enters-a-plea-of-guilty~~ for any of the following offenses:

1. Taking or possessing upland game birds, migratory waterfowl, salmon, steelhead, sturgeon, or any big game animal during closed season.

2. Exceeding the daily bag or possession limit of upland game birds, migratory waterfowl or big game animals.

3. Taking any fish by unlawful methods as set forth in section 36-902(a) or (c), Idaho Code.

4. Unlawfully purchasing, possessing or using any license, tag or permit as set forth in section 36-405(c), Idaho Code.

5. Trespassing in violation of warning signs as set forth in section 36-1603, Idaho Code.

~~6.--The-unlawful-sale-or-purchase-of-wildlife-as-set-forth-in-section-36-501,-Idaho-Code.~~

~~7.--Taking--any--game-animal-with-a-firearm-during-an-archery-only season.~~

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) may require that the offender attend a remedial hunter education course at the offender's expense. Upon successful completion of the course, the remainder of the revocation period shall be subject to a withheld judgment so long as the offender is not convicted of any additional hunting violations during the period. The commission shall establish by rule the curriculum and cost of the hunter education remedial course.

The revocation shall consist of cancellation of an existing license for the required length of time and/or denial of the privilege of purchasing an applicable license for the length of time required to meet the revocation period decreed. In the case of persons pleading guilty, convicted or found guilty of committing multiple offenses, the revocation periods may run consecutively. In the case of pleas of guilty, convictions or findings of guilt involving taking big game animals during closed season or exceeding the daily bag or possession limit of big game, the magistrate hearing the case shall revoke the hunting, fishing or trapping privileges of any person convicted or found guilty of those offenses for a period of not less than one (1) year for each big game animal illegally taken or possessed by the person convicted or found guilty.

It shall be a misdemeanor for any person to hunt, fish, or trap or purchase a license to do so during the period of time for which such privilege is revoked ~~by-order-of-any-court-of-this-state.--Any--person pleading--guilty,--found-guilty-or-convicted-thereof-shall-be-fined-in an-amount-of-not-less-than-one-hundred-dollars-($100)--nor--more--than one--thousand--dollars--($1,000)-or-by-commitment-to-jail-for-not-more than-six-(6)-months-or-by-both-such-fine-and-commitment.-Provided-further,-that-the-period--of--revocation--of--such--privileges--shall--be extended---an---additional--amount--of--time--equal--to--the--original revocation.~~

For the purpose of this title, the term "conviction" shall mean either a withheld judgment or a final conviction.

(e) Flagrant Violations. In addition to any other penalties

assessed by the court, the magistrate hearing the case shall forthwith revoke the hunting, fishing or trapping privileges, for a period of not less than one (1) year and may revoke the privileges for a period up to and including the person's lifetime, for any person who enters a plea of guilty, who is found guilty, or who is convicted of any of the following flagrant violations:

1. Taking a big game animal after sunset by spotlighting, with use of artificial light, or with a night vision enhancement device.
2. Unlawfully taking two (2) or more big game animals within a twelve (12) month period.
3. Taking a big game animal with a rimfire or centerfire cartridge firearm during an archery or muzzleloader only hunt.
4. Hunting, fishing, trapping or purchasing a license when license privileges have been revoked pursuant to this section or section 36-1501, Idaho Code.
5. Taking any big game animal during a closed season when there is no established take season open anywhere in the state for any species of big game.
6. Any felony violation provided in section 36-1401, Idaho Code.

(f) For purposes of the wildlife violator compact, section 36-2301, Idaho Code, et seq., the department shall:

1. Suspend a violator's license for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence.
2. Revoke a violator's license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.

(~~f~~g) Disposition of Fines and Forfeitures. Distribution of fines and forfeitures remitted shall be in accordance with section 19-4705, Idaho Code.

SECTION 3. That Section 36-1404, Idaho Code, be, and the same is hereby amended to read as follows:

36-1404. UNLAWFUL KILLING, POSSESSION OR WASTE OF WILD ANIMALS, BIRDS AND FISH -- REIMBURSABLE DAMAGES -- SCHEDULE -- ASSESSMENT BY MAGISTRATES -- INSTALLMENT PAYMENTS -- DEFAULT JUDGMENTS -- DISPOSITION OF MONEYS. (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty of or is convicted of the illegal killing or the illegal possession or illegal waste of game animals or birds or fish shall reimburse the state for ~~the value of~~ each animal so killed or possessed or wasted as follows:

1. Elk, five hundred dollars ($500) per animal killed, possessed or wasted.
2. Caribou, bighorn sheep, mountain goat and moose, one thousand dollars ($1,000) per animal killed, possessed or wasted.
3. ~~Deer, and pronghorn antelope~~ Any other species of big game, two hundred dollars ($200) per animal killed, possessed or wasted.
4. Wild turkey and swan, two hundred dollars ($200) per bird killed, possessed or wasted.

5. Sturgeon, two hundred dollars ($200) per fish killed, possessed or wasted.

6. Chinook salmon, one hundred dollars ($100) per fish killed, possessed or wasted.

7. Any other game bird, game fish or furbearer, twenty-five dollars ($25.00) per animal killed, possessed or wasted.

For each additional animal of the same category killed, possessed or wasted during any twelve (12) month period, the amount to be reimbursed shall double from the amount for each animal previously illegally killed, possessed or wasted. For example, the reimbursable damages for three (3) elk illegally killed during a twelve (12) month period would be three thousand five hundred dollars ($3,500), calculated as follows: five hundred dollars ($500) for the first elk; one thousand dollars ($1,000) for the second elk; and two thousand dollars ($2,000) for the third elk. Provided however, that wildlife possessing a twenty-five dollar ($25.00) reimbursement value shall be figured at the same rate per each animal in violation, without compounding.

(b) In every case of a plea of guilty, a finding of guilt or a conviction, the court before whom such plea of guilty, finding of guilt or conviction is obtained shall enter judgment ordering the defendant to reimburse the state in a sum or sums as hereinbefore set forth including postjudgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, bird or fish, such judgment shall be declared against them jointly and severally.

(c) The judgment shall fix the manner and time of payment, and may permit the defendant to pay the judgment in installments at such times and in such amounts as, in the opinion of the court, the defendant is able to pay. In no event shall any defendant be allowed more than two (2) years from the date judgment is entered to pay the judgment.

(d) A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.

(e) All courts ordering such judgments of reimbursement shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game account.

(f) The court shall retain jurisdiction over the case. If at any time the defendant is in arrears ninety (90) days or more, the court may revoke the defendant's hunting, fishing or trapping privileges until the defendant completes payment of the judgment.

Approved March 21, 1997.

CHAPTER 271
(S.B. No. 1252)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1350, IDAHO CODE, TO PROVIDE THAT THE TAXABLE WAGE BASE FOR CALENDAR

YEAR 1997 SHALL BE THE TAXABLE WAGE BASE IN EFFECT FOR CALENDAR YEAR 1995 AND TO PROVIDE THAT SCHEDULE I, THE EFFECTIVE SCHEDULE FOR CALENDAR YEAR 1995, SHALL BE EFFECTIVE FOR CALENDAR YEAR 1997; AMENDING SECTION 72-1366, IDAHO CODE, TO PROVIDE THAT A BENEFIT CLAIMANT FOUND INELIGIBLE UNDER CERTAIN PROVISIONS OF THIS SECTION MUST OBTAIN BONA FIDE WORK AND RECEIVE WAGES THEREFOR FOR AT LEAST TWELVE TIMES HIS WEEKLY BENEFIT AMOUNT TO REESTABLISH HIS ELIGIBILITY; AMENDING SECTION 72-1367, IDAHO CODE, TO ADD ONE ADDITIONAL WEEK FOR BENEFIT CLAIMANTS CURRENTLY ELIGIBLE FOR AN ODD NUMBER OF WEEKS OF ENTITLEMENT; APPROPRIATING MONEYS FROM THE SPECIAL ADMINISTRATION FUND FOR DEPOSIT IN THE WORKFORCE DEVELOPMENT TRAINING FUND; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING EFFECTIVE DATES.

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

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

72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. (a) All remuneration for personal services as defined in section 72-1328, Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of six hundred dollars ($600), or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this act. Provided however, and notwithstanding any other provision of the employment security law to the contrary, for calendar year 1997 the taxable wage base shall be twenty-one thousand dollars ($21,000), which was the taxable wage base in effect for calendar year 1995.

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

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

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

(e) The taxable wage rate schedule for each calendar year shall be determined by comparing the ratio of the actual balance of the employment security fund, section 72-1346, Idaho Code, and the reserve

fund, section 72-1347A, Idaho Code, on September 30, to the wages covered in the penultimate year against the taxable wage schedule ratios as provided in subsection (d) of this section.

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

(g) Schedules of Taxable Wage Rates

			SCHED. I	SCHED. II	SCHED. III	SCHED. IV	SCHED. V	SCHED. VI	SCHED. VII	SCHED. VIII	SCHED. IX
Cumulative Taxable Payroll Limits			+.020	+.015	+.010	+.005	ACM	-.005	-.010	-.015	
			Taxable Wage Rates for Eligible Employers								
Rate Class	More Than (% of Total Taxable Payroll)	Equal to or Less Than (% of Total Taxable Payroll)									
1	--	10	0.1%	0.5%	0.9%	1.3%	1.5%	1.7%	2.1%	2.5%	2.9%
2	10	22	0.4	0.8	1.2	1.6	1.8	2.0	2.4	2.8	3.2
3	22	37	0.7	1.1	1.5	1.9	2.1	2.3	2.7	3.1	3.5
4	37	52	1.0	1.4	1.8	2.2	2.4	2.6	3.0	3.4	3.8
5	52	67	1.3	1.7	2.1	2.5	2.7	2.9	3.3	3.7	4.1
6	67	82	1.6	2.0	2.4	2.8	3.0	3.2	3.6	4.0	4.4
7	82	--	1.9	2.3	2.7	3.1	3.3	3.5	3.9	4.3	4.7
Taxable Wage Rates for Standard-Rated Employers:			2.1%	2.5%	2.9%	3.3%	3.5%	3.7%	4.1%	4.5%	4.9%
Cumulative Taxable Payroll Limits											
			Taxable Wage Rates for Deficit Employers								
Rate Class	More Than (% of Total Taxable Payroll)	Equal to or Less Than (% of Total Taxable Payroll)									
1	--	20	2.4	2.8	3.2	3.6	3.8	4.0	4.4	4.8	5.2
2	20	40	2.8	3.2	3.6	4.0	4.2	4.4	4.8	5.2	5.6
3	40	60	3.2	3.6	4.0	4.4	4.6	4.8	5.2	5.6	6.0
4	60	80	3.6	4.0	4.4	4.8	5.0	5.2	5.6	6.0	6.4
5	80	99	4.0	4.4	4.8	5.2	5.4	5.6	6.0	6.4	6.8
6	99	--	5.4	5.4	5.4	5.4	5.4	5.6	6.0	6.4	6.8

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

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

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

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

SECTION 2. That Section 72-1366, Idaho Code, be, and the same is hereby amended to read as follows:

72-1366. PERSONAL ELIGIBILITY CONDITIONS. The personal eligibility conditions of a benefit claimant are that--

(a) In accordance with the provisions of this act, and such rules consistent therewith, as the director may prescribe--

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

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

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

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

(d) During the whole of any week with respect to which he claims benefits or credit to his waiting period he was able to work, available for suitable work, and seeking work; provided, however, that no

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

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

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

(g) In determining for the purposes of this act, whether or not work is suitable for an individual, the degree of risk involved to his health, safety, morals, his physical fitness, experience, training, past earnings, length of unemployment and prospects for obtaining local employment in his customary occupation, the distance of the work from his residence, and other pertinent factors shall be considered. No employment shall, in any event, be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work or to hold himself available for work under any of the following conditions:

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

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality of the work offered;

(3) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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

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

(2) The claimant attends a job training course authorized pursuant to the provisions of section 236(a)(1) of the trade act of 1974; or

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

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

employment; and

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

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

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

(j) A benefit claimant shall not be eligible to receive benefits for any week with respect to which it is found that his unemployment is due to a labor dispute; provided, that this subsection shall not apply if it is shown that--

(1) He is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and

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

(k) A benefit claimant shall not be entitled to benefits for any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation or insurance law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States shall finally determine that he is not entitled to such unemployment compensation or insurance benefits, he shall not by provisions of this subsection be denied benefits. For purposes of this section, a law of the United States providing any payments of any type and in any amounts for periods of unemployment due to involuntary unemployment shall be considered an unemployment compensation law of the United States.

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

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

(n) A benefit claimant who has been found ineligible for benefits

under the provisions of subsections (c), (e), (f), (g) or (i) of this section may reestablish his eligibility by having obtained bona fide work and received wages therefor in an amount of at least ~~sixteen (16)~~ twelve (12) times his weekly benefit amount.

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

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

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

(3) As used in this section, "contract period" means the entire period for which the individual contracts to perform services, pursuant to the terms of the contract.

(p) No individual is eligible to receive benefits in two (2) successive benefit years unless subsequent to the beginning of the first of said benefit years during which he received benefits he performed service and earned remuneration for such service in an amount equal to not less than five and one-half (5 1/2) times his weekly benefit amount established during the first benefit year.

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

(2) With respect to weeks of unemployment beginning after December 31, 1977, benefits based on wages earned for services performed in any other capacity for an educational institution shall not be paid to any individual for any week which commences during a period between two (2) successive school years or terms if such individual performs such services in the first of such school years or terms, and there is a contract or reasonable assurance that such individual will perform such services in the second of such school years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educa-

tional institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause.

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

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

(r) Benefits shall not be paid after December 31, 1977, based on services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

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

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

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

(t) An unemployed individual shall be eligible to receive benefits with respect to any week only if the individual participates in reemployment services, such as job search assistance services, if the

individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director, unless the director determines that:

(1) The individual has completed such services; or

(2) There is justifiable cause for the claimant's failure to participate in such services.

SECTION 3. That Section 72-1367, Idaho Code, be, and the same is hereby amended to read as follows:

72-1367. BENEFIT FORMULA. (a) To be eligible an individual shall have at least eleven hundred forty-four dollars and one cent ($1,144.01) in total wages paid for services performed for covered employers in the calendar quarter within his base period in which such wages were highest, and shall have total base period wages of at least one and one-quarter (1 1/4) times his high quarter wages.

(b) The weekly benefit amount shall be one twenty-sixth (1/26) of highest quarter wages except that it shall not exceed the applicable maximum weekly benefit amount. The maximum weekly benefit amount shall be established as follows:

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

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

Ratio of Total Base Period Earnings to Highest Quarter Earnings		Full Weeks of Benefit Entitlement
At Least	Less Than	
1.25	1.50	10
1.50	1.75	1~~1~~2
1.75	2.00	1~~3~~4
2.00	2.25	1~~5~~6
2.25	2.50	1~~7~~8
2.50	2.75	~~19~~20
2.75	3.00	2~~1~~2
3.00	3.25	2~~3~~4
3.25	--	26

(d) If in any compensable week the total wages payable to such individual for less than full-time work performed in such week exceed one-half (1/2) of his weekly benefit amount, the excess shall be

deducted from his weekly benefit amount.

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

SECTION 4. There is hereby appropriated from the Special Administration Fund established in Section 72-1347A, Idaho Code, the amount of $700,000 to be deposited in the Workforce Development Training Fund established in Section 72-1347B, Idaho Code, for the period on and after the effective date of this section.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after its passage and approval and retroactively to January 1, 1997. Sections 2, 3 and 4 of this act shall be in full force and effect on and after July 1, 1997.

Approved March 21, 1997.

CHAPTER 272
(H.B. No. 259, As Amended)

AN ACT

RELATING TO FIREARMS, EXPLOSIVES AND OTHER DEADLY WEAPONS; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 18-3318, 18-3319, 18-3320 AND 18-3321, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR UNLAWFUL POSSESSION OF DESTRUCTIVE DEVICES, TO PROVIDE FOR UNLAWFUL POSSESSION AND USE OF DESTRUCTIVE DEVICES, AND TO PROVIDE FOR EXEMPTIONS FROM UNLAWFUL POSSESSION OF DESTRUCTIVE DEVICES AND DESTRUCTIVE DEVICE COMPONENTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 33, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 18-3318, 18-3319, 18-3320 and 18-3321, Idaho Code, and to read as follows:

18-3318. DEFINITIONS. Definitions as used in sections 18-3319, 18-3320 and 18-3321, Idaho Code.

(1) "Bomb" means any chemical or mixture of chemicals contained in such a manner that it can be made to explode with fire or force, and combined with the method or mechanism intended to cause its explosion. The term includes components of a bomb only when the individual charged has taken steps to place the components in proximity to each other, or has partially assembled components from which a completed bomb can be readily assembled. "Bomb" does not include rifle, pistol or shotgun ammunition and their components, fireworks, boating, railroad and other safety flares or propellants used in model rockets or similar hobby activities.

(2) "Destructive device" means:
(a) Any explosive, incendiary or poisonous gas:
(i) Bomb;
(ii) Grenade;
(iii) Rocket having a propellant charge of more than four (4) ounces;
(iv) Missile having an explosive or incendiary charge of more than one-fourth (1/4) ounce;
(v) Mine;
(vi) Similar device.
(b) Any type of weapon, by whatever name known, which will, or which may be imminently converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than .700 inches in diameter, except rifled and unrifled shotguns or shotgun shells.
(c) Components of a destructive device only when the individual charged has taken steps to place the components in proximity to each other, or has partially assembled components from which a completed destructive device can be readily assembled.
(d) The term "destructive device" shall not include:
(i) Any device which is neither designed nor redesigned for use as a weapon;
(ii) Any device which, although originally designed for use as a weapon, has been redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;
(iii) Otherwise lawfully owned surplus military ordnance;
(iv) Antiques or reproductions thereof and rifles held for sporting, recreational, investment or display purposes; or
(v) Rifle, pistol or shotgun ammunition and their components.

18-3319. UNLAWFUL POSSESSION OF DESTRUCTIVE DEVICES. Any person who knowingly, intentionally, or recklessly possesses or controls a bomb or destructive device for a purpose unlawful pursuant to title 18, Idaho Code, is guilty of a felony, punishable by up to a five thousand dollar ($5,000) fine and five (5) years in prison.

18-3320. UNLAWFUL USE OF DESTRUCTIVE DEVICE OR BOMB. Any person who knowingly, intentionally, or recklessly:
(1) Conspires to use, uses or causes to be used a destructive device or bomb in the commission of or an attempt to commit a felony; or
(2) With the intent to injure the person or property of another, transports a bomb or destructive device; or
(3) Injures another or conspires or attempts to injure another in his person or property through the use of a destructive device or bomb is guilty of a felony, punishable by up to a twenty-five thousand dollar ($25,000) fine and life in prison.

18-3321. PERSONS EXEMPT. Unless the intent to injure the person or property of another has been established, the provisions in sections 18-3319, Idaho Code, shall not apply to:
(1) Any public safety officer or member of the armed forces of

the United States or national guard while acting in his official capacity;

(2) Any person possessing a valid permit issued under the provisions of Idaho uniform fire code, sections 41-253 and 41-254, Idaho Code, or any employee of such permittee acting within the scope of his employment;

(3) Any person possessing a valid license as an importer, wholesaler, or display operator under the provisions of the Idaho fireworks act, sections 39-2602, 39-2606, 39-2607, 39-2608, 39-2609, 39-2610, 39-2611 and 39-2612, Idaho Code;

(4) A device which falls within the definition of a bomb or destructive device when used on property owned or otherwise in the control of the person using the device;

(5) Those licensed or permitted by the federal government to use or possess a bomb or destructive device.

(6) Those persons who possess a destructive device properly registered and taxed under the provision of the national firearms act, as amended, as to possession of destructive devices properly registered to such persons.

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 21, 1997.

CHAPTER 273
(H.B. No. 350)

AN ACT

RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3622X, IDAHO CODE, TO CLARIFY THAT THE EXEMPTION FOR POLLUTION CONTROL EQUIPMENT APPLIES TO PURCHASES OF DRY CLEANING EQUIPMENT WHICH MEET THE STANDARDS REFERRED TO AS DRY TO DRY TRANSFER SYSTEMS.

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

SECTION 1. That Section 63-3622X, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622X. POLLUTION CONTROL EQUIPMENT. There is hereby exempted from the taxes imposed by this chapter the sale, use or purchase of tangible personal property, which property is pollution control equipment required to meet air and water quality standards of a state or federal agency having authority to regulate and set air and water quality emission standards.

This exemption applies to the purchase of dry cleaning equipment that is designed to protect employees from exposure to perchloroethylene as well as retaining the fluid in the machine in order to protect sewer systems and air quality standards. Dry cleaning machines meeting these standards are referred to as "dry to dry trans-

fer systems."

This exemption does not include motor vehicles or aircraft required to be licensed by the laws of this state, without regard to the use to which such motor vehicles or aircraft are put.

Law Without Signature.

CHAPTER 274
(S.B. No. 1099, As Amended)

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-102, IDAHO CODE, TO ADD A DEFINITION AND TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 72-208, IDAHO CODE, TO PROVIDE THAT NO INCOME BENEFITS SHALL BE PAID IF INTOXICATION IS A REASONABLE AND SUBSTANTIAL CAUSE OF AN INJURY, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 72-228, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE SECTION AND TO DELETE REDUNDANT LANGUAGE; AMENDING SECTION 72-403, IDAHO CODE, TO PROHIBIT TEMPORARY DISABILITY BENEFITS IF AN INJURED EMPLOYEE UNREASONABLY FAILS TO SEEK OR ACCEPT PHYSICALLY OR MENTALLY SUITABLE WORK; AMENDING SECTION 72-407, IDAHO CODE, TO PROVIDE THAT AN EMPLOYER DISPUTING TOTAL AND PERMANENT DISABILITY WITH RESPECT TO CERTAIN INJURIES HAS THE BURDEN TO PROVE THAT THE CLAIMANT IS NOT PERMANENTLY AND TOTALLY DISABLED; AMENDING SECTION 72-413, IDAHO CODE, TO PROVIDE FOR PAYMENT OF INCOME BENEFITS FOR DEATH IF DEATH RESULTS WITHIN FOUR YEARS FROM THE DATE OF THE ACCIDENT OR MANIFESTATION OF THE OCCUPATIONAL DISEASE; AMENDING SECTION 72-419, IDAHO CODE, TO PROVIDE FOR DETERMINATION OF THE AVERAGE WEEKLY WAGE IN SEASONAL OCCUPATIONS THAT DO NOT CUSTOMARILY OPERATE THROUGHOUT THE ENTIRE YEAR AND TO PROVIDE FOR COMPUTATION BASED ON WAGES EARNED BY THE EMPLOYEE FROM ALL OCCUPATIONS; AMENDING SECTION 72-429, IDAHO CODE, TO PROVIDE THE RATE OF PAYMENT OF WEEKLY INCOME BENEFITS FOR UNSCHEDULED PERMANENT DISABILITIES; AMENDING SECTION 72-432, IDAHO CODE, TO REQUIRE WRITTEN NOTICE OF A REQUEST FOR CHANGE OF PHYSICIAN, TO PROVIDE FOR THE EMPLOYER'S RESPONSE TO A REQUEST, TO PROVIDE FOR A HEARING IF A DISPUTE ARISES, TO PROVIDE FOR RULE PROMULGATION, TO REQUIRE COMPLIANCE WITH PROCEDURES, TO PROVIDE THAT THE EMPLOYER OR SURETY SHALL NOT BE SUBJECT TO LIABILITY TO A DESIGNATED HEALTH CARE PROVIDER, TO PROVIDE FOR RELEASE OF MEDICAL INFORMATION TO THE INDUSTRIAL SPECIAL INDEMNITY FUND AND THE ATTORNEYS OR AUTHORIZED REPRESENTATIVES OF THE PARTIES OR THE COMMISSION, TO PROVIDE A RIGHT TO CONFER WITH A HEALTH CARE PROVIDER WITHOUT THE PRESENCE OF AN OPPOSING ATTORNEY OR PARTY AND TO PROVIDE AN EXCEPTION, TO PROVIDE FOR REIMBURSEMENT TO AN INJURED EMPLOYEE FOR TRAVEL EXPENSES IN OBTAINING MEDICAL CARE AND TO PROVIDE FOR NOTICE AND EXAMINATION OF AN EMPLOYEE WHO LEAVES THE LOCALITY; AMENDING SECTION 72-433, IDAHO CODE, TO PROVIDE FOR REIMBURSEMENT OF TRAVEL EXPENSES OF AN INJURED EMPLOYEE TO RECEIVE A MEDICAL EXAMINATION OR PHYSICAL REHABILITATION, TO PROVIDE FOR AN AUDIO AND A VIDEO RECORDING OF

AN EXAMINATION AND TO PROVIDE FOR REIMBURSEMENT OF TRAVEL EXPENSES; AMENDING SECTION 72-434, IDAHO CODE, TO PROVIDE FOR SUSPENSION OF RIGHTS TO PROCEED IF AN INJURED EMPLOYEE UNREASONABLY FAILS TO SUBMIT TO EXAMINATION; AMENDING SECTION 72-439, IDAHO CODE, TO PROVIDE THAT AN EMPLOYER IS NOT LIABLE WITH RESPECT TO AN OCCUPATIONAL DISEASE UNLESS THE DISEASE IS ACTUALLY INCURRED IN THE EMPLOYER'S EMPLOYMENT AND TO PROVIDE FOR LIABILITY OF THE EMPLOYER IN WHOSE EMPLOYMENT THE EMPLOYEE WAS LAST INJURIOUSLY EXPOSED TO THE HAZARD OF THE DISEASE; AMENDING SECTION 72-448, IDAHO CODE, TO PROVIDE FOR NOTICE IN ALL CASES OF OCCUPATIONAL DISEASE, TO PROVIDE FOR NOTICE TO THE INDUSTRIAL COMMISSION IF AN EMPLOYER CANNOT BE REASONABLY LOCATED, TO PROVIDE FOR BAR OF A CLAIM IF THE CLAIM IS NOT FILED WITHIN A YEAR OF THE FIRST MANIFESTATION OF THE DISEASE, TO REQUIRE NOTICE OF DEATH FROM AN OCCUPATIONAL DISEASE AND TO BAR A CLAIM IF NOT FILED WITHIN A YEAR AFTER THE DEATH AND TO PROVIDE NOTIFICATION REQUIREMENTS; AND AMENDING SECTION 72-450, IDAHO CODE, TO PROVIDE FOR A MUTUAL AGREEMENT TO RETRAINING.

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 any person who has been convicted of a criminal offense, any juvenile who has been found to be within the purview of chapter ~~18~~ 5, title ~~16~~ 20, Idaho Code, and who has been informally diverted under the provisions of section ~~16-1807A~~ 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.

(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) "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 workmen there employed. If the employer is secured, it means his surety so far as applicable.

(13) "Farm labor contractor" means any person or his agent or subcontractor who, for a fee, recruits and employs farm workers and performs any farm labor contracting activity.

(14) "Gender and number." The masculine gender includes the femi-

nine 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.

(~~19~~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.

(2~~0~~1) "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) "~~Siliicoses~~Silicosis" means the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO_2) dust.

(2~~1~~2) "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.

(2~~2~~3) "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.

(2~~3~~4) "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.

(2~~4~~5) "Secretary" means the secretary of the commission.

(2~~5~~6) "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.

(2~~6~~7) "State" includes any state, district, commonwealth, zone or territory of the United States or any province of Canada.

(2~~7~~8) "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.

(2~~8~~9) "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.

(~~29~~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.

(3~~0~~1) "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.

(3~~1~~2) "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 govern-

mental entity. The student need not receive wages from the private or governmental entity in order to be classified as a work experience student.

(3~~2~~3) "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 72-208, Idaho Code, be, and the same is hereby amended to read as follows:

72-208. INJURIES NOT COVERED -- WILFUL INTENTION -- INTOXICATION. (1) No compensation shall be allowed to an employee for injury proximately caused by the employee's wilful intention to injure himself or to injure another.

(2) If ~~an injury~~ intoxication is ~~the proximate result~~ a reasonable and substantial cause of an ~~employee's intoxication~~ injury, ~~all~~ no income benefits shall be ~~reduced by fifty per cent (50%), provided that such reduction shall not apply~~ paid, except where the intoxicants causing the employee's intoxication were furnished by the employer or where the employer permits the employee to remain at work with knowledge by the employer or his supervising agent that the employee is intoxicated.

(3) "Intoxication" as used in this section means being under the influence of alcohol or of controlled substances, as defined in section 37-2701(d), Idaho Code. Provided, however, that this definition shall not include an employee's use of a controlled substance for which a prescription has been issued authorizing such substance to be dispensed to ~~him~~ the employee, or when such substance is dispensed directly by a ~~practitioner~~ physician to ~~him~~ the employee, and where the employee's use of the controlled substance is in accordance with the instructions for use of the controlled substance.

SECTION 3. That Section 72-228, Idaho Code, be, and the same is hereby amended to read as follows:

72-228. PRESUMPTION FAVORING CERTAIN CLAIMS. (1) In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, and where there is unrebutted prima facie evidence that indicates that the injury arose in the course of employment, it shall be presumed, in the absence of substantial evidence to the contrary, that the injury arose out of the employment~~,~~ and that sufficient notice of the accident causing the injury has been given~~, and that the injury or death was not occasioned by the employee's intoxication or by his wilful intention to injure himself or to injure another~~.

(2) This section shall not apply to any defense under section 72-208, Idaho Code.

SECTION 4. That Section 72-403, Idaho Code, be, and the same is hereby amended to read as follows:

72-403. PENALTY FOR MALINGERING -- DENIAL OF COMPENSATION. If ~~a~~

~~partially-disabled~~ an injured employee refuses or unreasonably fails to seek physically or mentally suitable work, or refuses or unreasonably fails or neglects to work after such suitable work is offered to, procured by or secured for ~~him,-he~~ the employee, the injured employee shall not be entitled to ~~any--compensation~~ temporary disability benefits during the period of such refusal or failure.

SECTION 5. That Section 72-407, Idaho Code, be, and the same is hereby amended to read as follows:

72-407. CERTAIN INJURIES DEEMED TOTAL AND PERMANENT. In case of the following injuries, ~~in-the-absence-of-conclusive-proof-to-the-contrary--the--disability-caused-thereby-shall-be-deemed-total-and-permanent~~ if the employer disputes that the claimant is totally and permanently disabled, the burden of proof shall be on the employer to prove by clear and convincing evidence that the claimant is not permanently and totally disabled.

(1) The total and permanent loss of sight in both eyes.

(2) The loss of both feet at or above the ankle.

(3) The loss of both hands at or above the wrist.

(4) The loss of one (1) hand and one (1) foot.

(5) An injury to the spine resulting in permanent and complete paralysis of both legs or arms or of one (1) leg and one (1) arm.

(6) An injury to the skull resulting in incurable imbecility or insanity.

The above enumeration is not to be taken as exclusive.

SECTION 6. That Section 72-413, Idaho Code, be, and the same is hereby amended to read as follows:

72-413. INCOME BENEFITS FOR DEATH. If death results from the ~~injury~~ accident or occupational disease within four (4) years from the date of the accident, or manifestation of the occupational disease, the employer shall pay to or for the benefit of the following particular classes of dependents' weekly income benefits equal to the following percentages of the average weekly state wage as defined in section 72-409, Idaho Code. The benefits payable hereunder shall be subject to annual adjustment as provided in section 72-409(2), Idaho Code. The annual adjustment provided herein shall not apply to benefits for an injury or occupational disease resulting in death if the accident causing the injury or the manifestation of the occupational disease occurred prior to July 1, 1991.

(1) To a dependent widow or widower, if there be no dependent children, forty-five per cent (45%).

(2) To a dependent widow or widower, if there be dependent children, an additional five per cent (5%) of the average weekly state wage for each dependent child to and including a total of three (3). Such compensation to the widow or widower shall be for the use and benefit of the widow or widower and of the dependent children and the commission may from time to time apportion such compensation between them in such a way as it deems best.

(3) If there be no dependent widow or widower, but a dependent child or children, thirty per cent (30%) of the average weekly state

wage for one (1) child and ten per cent (10%) for each additional child to and including a total of three (3), to a maximum not to exceed sixty per cent (60%) of the average weekly state wage, to be divided equally among such children.

(4) To the parents, if one (1) be wholly dependent for support upon the deceased employee at the time of his death and the other is not dependent to any extent, twenty-five per cent (25%) of the average weekly state wage; if both are wholly dependent, twenty per cent (20%) of the average weekly state wage to each; if one (1) be or both are partly dependent, a proportionate amount in the discretion of the commission.

The above percentages shall be paid if there be no dependent widow, widower or child. If there be a widow, widower or child, there shall be paid so much of the above percentages as, when added to the total percentage payable to the widow, widower and children, will not exceed a total of sixty per cent (60%) of the average state weekly wage.

(5) To the brothers, sisters, grandparents and grandchildren, if one (1) be wholly dependent upon the deceased employee at the time of his death, twenty per cent (20%) of the average state weekly wage to such dependents; if more than one be wholly dependent, thirty per cent (30%) of the average state weekly wage, divided among such dependents, share and share alike. If there be no one (1) of them wholly dependent, but one (1) or more partially dependent, ten per cent (10%) of the average state weekly wage divided among such dependents, share and share alike.

The above percentages shall be paid if there be no dependent widow, widower, child or parent. If there be a dependent widow, widower, child or parent, there shall be paid so much of the above percentages as, when added to the total percentages payable to the widow, widower, children and dependent parents, will not exceed a total of sixty per cent (60%) of the average weekly state wage.

Payments made for and on behalf of a dependent child or children shall be made to such child's or children's natural or adoptive surviving parent for the use and benefit of the child or children, if such child or children reside with such parent, notwithstanding the remarriage of such parent; provided, however, if the care and the custody of such child or children has been awarded by a court of competent jurisdiction of this state or any other state to a person or persons other than the child's or children's natural or adoptive parent, then such payments shall be made to that person or those persons so awarded care and custody for the use and benefit of the child or children. Whenever the commission deems it necessary, it may direct any payments made hereunder to be made under such terms and conditions as it deems necessary.

SECTION 7. That Section 72-419, Idaho Code, be, and the same is hereby amended to read as follows:

72-419. DETERMINATION OF AVERAGE WEEKLY WAGE. Except as otherwise provided in this law, the average weekly wage of the employee at the time of the accident causing the injury or of manifestation of the occupational disease shall be taken as the basis upon which to compute

compensation and shall be determined as follows:

(1) If at such time the wages are fixed by the week, the amount so fixed shall be the average weekly wage.

(2) If at such time the wages are fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52).

(3) If at such time the wages are fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52).

(4) (a) If at such time the wages are fixed by the day, hour or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) his wages (not including overtime or premium pay) earned in the employ of the employer in the first, second, third or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the time of accident or manifestation of the disease.

(b) If the employee has been in the employ of the employer less than twelve (12) calendar weeks immediately preceding the accident or manifestation of the disease, his average weekly wage shall be computed under the foregoing paragraph, taking the wages (not including overtime or premium pay) for such purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding such time and had worked, when work was available to other employees in a similar occupation.

(5) If at such time the hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where such services are rendered by paid employees.

(6) In ~~occupations which are exclusively~~ seasonal ~~and--therefore cannot--be--carried--on~~ occupations that do not customarily operate throughout the entire year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the time of the accident or manifestation of the disease.

(7) In the case of volunteer firemen, police and civil defense members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.

(8) If the employee was a minor, apprentice or trainee at the time of the accident or manifestation of the disease, and it is established that under normal conditions his wages should be expected to increase during the period of disability that fact may be considered in computing his average weekly wage.

(9) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of such employment prior to the injury, the employee's wages from all such employers shall be considered as if earned from the employer liable for compensation.

(10) When circumstances are such that the actual rate of pay cannot be readily ascertained, the wage shall be deemed to be the contractual, customary or usual wage in the particular employment, indus-

try or community for the same or similar service.

SECTION 8. That Section 72-429, Idaho Code, be, and the same is hereby amended to read as follows:

72-429. UNSCHEDULED PERMANENT DISABILITIES. In all other cases of permanent disabilities less than total not included in the foregoing schedule the amount of income benefits~~, computed on the basis set forth in section 72-409,~~ shall be not less than the evaluation in relation to the percentages of loss of the members, or of loss of the whole man, stated against the scheduled permanent impairments, as the disabilities bear to those produced by the permanent impairments named in the schedule. Weekly income benefits paid pursuant to this section shall likewise be paid at fifty-five percent (55%) of the average weekly state wage for the year of the injury as provided in section 72-428, Idaho Code.

SECTION 9. That Section 72-432, Idaho Code, be, and the same is hereby amended to read as follows:

72-432. MEDICAL SERVICES, APPLIANCES AND SUPPLIES -- REPORTS. (1) The employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or ~~disability from~~ manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer.

(2) The employer shall also furnish necessary replacements or repairs of appliances and prostheses, unless the need therefor is due to lack of proper care by the employee. If the appliance or prosthesis is damaged or destroyed in an industrial accident, the employer, for whom the employee was working at the time of accident, will be liable for replacement or repair, but not for any subsequent replacement or repair not directly resulting from the accident.

(3) In addition to the income benefits otherwise payable, the employee who is entitled to income benefits shall be paid an additional sum in an amount as may be determined by the commission as by it deemed necessary, as a medical service, when the constant service of an attendant is necessary by reason of total blindness of the employee or the loss of both hands or both feet or the loss of use thereof, or by reason of being paralyzed and unable to walk, or by reason of other disability resulting from the injury or disease actually rendering him so helpless as to require constant attendance. The commission shall have authority to determine the necessity, character and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital or rehabilitation facility when in its judgment such change is desirable or necessary.

(4) (a) The employee upon reasonable grounds, may petition the commission for a change of physician to be provided by the employer~~,~~; however, the employee must give written notice to the

employer or surety of ~~his~~ the employee's request for a change of physicians to afford the employer the opportunity to fulfill ~~his~~ its obligations under this section. If proper notice is not given, the employer shall not be obligated to pay for the services obtained. Nothing in this section shall limit the attending physician from arranging for consultation, referral or specialized care without permission of the employer. Upon receiving such written notice, the employer shall render its written decision on the claimant's request within fourteen (14) days. If any dispute arises over the issue of a request for change of physician, the industrial commission shall conduct an expedited hearing to determine whether or not the request for change of physician should be granted, and shall render a decision within fourteen (14) days after the filing of the response by the employer.

(b) The industrial commission shall, no later than December 31, 1997, promulgate a rule for the expeditious handling of a petition for change of physician pursuant to this section. Nothing herein shall prevent the commission from making periodic amendments, as may become necessary, to any rule for a petition for change of physician.

(5) Any employee who seeks medical care in a manner not provided for in this section, or as ordered by the industrial commission pursuant to this section, shall not be entitled to reimbursement for costs of such care.

(6) An employee shall not be responsible for charges of physicians, hospitals or other providers of medical services to whom he has been referred for treatment of his injury or occupational disease by an employer designated physician or by the commission, except for charges for personal items or extended services which the employee has requested for his convenience and which are not required for treatment of his injury or occupational disease.

(7) The employer or surety shall not be subject to tort liability to any health care provider for complying with the provisions of this law.

(~~6~~8) Nothing in this chapter shall be construed to require a workman who in good faith relies on Christian Science treatment by a duly accredited Christian Science practitioner to undergo any medical or surgical treatment, providing that neither he nor his dependents shall be entitled to income benefits of any kind beyond those reasonably expected to have been paid had he undergone medical or surgical treatment, and the employer or insurance carrier may pay for such spiritual treatment.

(~~7~~9) The commission shall promulgate rules ~~and regulations~~ requiring physicians and other practitioners providing treatment to make regular reports to the commission containing such information as may be required by the commission. The commission shall promulgate such rules ~~and regulations~~ with the counsel, advice, cooperation and expertise of representatives of industry, labor, sureties and the legal and medical professions as well as institutions, hospitals and clinics having physical rehabilitation facilities.

(~~8~~10) All medical information relevant to or bearing upon a particular injury or occupational disease shall be provided to the employer, surety, manager of the industrial special indemnity fund, or

their attorneys or authorized representatives, the claimant, the claimant's attorneys or authorized representatives, or the commission without liability on the part of the physician, hospital or other provider of medical services and information developed in connection with treatment or examination for an injury or disease for which compensation is sought shall not be privileged communication. When a physician or hospital willfully fails to make a report required under this section, after written notice by the commission that such report is due, the commission may order forfeiture of all or part of payments due for services rendered in connection with the particular case. An attorney representing the employer, surety, claimant or industrial special indemnity fund shall have the right to confer with any health care provider without the presence of the opposing attorney, representative or party, except for a health care provider who is retained only as an expert witness.

(9~~1~~11) Physicians or others providing services under this section shall assist in the rehabilitation program provided in section 72-501A, Idaho Code. They shall cooperate with specialists from the commission's rehabilitation staff and with employer rehabilitation personnel in furthering the physical or vocational rehabilitation of the employee. The extension of total temporary disability benefits during retraining as authorized by section 72-450, Idaho Code, shall be the responsibility of the commission, however, the physician shall inform the commission as soon as it is medically apparent that the employee may be unable to return to the job in which he sustained injury or occupational disease following treatment and maximum recovery.

(12) An injured employee shall be reimbursed for his expenses of necessary travel in obtaining medical care under this section. Reimbursement for transportation expenses, if the employee utilizes a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.

(13) An employee who leaves the locality where employed at the time of the industrial accident, or manifestation of an occupational disease, or the locality in which the employee is currently receiving medical treatment for the injury, shall give timely notice to the employer and surety of the employee's leaving the locality. The employer or surety may require the claimant to report to the treating physician for examination prior to leaving the locality, if practical. If an examination by the treating physician is not practical prior to leaving the locality, the employer or surety may assist in arranging an examination by an appropriate physician in the new locality. After receiving notice of relocation, the employer or surety shall have the same responsibility to furnish care as set forth in subsection (1) of this section.

SECTION 10. That Section 72-433, Idaho Code, be, and the same is hereby amended to read as follows:

72-433. SUBMISSION OF INJURED EMPLOYEE TO MEDICAL EXAMINATION OR PHYSICAL REHABILITATION. (1) After an injury or contraction of an occupational disease and during the period of disability the employee, if requested by the employer or ordered by the commission, shall submit himself for examination at reasonable times and places to a duly qualified physician or surgeon. The employee shall be reimbursed for his expenses of necessary travel and subsistence in submitting himself for any such examination and for loss of wages, if any. For purposes of this section, the reimbursement for loss of wages shall be at the employee's then current rate of pay if the employee is then working; otherwise, such reimbursement shall be at the total temporary disability rate. Reimbursement for travel expenses, if the employee utilizes ~~his own~~ a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided, however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip distance of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.

(2) The employee shall have the right to have a physician or surgeon designated and paid by himself present at an examination by a physician or surgeon so designated by the employer. Such right, however, shall not be construed to deny the employer's designated physician or surgeon the right to visit the injured employee during reasonable times and under all reasonable conditions during disability. The employee and the examining physician shall have the right to have an audio recording of any examination, but may have a video recording only if the examining physician and the employee consent.

(3) At any time after injury, if an injured employee be sent to a facility approved by the commission for physical or vocational rehabilitation, the employee shall be furnished by the employer reasonable travel accommodations to and from such facility and if the injured employee is an outpatient in a physical rehabilitation facility, he shall be paid daily subsistence as the commission may authorize to cover reasonable expenses of board, lodging and transportation. Reimbursement for transportation expense, if the employee utilizes ~~his own~~ a private vehicle, shall be at the mileage rate allowed by the state board of examiners for state employees; provided however, that the employee shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip distance of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel.

SECTION 11. That Section 72-434, Idaho Code, be, and the same is hereby amended to read as follows:

72-434. EFFECT OF REFUSING MEDICAL EXAMINATION -- DISCONTINUANCE OF COMPENSATION. If an injured employee ~~refuses~~ unreasonably fails to submit ~~himself~~ to or in any way obstructs an examination by a physician or surgeon designated by the commission or the employer, ~~his~~ the injured employee's right to take or prosecute any proceedings under this law shall be suspended until such ~~refusal~~ failure or obstruction ceases, and no compensation shall be payable for the period during which such ~~refusal~~ failure or obstruction continues.

SECTION 12. That Section 72-439, Idaho Code, be, and the same is hereby amended to read as follows:

72-439. ~~LIMITATIONS~~ ACTUALLY INCURRED/NONACUTE OCCUPATIONAL DISEASE. (1) An employer shall not be liable for any compensation for an occupational disease unless such disease is actually incurred in ~~his~~ the employer's employment ~~and,-unless--disablement--or--death--results within-four-(4)-years-in-case-of-silicosis,-or-one-(1)-year-in-case-of any--other--occupational-disease,-after-the-last-injurious-exposure-to such-disease-in-such-employment,-or,-in-case-of--death,--unless--death follows-continuous-disability-from-such-disease,-commencing-within-the period--above--limited-for-which-compensation-has-been-paid-or-awarded or-claim-made-as-provided-in-this-chapter,-and-results-within-four-(4) years-after-the-last-injurious-exposure.~~

(2) An employer shall not be liable for any compensation for a nonacute occupational disease unless the employee was exposed to the hazard of such disease for a period of sixty (60) days for the same employer.

(3) Where compensation is payable for an occupational disease, the employer, or the surety on the risk for the employer, in whose employment the employee was last injuriously exposed to the hazard of such disease, shall be liable therefor.

SECTION 13. That Section 72-448, Idaho Code, be, and the same is hereby amended to read as follows:

72-448. NOTICE ~~OF-CONTRACTION-OF-DISEASE-AND-CLAIM-FOR-COMPENSATION~~ AND LIMITATIONS. (1) ~~Except--in--cases--of--silicosis--for--which notice--of--contraction-and-claim-for-compensation-may-be-given-at-any time-within-the-four-(4)-year-limitation-provided-in-section---72-439, Idaho--Code,-u~~Unless written notice of the manifestation of an occupational disease ~~shall-be~~ is given ~~by--the--employee~~ to the employer within sixty (60) days after ~~the~~ its first manifestation, ~~thereof,-and within--five-(5)-months-after-the-employment-has-ceased-in-which-it-is claimed-the-disease-was-contracted,-and,--in--case--of--death,--unless written--notice-of-such-death-be-given~~ or to the industrial commission if the employer cannot be reasonably located within ninety (90) days after the ~~occurrence~~ first manifestation, and unless claim for ~~disability-or-death-shall-be-made~~ worker's compensation benefits for an occupational disease is filed with the industrial commission within one (1) year after the first manifestation ~~of-the--disease--or--death respectively,~~ all rights of the employee to worker's compensation ~~for disability-or-death-from-injury~~ due to ~~an~~ the occupational disease shall be forever barred.

(2) ~~Provided,--that--when--disablement--or-death-is-the-result-of exposure-to-radioactive-properties-of-substances--or--sources--of--the ionizing--radiation--in-any-occupation-involving-direct-contact-therewith,--handling--thereof--or--exposure--thereto,--or---asbestosis---or berylliosis--and-other-unusual-cases-of-occupational-diseases,-written notice-may-be-given-any-time-and-a-claim-filed--within--one--(1)--year after-the-date-upon-which-the-employee-first-suffered-incapacity,-disability--or--death--from--such-exposure-and-knew-or-in-the-exercise-of reasonable-diligence-should-have-known-that-the--occupational--disease~~

~~was--caused--by-his-present-or-prior-employment.~~ Unless written notice of death from an occupational disease is given to the employer within ninety (90) days after the death, or to the industrial commission if the employer cannot be reasonably located within ninety (90) days after the death, and unless claim for worker's compensation benefits for the death is filed with the industrial commission within one (1) year after the death, all rights to worker's compensation benefits for the death shall be forever barred.

(3) If notice is given to the industrial commission under subsection (1) or (2) of this section, the industrial commission shall promptly give notice to the employer and the surety.

SECTION 14. That Section 72-450, Idaho Code, be, and the same is hereby amended to read as follows:

72-450. RETRAINING. Following a hearing ~~or-informal-conference~~ upon a motion of the employer, the employee ~~or-its-own-motion~~, or the commission, if the commission deems a permanently disabled employee, after the period of recovery, is receptive to and in need of retraining in another field, skill or vocation in order to restore his earning capacity, ~~it~~ the commission may authorize or order such retraining and during the period of retraining or any extension thereof, the employer shall continue to pay the disabled employee, as a subsistence benefit, temporary total or temporary partial disability benefits as the case may be. The period of retraining shall be fixed by the commission but shall not exceed fifty-two (52) weeks unless the commission, following application and hearing, deems it advisable to extend the period of retraining, in which case the increased period shall not exceed fifty-two (52) weeks. An employer and employee may mutually agree to a retraining program without the necessity of a hearing before the commission.

Approved March 21, 1997.

CHAPTER 275
(S.B. No. 1154)

AN ACT

RELATING TO AN OPTIONAL RETIREMENT PROGRAM FOR COMMUNITY COLLEGES AND POSTSECONDARY VOCATIONAL EDUCATION INSTITUTIONS; AMENDING SECTION 33-107A, IDAHO CODE, TO PROVIDE FOR PAYMENT OF THE CONTRIBUTIONS OF A MEMBER OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO ELECTING TO PARTICIPATE IN THE OPTIONAL RETIREMENT PROGRAM; AMENDING CHAPTER 1, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-107B, IDAHO CODE, TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ESTABLISH AN OPTIONAL RETIREMENT PROGRAM FOR TEACHING STAFF AND OFFICERS OF COMMUNITY COLLEGES AND POSTSECONDARY VOCATIONAL EDUCATION INSTITUTIONS, INCLUDING NORTH IDAHO COLLEGE, COLLEGE OF SOUTHERN IDAHO AND EASTERN IDAHO TECHNICAL COLLEGE, TO PROVIDE FOR RIGHTS AND BENEFITS, TO PROVIDE FOR ELIGIBLE EMPLOYEES, TO PROVIDE VESTED MEMBERS OF THE PUBLIC EMPLOYEE RETIREMENT

SYSTEM WITH A ONE TIME IRREVOCABLE OPTION TO PARTICIPATE IN THE OPTIONAL RETIREMENT PROGRAM, TO PROVIDE NONVESTED TEACHING STAFF AND OFFICERS EMPLOYED AS OF THE DAY BEFORE THE EFFECTIVE DATE OF THE ACT WITH A ONE TIME IRREVOCABLE OPTION TO PARTICIPATE IN THE OPTIONAL RETIREMENT PROGRAM, TO PROVIDE FOR PAYMENT OF THE CONTRIBUTIONS OF A MEMBER OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO ELECTING TO PARTICIPATE IN THE OPTIONAL RETIREMENT PROGRAM DIRECTLY TO ANOTHER QUALIFIED PLAN MAINTAINED UNDER THE OPTIONAL RETIREMENT PROGRAM, TO PROVIDE THAT THOSE PARTICIPATING IN THE OPTIONAL RETIREMENT PROGRAM ARE INELIGIBLE FOR MEMBERSHIP IN THE PUBLIC EMPLOYEE RETIREMENT SYSTEM AND TO PROVIDE FOR CONTRIBUTIONS BY EACH INSTITUTION AND EACH PARTICIPANT; AMENDING SECTION 33-2101A, IDAHO CODE, TO INCLUDE SECTION 33-107B, IDAHO CODE; AND AMENDING SECTION 33-2109A, IDAHO CODE, TO PERMIT PARTICIPANTS IN THE OPTIONAL RETIREMENT PROGRAM TO BE ACCORDED CREDIT FOR UNUSED SICK LEAVE FOR THE PURPOSES OF SECTION 67-5339, IDAHO CODE.

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

SECTION 1. That Section 33-107A, Idaho Code, be, and the same is hereby amended to read as follows:

33-107A. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM. (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of the university of Idaho, Idaho state university, Boise state university, Lewis Clark state college and the state board of education who are hired on or after July 1, 1993; provided, however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

(a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;

(b) The relation of such rights and benefits to the amount of contributions to be made;

(c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and

(d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are:

(i) Those faculty and nonclassified staff initially appointed or hired between July 1, 1990 and June 30, 1993; and

(ii) Those teaching staff and officers initially appointed or hired on or after July 1, 1993.

All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to remain a member of that retirement system. The election shall be made in writing, within sixty (60) days of the date of initial hire or appointment or the effective date of this act, whichever occurs later. It shall be filed with the administrative officer of the employing institution.

(c) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(4) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to the employer's "normal cost" under the public employee retirement system as defined in section 59-1322, Idaho Code, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits or any combination thereof, but in no event less than five per cent (5%) of each participant's salary; and

(ii) To the public employee retirement system, an amount equal to three and three one-hundredths per cent (3.03%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2015, and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) Each participant shall contribute an amount equal to the member contribution under the public employee retirement system as required in section 59-1333, Idaho Code. Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(c) Payment of contributions authorized or required under this subsection shall be made by the financial officer of the employing

institution to the designated company or companies for the benefits of each participant.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

SECTION 2. That Chapter 1, Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 33-107B, Idaho Code, and to read as follows:

33-107B. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM FOR COMMUNITY COLLEGES AND POSTSECONDARY VOCATIONAL EDUCATION INSTITUTIONS. (1) The state board of education may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for members of the teaching staff and officers of community colleges and postsecondary vocational education institutions, including north Idaho college, college of southern Idaho and eastern Idaho technical college, hired on or after July 1, 1997; provided however, that no such employee shall be eligible to participate in an optional retirement program unless he would otherwise be eligible for membership in the public employee retirement system of Idaho. The benefits to be provided for or on behalf of participants in an optional retirement program shall be provided through annuity contracts or certificates, fixed or variable in nature, or a combination thereof, whose benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide for the administration of the optional retirement program and to perform or authorize the performance of such functions as may be necessary for such purposes. The board shall designate the company or companies from which contracts are to be purchased under the optional retirement program and shall approve the form and contents of such contracts. In making the designation and giving approval, the board shall consider:

(a) The nature and extent of the rights and benefits to be provided by such contracts for participants and their beneficiaries;

(b) The relation of such rights and benefits to the amount of contributions to be made;

(c) The suitability of such rights and benefits to the needs of the participants and the interests of the institutions in the recruitment and retention of staff members; and

(d) The ability of the designated company to provide such suitable rights and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are the teaching staff and officers ini-

tially appointed or hired on or after the effective date of this chapter. All eligible employees, except those who are vested members of the public employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Eligible employees who are vested members of the public employee retirement system of Idaho may make a one (1) time irrevocable election to transfer to the optional retirement program. The election shall be made in writing and within sixty (60) days of the date of initial hire or appointment, or one hundred fifty (150) days after the effective date of this chapter, whichever occurs later. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(c) Teaching staff and officers employed by the institution the day before the effective date of this chapter may make a one (1) time irrevocable election to participate in the optional retirement program. The election shall be made in writing and within one hundred fifty (150) days after the effective date of this chapter. The election shall be filed with the administrative officer of the employing institution. The election shall be effective not later than the first day of the second pay period following the date of the election.

(d) The accumulated contributions of employees who make the one (1) time irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement system of Idaho to such qualified plan, maintained under the optional retirement program, as designated in writing by the employee.

(e) An election by an eligible employee of the optional retirement program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4) (a) Each institution shall contribute on behalf of each participant in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to the employer's "normal cost" under the public employee retirement system as defined in section 59-1322, Idaho Code, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event less than five percent (5%) of each participant's salary; and

(ii) To the public employee retirement system, an amount equal to three and eighty-three hundredths percent (3.83%) of salaries of members who are participants in the optional retirement program. This amount shall be paid until July 1, 2011 and is in lieu of amortization payments and withdrawal contributions required pursuant to chapter 13, title 59, Idaho Code.

(b) For the purposes of section 59-1322, Idaho Code, the term "projected salaries" shall include the sum of the annual salaries

of all participants in the optional retirement program established pursuant to this section.

(c) Each participant shall contribute an amount equal to the member contribution under the public employee retirement system as required in section 59-1333, Idaho Code. Employee contributions may be made by employer pick-up pursuant to section 59-1332, Idaho Code.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

SECTION 3. That Section 33-2101A, Idaho Code, be, and the same is hereby amended to read as follows:

33-2101A. JUNIOR COLLEGE SHALL MEAN COMMUNITY COLLEGE. Notwithstanding any other provision of law, in sections 21-805, 21-806, 21-809, 23-404, 31-808, 33-101, 33-107, 33-107B, 33-601, 33-1252, 33-2101, 33-2102, 33-2103, 33-2104, 33-2105, 33-2106, 33-2107, 33-2107A, 33-2107B, 33-2107C, 33-2108, 33-2109A, 33-2110, 33-2110A, 33-2110B, 33-2111, 33-2112, 33-2113, 33-2114, 33-2115, 33-2116, 33-2117, 33-2118, 33-2119, 33-2121, 33-2122, 33-2123, 33-2124, 33-2125, 33-2126, 33-2130, 33-2135, 33-2137, 33-2138, 33-2139, 33-2141, 33-2142, 33-2143, 33-2144, 33-2211, 33-3716, 33-3717, 33-4001, 33-4003, 33-4004, 33-4006, 33-4201, 33-4306, 33-4315, 46-314, 50-1405, 50-1721, 54-2029, 57-1105A, 59-1324, 59-1371, 59-1374, 67-2320, 67-2322, 67-5309C and 67-5332, Idaho Code, the term "junior college" shall mean and shall be denoted as "community college."

SECTION 4. That Section 33-2109A, Idaho Code, be, and the same is hereby amended to read as follows:

33-2109A. USE OF UNUSED SICK LEAVE. Upon separation from employment with the junior college district by retirement, in accordance with chapter 13, title 59, Idaho Code, or with chapter 1, title 33, Idaho Code, an employee shall be accorded credit for unused sick leave as provided in section 67-5339, Idaho Code. Each junior college district shall contribute to the sick leave account for the purposes of this section, as provided in subsection (3) of section 67-5339, Idaho Code.

Approved March 21, 1997.

CHAPTER 276
(S.B. No. 1017, As Amended in the House)

AN ACT

RELATING TO CONSUMER PROTECTION; AMENDING TITLE 48, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 14, TITLE 48, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR EXPRESS WARRANTIES, TO PROVIDE FOR ASSISTIVE DEVICE REPLACEMENT OR A REFUND, TO PROVIDE A NONCONFORMITY DISCLOSURE REQUIREMENT, TO PROVIDE A MANUFACTURER'S DUTY TO PROVIDE REIMBURSEMENT FOR TEMPORARY REPLACEMENT OF ASSISTIVE DEVICES AND PENALTIES AND TO PROVIDE FOR ENFORCEMENT.

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

SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 14, Title 48, Idaho Code, and to read as follows:

CHAPTER 14
ASSISTIVE TECHNOLOGY WARRANTY ACT

48-1401. SHORT TITLE. This chapter governing the sale of assistive technology devices may be cited as the "Assistive Technology Warranty Act."

48-1402. DEFINITIONS. As used in this chapter:

(1) "Assistive device" is an item, piece of equipment, or product system that is designated and used to increase, maintain or improve functional capabilities of individuals with disabilities in the areas of seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself or working. The term includes, but is not limited to: manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual; hearing aids, assistive listening devices and other aids that enhance an individual's ability to hear or communicate; voice synthesized computer modules, optical scanners, talking software, braille printers, large print materials and other devices that enhance an individual's ability to access print or communicate; and other devices such as environmental controls, adaptive transportation aids, communication boards and modified environments. "Assistive device" does not include: (a) a transcutaneous electrical nerve stimulator, neuromuscular electrical stimulator, or dynamic range of motion splint, if the stimulator or splint is already covered by a warranty; (b) a hearing aid covered by a one (1) year express warranty to repair or replace a device with a nonconformity; and (c) items typically sold on a nonprescription basis including, but not limited to, upper and lower extremity prosthetics and related orthotics, canes, crutches, walkers, bathroom safety aids, batteries, blood pressure kits, glucose monitors, bandages, household aids, wraps and other disposable items.

(2) "Assistive device dealer" means a person who is in the business of selling new assistive devices.

(3) "Assistive device lessor" means a person who leases new assistive devices to consumers, or who holds the lessor's rights, under a written lease.

(4) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive device.

(5) "Consumer" or "agency" means any of the following:

(a) The purchaser of an assistive device, if the assistive device was purchased from an assistive dealer or manufacturer for purposes other than resale;

(b) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(c) A person who may enforce the warranty; or

(d) A person who leases an assistive device from an assistive device lessor under a written lease.

(6) "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

(7) "Early termination cost" means an expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to the manufacturer. The term incurs a penalty for prepayment under a finance arrangement.

(8) "Early termination savings" means an expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to the manufacturer. The term includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(9) "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, and a warrantor of the manufacturer's assistive device. The term does not include an assistive device dealer or lessor.

(10) "Nonconformity" means a specific condition or generic defect or malfunction, or a defect or condition that substantially impairs the use, value or safety of an assistive device, but does not include a condition or defect that is the result of abuse or unauthorized modification or alteration of the assistive device by the consumer.

(11) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive device:

(a) The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers accepts returns of the new assistive device for repair at least two (2) times; or

(b) The assistive device is out of service for an aggregate of at least thirty (30) cumulative days because of warranty nonconformities.

48-1403. EXPRESS WARRANTIES. (1) A manufacturer who sells or leases a new assistive device to a consumer, either directly or through an assistive device dealer or lessor, shall furnish the consumer with an express warranty to preserve or maintain the utility or performance of the assistive device. The duration of the express warranty must not be less than one (1) year after first possession of the assistive device by the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(2) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repairs before one (1) year after the first possession of the device by the consumer, the nonconformity must be repaired or replaced.

48-1404. ASSISTIVE DEVICE REPLACEMENT OR REFUND. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out, at the option of the consumer, the requirements under subsection (1)(a) or (b) or (2) of this section, whichever is appropriate.

(1) To provide for refunds, at the request of the consumer, the manufacturer shall do one (1) of the following:

(a) Accept return of the assistive device and refund to the consumer and to a holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use; or

(b) Accept return of the assistive device, refund to the assistive device lessor and the holder of a perfected security interest in the assistive device, as their interest may appear, the current value of a written lease and refund to the consumer the amount that the consumer paid under the written lease plus collateral costs, less a reasonable allowance for use.

(2) The manufacturer shall provide a comparable new assistive device replacing the device having the nonconformity. To receive a comparable new assistive device, the consumer shall offer to transfer possession of the assistive device to the manufacturer of the assistive device having the nonconformity. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund, and the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(3) If, after a reasonable attempt to repair, the nonconformity is not repaired, an assistive device lessor shall receive a refund from the manufacturer. To receive a refund, the assistive device lessor shall offer to transfer possession of a nonconforming assistive device to its manufacturer. No later than thirty (30) days after that

offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(4) Under this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

(5) Under this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount the consumer paid or for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825) and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor or assistive device dealer.

(6) No person may enforce the lease against the consumer after the consumer receives a refund.

48-1405. NONCONFORMITY DISCLOSURE REQUIREMENT. No assistive device returned by a consumer or assistive device lessor in this state or another state may be sold or leased in this state unless full disclosure of the reason for return is made to the prospective buyer or lessee.

48-1406. MANUFACTURER'S DUTY TO PROVIDE REIMBURSEMENT FOR TEMPORARY REPLACEMENT OF ASSISTIVE DEVICES AND PENALTIES. (1) Whenever an assistive device covered by manufacturer's express warranty is tendered by a consumer to a dealer from whom it was purchased or exchanged for the repair of a defect, malfunction or nonconformity to which the warranty is applicable and at least one (1) of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a replacement assistive device or a rental assistive device reimbursement to pay for the cost incurred by the consumer for renting a replacement assistive device. The applicable conditions are as follows:

(a) The repair period exceeds ten (10) working days, including the day on which the device is tendered to the dealer for repair; or

(b) The defect, malfunction or nonconformity is the same for which the assistive device has been tendered to the dealer for repair on at least two (2) previous occasions.

(2) This section applies for the period of the manufacturer's express warranty.

48-1407. ENFORCEMENT. (1) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of the chapter in the district court of the county where the consumer resides or where the manufacturer resides or has its principal place of business. Damages include all costs to the

consumer attributable to the nonconforming device, but does not include punitive damages. The court shall award a consumer who prevails in such action the amount of any pecuniary loss, and costs and reasonable attorney's fees, and any other equitable relief the court deems appropriate.

(2) These sections shall not be construed to limit rights or remedies available to the consumer under any other law and the remedies provided under this chapter are inclusive and in addition to any other remedies provided by law.

(3) Any waiver by a consumer of rights under this chapter is void.

Approved March 21, 1997.

CHAPTER 277
(S.B. No. 1214, As Amended in the House)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-418A, IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT OF AN IDAHO PUBLIC COLLEGE AND UNIVERSITY LICENSE PLATE PROGRAM.

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

SECTION 1. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-418A, Idaho Code, and to read as follows:

49-418A. IDAHO PUBLIC COLLEGE AND UNIVERSITY PLATES. (1) On and after January 1, 1998, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, may apply for special plates featuring one (1) of Idaho's public colleges or universities. Availability of Idaho public college and university special license plates for other vehicles may be authorized by rule of the board.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of fifty dollars ($50.00) for the initial issuance of the plates, and fifty dollars ($50.00) upon each succeeding annual registration. Twenty-five dollars ($25.00) of the initial fee and fifteen dollars ($15.00) of the renewal fee shall be deposited in the state highway account to be used by the department to fund highway, road and bridge construction projects and to fund the cost of administration of this special license plate program. The department shall transfer twenty-five dollars ($25.00) of the initial fee and thirty-five dollars ($35.00) of the renewal fee for deposit to the institution designated on the license plate.

(3) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the

required transfer fees. The owner may only display the plates after receipt of new registration from the department.

(4) All special college and university plates shall be of a color and design comparable to the standard issue of license plates with blue numerals on a red, white and blue background and shall indicate the participating institution.

(a) The standard red, white and blue graphic shall be used, except that the word "Idaho" and "Famous Potatoes" shall appear on every plate, the identification of county shall be omitted, and the inscription "Scenic Idaho" may be omitted.

(b) Each public college or university that chooses to participate in this program shall provide that portion of the design which features the particular institution and such design shall be acceptable to the president of the institution and the state board of education and board of regents of the university of Idaho.

Each version of the special public college and university plate featuring the participating public college or university shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including the cost of plate design, shall be paid by the participating public college or university.

(5) The state board of education and board of regents of the university of Idaho shall adopt rules to account for receipt and distribution of revenues accruing to participating public colleges and universities from the special license plate program. Revenues from the special plate program shall be used to:

(a) Fund scholarships for Idaho residents attending that college or university.

(b) Match funds contributed in equal amounts from nonstate sources for academic programs, provided that such expenditures shall be subject to prior approval by the state board of education and board of regents of the university of Idaho.

(6) Sample public college and university license plates may be purchased from the department for a fee of thirty-five dollars ($35.00), twelve dollars ($12.00) of which shall be retained by the department for deposit to the state highway account and twenty-three dollars ($23.00) shall be transferred by the department to the college or university designated on the license plate. No additional fee shall be charged for personalizing sample plates.

Approved March 21, 1997.

CHAPTER 278

(H.B. No. 185, As Amended in the Senate, As Amended in the Senate)

AN ACT

RELATING TO THE POSSESSION, SALE, PURCHASE, DISTRIBUTION, AND USE OF TOBACCO PRODUCTS; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 57, TITLE 39, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE THE USE, PURCHASE, RECEIPT, SALE OR POSSESSION OF TOBACCO PRODUCTS BY A MINOR

TO BE CONTRARY TO LAW AND TO PROHIBIT THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO A MINOR, TO PROVIDE FOR INJUNCTION FOR MAINTENANCE OF A VENDING MACHINE CONTRARY TO LAW; TO PROVIDE PENALTIES; TO PRESCRIBE THE MANNER OF CONDUCTING AND REPORTING ENFORCEMENT ACTIONS WHEREIN THE ASSISTANCE OF A MINOR WAS UTILIZED, TO PROVIDE FOR REPORTING TO THE GOVERNOR AND THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES BY THE DIRECTOR OF THE DEPARTMENT DESIGNATED BY THE GOVERNOR, TO PROVIDE FOR THE USE OF CERTAIN FEDERAL FUNDS FOR SUCH PURPOSES AND TO PROVIDE THAT NOTHING IN CHAPTER 57, TITLE 39, IDAHO CODE, PERTAINING TO TOBACCO USAGE BY MINORS SHALL PROHIBIT LOCAL UNITS OF GOVERNMENT FROM PASSING ORDINANCES WHICH ARE MORE STRINGENT THAN THE PROVISIONS OF THIS CHAPTER; REPEALING SECTIONS 18-1502A, 18-1503 AND 18-1504, IDAHO CODE; AND DECLARING AN EMERGENCY.

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 57, Title 39, Idaho Code, and to read as follows:

CHAPTER 57
TOBACCO USAGE BY MINORS

39-5701. LEGISLATIVE INTENT. The prevention of youth access to tobacco products within the state of Idaho is hereby declared to be a state goal to promote the general health and welfare of Idaho's young people.

39-5702. DEFINITIONS. As used in this chapter, the terms used herein are defined as follows:

(1) "Cigar" means a roll of tobacco or any lawful substitute for tobacco that is wrapped in tobacco;

(2) "Cigarette" means a roll of tobacco or any lawful substitute for tobacco that is wrapped in paper or in any substance other than tobacco;

(3) "Cigarette paper" means any paper or wrapping intended for the wrapping of tobacco in the form of a cigarette;

(4) "Director" means the director of such executive department as may be designated by the governor to perform the duties set forth in section 39-5706, Idaho Code;

(5) "Distribute" means to give, sell, furnish or supply tobacco products to a person;

(6) "Minor" means a person under eighteen (18) years of age;

(7) "Person" means an individual human being, partnership, limited liability company, firm, association, corporation, the state of Idaho or any political subdivision thereof, or a representative of the foregoing entities;

(8) "Smokeless tobacco" includes shredded tobacco, snuff, cavendish and plug, twist and other tobacco products that are intended for oral use, but not for smoking;

(9) "Tobacco product" means any item containing tobacco intended for human use, including cigarettes, cigars, pipe tobacco and

smokeless tobacco.

(10) "Vending machine" means any equipment, device or mechanical unit which, upon the insertion of tokens, money, or any other form of payment, enables products or commodities to be dispensed by or from the equipment, device or mechanical unit.

39-5703. VIOLATIONS. It shall be unlawful:

(1) For any person to sell or distribute tobacco products or cigarette paper, or to aid or assist in such sale or distribution, either directly or through an employee or agent, to a minor or for a minor to sell tobacco products;

(2) For a minor to purchase, attempt to purchase, receive, or attempt to receive, or possess a tobacco product or cigarette paper; provided, however, a minor possessing tobacco products in the course of a minor's employment by a person engaged in the lawful sale or distribution of tobacco products, or assisting a law enforcement agency for the purpose of enforcing the provisions of this chapter pursuant to section 39-5706, Idaho Code, shall not be considered to be in violation of this subsection.

(3) For a minor to use or consume tobacco products;

(4) For any person to falsely represent that a minor is eighteen (18) years of age or older for the purpose of inducing a person to sell or distribute tobacco products or cigarette paper to a minor;

(5) To sell cigarettes or smokeless tobacco other than in an unopened package which originated with the manufacturer and bears any health warning required by federal law;

(6) To place a vending machine containing tobacco products or cigarette paper in a place which is accessible to minors, or to permit a vending machine containing tobacco products or cigarette paper, to be in a place which is accessible to a minor.

39-5704. INJUNCTION FOR MAINTENANCE OF VENDING MACHINE CONTRARY TO LAW. The attorney general, or prosecuting attorney of a county in which a vending machine is placed or located contrary to the provisions of section 39-5703(6), Idaho Code, may maintain an action to enjoin the continued location of such vending machine in a place which is in violation of the provisions of section 39-5703(6), Idaho Code.

39-5705. VIOLATION OF LAW -- MISDEMEANOR -- DEFENSE. (1) A violation of the provisions of this chapter shall constitute a misdemeanor and shall be punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding three hundred dollars ($300), or by both such fine and imprisonment.

(2) It shall be an affirmative defense to a charge that a person sold or distributed tobacco products to a minor, if, before the person sells or distributes tobacco products to a minor, such person:

(a) Demands that the prospective purchaser or distributee present a driver's license or other written or documentary evidence which shows that the purchaser is eighteen (18) years of age or older; and

(b) Is presented a driver's license or other written or documentary evidence which shows that the prospective purchaser or distributee is eighteen (18) years of age or older; and

(c) Reasonably relies upon the driver's license or other written or documentary evidence presented by the prospective purchaser or distributee.

39-5706. CONDUCT OF ENFORCEMENT ACTIONS -- ASSISTANCE OF A MINOR. (1) It is the intent of the legislature that law enforcement agencies shall enforce this chapter in a manner that can reasonably be expected to reduce the extent to which tobacco products are sold or distributed to minors. For that purpose, law enforcement agencies may conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this chapter, and such law enforcement agencies may utilize the assistance of a minor for the purpose of enforcing the provisions of this chapter. Before the assistance of a minor may be utilized for such inspections or enforcement activities, the law enforcement agency shall obtain the written consent of the minor's parent or legal guardian authorizing the minor to provide such assistance.

(2) If a minor is assisting a law enforcement agency in the enforcement of this chapter, the minor shall, if asked for a driver's license or other documentary evidence for the purpose of determining age, provide a truthful driver's license or other documentary evidence of age;

(3) Within a reasonable time, not later than two (2) business days after a law enforcement agency has utilized the assistance of a minor pursuant to this section, the supervising law enforcement agency shall inform a representative of the place or business establishment from which the minor purchased or attempted to purchase or receive tobacco products that such action occurred and the results of such action;

(4) A law enforcement agency utilizing the assistance of a minor for the purpose of enforcing the provisions of this chapter, shall cause to be prepared a report concerning the use of such minor, which report shall contain the following information:

(a) The name of the law enforcement personnel who supervised the minor and the position held by such person;

(b) The age and date of birth of the minor who assisted the law enforcement agency;

(c) The name and address of the place or business establishment at which the minor purchased, received, or attempted to purchase or receive, tobacco products;

(d) The date and time of the event using the assistance of the minor;

(e) The result of the action, including whether the inspection did, or did not, result in the sale, distribution or offering for sale of tobacco products to the minor.

(5) Law enforcement agencies shall, upon request of the director, report at such times as may be requested by the director, but not more often than quarterly, on a form to be provided by the director, all enforcement activities undertaken by such law enforcement agencies to enforce the provisions of this chapter. The director shall not require law enforcement agencies to report any information pursuant to this section that is not required to enable the director to prepare the report required by section 1926 of the federal public health ser-

vice act, 42 U.S.C. 300x-26.

39-5707. REPORT TO GOVERNOR AND SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES CONCERNING SALES OF TOBACCO PRODUCTS TO MINORS -- DUTIES OF DIRECTOR. (1) The director designated by the governor of the state of Idaho, shall prepare annually, for approval of the governor and submission by the governor to the secretary of the United States department of health and human services, any required report regarding the sale of tobacco products to minors.

(2) As necessary to comply with section 1926 of the federal public health services act, 42 U.S.C. 300x-26, and implementing federal regulations, the director shall measure overall compliance with the provisions of this chapter in such a way as to provide a probability sample of locations where tobacco products are sold or distributed, and shall negotiate interim performance targets annually with the federal department of health and human services.

(3) Federal funds from the primary prevention set-aside portion of federal block grants for substance abuse prevention and treatment, 45 C.F.R. 96.130(j), from the center for disease control's preventative health and health services block grant, 42 U.S.C. 300w, et seq., and from any other federal sources which are to be used to reduce the availability of tobacco products by minors, shall be administered and expended for such purpose by the director.

39-5708. LOCAL ORDINANCES. Nothing in this chapter shall be construed to prohibit local units of government from passing ordinances which are more stringent than the provisions of this chapter.

SECTION 2. That Sections 18-1502A, 18-1503 and 18-1504, Idaho Code, be, and the same are hereby repealed.

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

Approved March 21, 1997.

CHAPTER 279
(H.B. No. 408)

AN ACT

RELATING TO WATER QUALITY STANDARDS; AMENDING SECTION 39-3602, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-3604, IDAHO CODE, TO PROVIDE THAT DESIGNATED USES SHALL FULLY SUPPORT EXISTING USES; AMENDING SECTION 39-3605, IDAHO CODE, TO PROVIDE PROCEDURES FOR IDENTIFICATION OF REFERENCE STREAMS OR CONDITIONS; AMENDING SECTION 39-3606, IDAHO CODE, TO CORRECT THE CATCHLINE; AMENDING SECTION 39-3609, IDAHO CODE, TO CORRECT THE CATCHLINE; AMENDING SECTION 39-3611, IDAHO CODE, TO PROVIDE FOR A TOTAL MAXIMUM DAILY LOAD PROCESS AND TO PROVIDE FOR AN INVENTORY OF POINT AND NONPOINT SOURCES OF POLLUTANTS; AMENDING SECTION 39-3615, IDAHO CODE, TO

PROVIDE FOR THE DEVELOPMENT AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS AND OTHER STATE WATER QUALITY STANDARDS; AMENDING SECTION 39-3616, IDAHO CODE, TO REVISE THE DUTIES OF EACH WATERSHED ADVISORY GROUP; AND AMENDING SECTION 39-3620, IDAHO CODE, TO PROVIDE FOR THE DEVELOPMENT OF BEST MANAGEMENT PRACTICES FOR REASONABLY FORESEEABLE NEW NONPOINT SOURCE ACTIVITIES.

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

SECTION 1. That Section 39-3602, Idaho Code, be, and the same is hereby amended to read as follows:

39-3602. DEFINITIONS. Whenever used or referred to in this act, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be ~~the~~ a cost-effective~~,~~ and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(3) "Board" means the board of health and welfare.

(4) "Department" means the department of health and welfare.

(5) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of health and welfare's division of environmental quality for all other activities.

(6) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. ~~Designated--uses--may include~~ The department may adopt subcategories of ~~existing uses that the director determines are not fully attainable~~ a use.

(7) "Director" means the director of the department of health and welfare, or his or her designee.

(8) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(9) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses ~~that are not fully attainable~~ may form the basis for subcategories of designated uses.

(10) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.

(11) "Lower water quality" means a measurable adverse change in a chemical, physical, or biological parameter of water relevant to a designated beneficial use, and which can be expressed numerically. Measurable adverse change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices.

(12) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(13) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(14) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(15) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(16) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(17) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(18) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges

from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(19) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(20) "Reference stream or condition" means ~~a stream or other water body which represent~~ one (1) of the following:

(a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses~~.~~; or

(b) A water body representing n~~N~~atural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or

(c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(21) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(22) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(23) "Soil conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(24) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(25) "State" means the state of Idaho.

(26) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(27) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load

allocations for nonpoint sources, and natural background levels of ~~all~~ the pollutant~~s~~ impacting the water body. ~~Acceptable-p~~Pollutant ~~levels~~ allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

(28) "Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state.

(29) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(30) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

SECTION 2. That Section 39-3604, Idaho Code, be, and the same is hereby amended to read as follows:

39-3604. DESIGNATION OF INSTREAM BENEFICIAL USES. For each surface water body, the director shall designate, pursuant to chapter 52, title 67, Idaho Code, and specifically list in the rules of the department, the beneficial use which that water body can reasonably be expected to support without regard to whether that use is fully supported at the time of such designation. In making such designations, the director shall consider the existing use of the water body and such physical, geological, chemical and biological measures as may affect the water body and shall make such designations utilizing fully the public participation provisions set forth in this chapter. Designated uses as set forth in this chapter shall fully support existing uses ~~and--shall--supersede--existing-uses~~. Designations of beneficial uses shall be reviewed as necessary and revised when such physical, chemical or biological measures indicate the need to do so. In revising a designated beneficial use, the director shall consider the economic impact of the revision and the economic costs required to fully support the revised designated beneficial use. There shall be no requirement for persons who either conduct nonpoint activities or who conduct operations on waters described in section 39-3609, Idaho Code, pursuant to a national pollution discharge elimination system permit to meet water quality criteria other than those necessary for the full support of the existing beneficial use for the water body pertinent to either the nonpoint activity or point source permit in question,

except as provided in section 39-3611, Idaho Code.

SECTION 3. That Section 39-3605, Idaho Code, be, and the same is hereby amended to read as follows:

39-3605. IDENTIFICATION OF REFERENCE STREAMS OR ~~WATER-BODIES~~ CONDITIONS. The director shall, in a manner consistent with the public participation provisions set forth in this chapter and in accordance with chapter 52, title 67, Idaho Code, identify reference streams~~, water--bodies~~ or conditions to assist in determining when designated beneficial uses are being fully supported. Streams~~, water--bodies~~ or conditions shall be selected to represent the land types, land uses and geophysical features of the basins described in this chapter. ~~Such r~~Reference streams or conditions shall be representative of ~~each~~ one (1) of the following:

(1) A stream or other water body reflecting natural conditions with few impacts from human activities and which is representative of the highest level of support attainable in the basin~~.~~; or

(2) A stream or water body reflecting the minimum conditions necessary to fully support the designated beneficial uses; or

(3) Physical, chemical and biological indicators identified in the rules of the department which reflect full support of designated beneficial uses.

SECTION 4. That Section 39-3606, Idaho Code, be, and the same is hereby amended to read as follows:

39-3606. USE OF REFERENCE STREAMS OR ~~WATER-BODIES~~ CONDITIONS TO DETERMINE FULL SUPPORT OF BENEFICIAL USES. The director, in consultation with the basin advisory group, shall conduct monitoring to determine if designated beneficial uses are fully supported. In making such determination, the director shall compare the physical, chemical and biological measures of the water body in question with the reference stream or condition appropriate to the land type, land uses and geophysical features of the water body in question as described in section 39-3605(2), Idaho Code. If the water body in question has such physical, chemical or biological measures as the reference water body or condition, even though such measures may be diminished from the conditions set forth in section 39-3605(1), Idaho Code, then the director shall deem the designated beneficial uses for the water in question to be fully supported and as having achieved the objectives of the federal clean water act and of this chapter. When site-specific standards have been developed for an activity pursuant to the rules of the department, the use of reference streams as described in this section shall not be necessary.

SECTION 5. That Section 39-3609, Idaho Code, be, and the same is hereby amended to read as follows:

39-3609. ~~REGULATORY--ACTIONS--FOR~~ IDENTIFICATION OF WATER BODIES WHERE BENEFICIAL USES ARE NOT FULLY SUPPORTED. In accordance with the provisions set forth in the federal clean water act and the public participation provisions set forth in this chapter, the director shall

notify the appropriate public agencies of any water bodies in which the designated beneficial uses are not fully supported. For water bodies so identified, the director shall place such water bodies into one (1) of the following priority classifications for the development of total maximum daily load or equivalent processes:

(1) "High," wherein definitive and generally accepted water quality data indicate that unless remedial actions are taken in the near term there will be significant risk to designated or existing beneficial uses of a particular water body. The director in establishing this category, shall consider public involvement as set forth in this chapter.

(2) "Medium," wherein water quality data indicate that unless remedial actions are taken there will be risks to designated or existing beneficial uses.

(3) "Low," wherein limited or subjective water quality data indicate designated uses are not fully supported, but that risks to human health, aquatic life, or the recreational, economic or aesthetic importance of a particular water body are minimal.

SECTION 6. That Section 39-3611, Idaho Code, be, and the same is hereby amended to read as follows:

39-3611. DEVELOPMENT AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOAD OR EQUIVALENT PROCESSES. For water bodies described in section 39-3609, Idaho Code, the director shall, in accordance with the priorities set forth in section 39-3610, Idaho Code, and in accordance with sections 39-3614 and 39-3616, Idaho Code, and as required by the federal clean water act, ~~initiate development of~~ develop a total maximum daily load ~~process~~ to control point source and nonpoint sources of pollution on the water body. For water bodies where an applicable water quality standard has not been attained due to impacts that occurred prior to 1972, no further restrictions under a total maximum daily load process shall be placed on a point source discharge unless the point source contribution of a pollutant exceeds twenty-five percent (25%) of the total load for that pollutant. Existing uses shall be maintained on all such water bodies. Total maximum daily load processes developed pursuant to this section shall include, but not be limited to:

(1) ~~An inventory of all point and nonpoint sources of the identified~~ Identification of pollutant(s) impacting the water body;

(2) An inventory of all point and nonpoint sources of the identified pollutant, if practical, or an analysis of the land types, land uses and geographical features within the watershed that may be contributing identified pollutants to the water body;

(3) An analysis of why current control strategies are not effective in assuring full support of designated beneficial uses;

(~~3~~4) A plan to monitor and evaluate progress toward water quality progress and to ascertain when designated beneficial uses will be fully supported;

(~~4~~5) Pollution control strategies for both point sources and nonpoint sources for reducing those sources of pollution;

(~~5~~6) Identification of the period of time necessary to achieve full support of designated beneficial uses; and

(7) An adequate margin of safety to account for uncertainty.

Point source discharges for which a national pollutant discharge elimination system permit is approved after January 1, 1995, shall be deemed to have met the requirements of this section.

SECTION 7. That Section 39-3615, Idaho Code, be, and the same is hereby amended to read as follows:

39-3615. CREATION OF WATERSHED ADVISORY GROUPS. The director, with the advice of the appropriate basin advisory group, may name watershed advisory groups which will generally advise the department on the development and implementation of TMDLs and other state water quality plans, including those specific actions needed to control point and nonpoint sources of pollution within the watersheds of those water bodies where designated beneficial uses are not fully supported. ~~For--each--such--water-body-in-the-"high"-category,-the-director-shall name-a-watershed-advisory-group-to-provide-guidance-on-those-pollution control-efforts-needed-to-achieve,-within-a-reasonable-amount-of-time, full-support-of-designated-beneficial-uses.--For-water-bodies-in-other categories,-the-director-may-name-watershed-advisory-groups,--as--economic--resources--and-the-interest-of-those-affected-by-the-management of-the-watershed-in-question-allows.~~ Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. Members of each watershed advisory group shall serve and shall not be reimbursed for their expenses during their term of service.

SECTION 8. That Section 39-3616, Idaho Code, be, and the same is hereby amended to read as follows:

39-3616. DUTIES OF EACH WATERSHED ADVISORY GROUP. Each watershed advisory group shall generally be responsible for recommending those specific actions needed to control point and nonpoint sources of pollution within the watershed so that, within reasonable periods of time, designated beneficial uses are fully supported~~.-The-duties-of the-watershed-advisory-group-shall-include-those-actions-pertinent--to total--maximum-daily-loads-as-described-in-section-39-3611,-Idaho-Code~~ and other state water quality plans are achieved. Watershed advisory groups shall, as described in this chapter, develop and recommend actions needed to effectively control sources of pollution. In carrying out the provisions of this section, the director and the watershed advisory groups shall employ all means of public involvement deemed necessary or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies.

SECTION 9. That Section 39-3620, Idaho Code, be, and the same is hereby amended to read as follows:

39-3620. APPROVAL PROVISIONS FOR BEST MANAGEMENT PRACTICES FOR

NEW NONPOINT SOURCE ACTIVITIES ON OR AFFECTING OUTSTANDING RESOURCE WATERS. No person may conduct a new nonpoint source activity on or affecting an outstanding resource water, except for a short-term or temporary activity as set forth in section 39-3602, Idaho Code, prior to approval by the designated agency as provided in this section.

(1) Within six (6) months of designation of an outstanding resource water by the legislature, the designated agency shall develop best management practices for reasonably foreseeable new nonpoint source activities. In developing best management practices the designated agencies shall:

(a) Solicit technical advice from state and federal agencies, research institutions, and universities and consult with affected landowners, land managers, operators, and the public; and

(b) Shall assure that all public participation processes required by law have been completed, but if no public participation process is required by law, will require public notification and the opportunity to comment;

(c) Recommend proposed best management practices to the board of health and welfare.

(2) The board of health and welfare and designated agencies shall adopt the proposed best management practices that are in compliance with the rules and regulations governing water quality standards, and based on the recommendations of the designated agency and the comments received during the public participation process;

(3) After adoption, these best management practices will be known as the outstanding resource water best management practices and will be published by the designated agency. Outstanding resource water approved best management practices will be reviewed and revised where needed by the designated agency every four (4) years in consultation with the department, landowners, federal managers, operators and the public to determine conformance with objectives of this act;

(4) Following adoption of best management practices, the designated agency shall require implementation of applicable outstanding resource water best management practices which will assure that water quality of an outstanding resource water is not lowered;

(5) Where outstanding resource water best management practices have not been adopted as set forth in subsections (1) through (4) of this section, the designated agency shall:

(a) Assure that all public participation processes required by law have been completed, but if no public participation process is required by law, the designated agency shall provide for public notification of the new activity and the opportunity to comment;

(b) Determine that the site-specific best management practices selected for a new nonpoint source activity are designed to ensure that water quality of the outstanding resource water is not lowered; and

(c) Provide for review by the department that the activity is in compliance with rules and regulations governing water quality standards.

(6) When the applicable outstanding resource water best management practices are applied, the landowner, land manager, or operator applying those practices will be in compliance with the provisions of this act. In the event water quality is lowered, the outstanding

resource water best management practices will be revised within a time frame established by the designated agency to ensure water quality is restored.

Approved March 21, 1997.

CHAPTER 280
(H.B. No. 16, As Amended, As Amended in the Senate)

AN ACT

RELATING TO LICENSING OF INSURANCE AGENTS, BROKERS AND CONSULTANTS; AMENDING THE HEADING FOR CHAPTER 10, TITLE 41, IDAHO CODE, TO STRIKE SOLICITOR; AMENDING SECTION 41-1020, IDAHO CODE, TO STRIKE SOLICITOR; REPEALING SECTION 41-1027, IDAHO CODE; AMENDING SECTION 41-1030, IDAHO CODE, TO STRIKE SOLICITOR AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1033, IDAHO CODE, TO STRIKE SOLICITOR AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1034, IDAHO CODE, TO STRIKE SOLICITOR, TO REVISE THE RESIDENCY REQUIREMENTS AND TO REVISE CONDITIONS REGARDING CRIMINAL CONVICTIONS; AMENDING SECTION 41-1035, IDAHO CODE, TO REVISE QUALIFICATIONS FOR A CONSULTANT'S LICENSE; AMENDING SECTION 41-1037, IDAHO CODE, TO STRIKE SOLICITOR, TO STRIKE REFERENCES TO SOLICITOR LICENSE, TO CHANGE REQUIREMENTS FOR EXAMINATION APPLICATION FEES AND TO REQUIRE DISCLOSURE OF ADMINISTRATIVE DISCIPLINARY ACTIONS; AMENDING SECTION 41-1038, IDAHO CODE, TO STRIKE SOLICITOR AND SOLICITOR'S LICENSE, TO CHANGE THE WRITTEN EXAMINATION REQUIREMENT, TO CHANGE REQUIREMENTS FOR AN APPLICANT TO BE AUTHORIZED TO TRANSACT VARIABLE ANNUITIES OR VARIABLE LIFE INSURANCE BUSINESS AND TO PROVIDE FOR FILING OF A WRITTEN EXAMINATION APPLICATION WITH THE DIRECTOR OR HIS DESIGNEE; AMENDING SECTION 41-1040, IDAHO CODE, TO STRIKE SOLICITOR; AMENDING SECTION 41-1041, IDAHO CODE, TO STRIKE THE REQUIREMENT THAT AN APPLICANT WHO FAILS AN EXAMINATION MUST WAIT TWENTY-EIGHT DAYS BEFORE REEXAMINATION; AMENDING SECTION 41-1043, IDAHO CODE, TO STRIKE A REFERENCE TO SOLICITOR LICENSE AND TO STRIKE THE REQUIREMENT THAT A TEMPORARY LICENSE BE ISSUED IN ACCORD WITH A SPECIFIC IDAHO CODE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-1044, IDAHO CODE, TO STRIKE SOLICITOR LICENSE; AMENDING SECTION 41-1046, IDAHO CODE, TO STRIKE SOLICITOR AND SOLICITOR LICENSE, TO STRIKE THE REQUIREMENT THAT AN AGENT MUST HAVE AN ACTIVE APPOINTMENT TO KEEP HIS LICENSE AND TO PROVIDE FOR A RULE LIMITING THE TERM OF SERVICE OF MEMBERS OF THE ADVISORY COMMITTEE; AMENDING SECTION 41-1052, IDAHO CODE, TO STRIKE SOLICITOR AND SOLICITOR LICENSE AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 41-1059, IDAHO CODE; AMENDING SECTION 41-1064, IDAHO CODE, TO STRIKE SOLICITOR; AMENDING SECTION 41-1073, IDAHO CODE, TO DELETE AN EXCEPTION AND A PRESUMPTION RELATING TO THE PROHIBITION AGAINST CONSULTANTS SHARING IN COMMISSIONS; AMENDING SECTION 41-1077, IDAHO CODE, TO STRIKE SOLICITOR, TO CHANGE THE DEFINITION OF CRIMINAL CONVICTION WHICH MAY TRIGGER AN ADMINISTRATIVE PENALTY, TO CHANGE EDUCATIONAL REQUIREMENTS, TO CHANGE REQUIREMENTS REGARDING EXPIRATION OF LICENSES AND ADMINIS-

TRATIVE CHARGES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1078, IDAHO CODE, TO STRIKE SOLICITORS AND SOLICITOR'S LICENSE; AMENDING SECTION 41-1079, IDAHO CODE, TO STRIKE SOLICITOR; AND AMENDING SECTION 41-1080, IDAHO CODE, TO REVISE REQUIREMENTS FOR REACTIVATING A LICENSE.

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

SECTION 1. That the heading for Chapter 10, Title 41, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 10
LICENSING OF AGENTS, BROKERS~~, SOLICITORS~~ AND CONSULTANTS -- LICENSING REQUIREMENTS AND PROCEDURES

SECTION 2. That Section 41-1020, Idaho Code, be, and the same is hereby amended to read as follows:

41-1020. SCOPE OF CHAPTER. This chapter applies as to agents, brokers~~, solicitors,~~ and consultants, all as defined herein, in relation to all kinds of insurance. This chapter applies also to adjusters to the extent provided in section 41-1108, Idaho Code, and to surplus line brokers to the extent stated in sections 41-1223 and 41-1224, Idaho Code.

SECTION 3. That Section 41-1027, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 41-1030, Idaho Code, be, and the same is hereby amended to read as follows:

41-1030. LICENSE REQUIRED -- AGENTS, BROKERS~~, SOLICITORS~~ AND CONSULTANTS. No insurer shall solicit in this state through agents other than agents appointed and licensed as such by this state. Unless then licensed as an agent, broker~~, solicitor,~~ or consultant, as the case may be, under this chapter with respect to the kind or kinds of insurance involved, no person shall directly or indirectly in this state:

(1) Be, act as, or advertise or hold himself out to be, an agent, broker~~, solicitor,~~ or consultant, as the case may be; or

(2) For fee, commission, or compensation solicit or negotiate for insurance or annuity contracts, or render services as a consultant, with respect to the insurance or annuity interests of any person other than himself; or

(3) Engage or hold himself out as engaging as a consultant in the business of analyzing or abstracting insurance policies or annuity contracts or of counseling or advising or giving opinions (other than as a licensed attorney at law in active practice of law) relative to insurance or annuities, for fee, commission, or other compensation, other than from the insurer or as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurable interests of the employer and of the subsidiaries or business affiliates of the employer; or

(4) Receive or transmit applications for suretyship, or receive

for delivery surety insurance contracts founded on applications forwarded from this state, or otherwise procure suretyship to be effected by a surety insurer upon the bonds of persons in this state, or upon bonds given to persons in this state.

SECTION 5. That Section 41-1033, Idaho Code, be, and the same is hereby amended to read as follows:

41-1033. PURPOSE OF LICENSE -- LICENSE FOR "CONTROLLED BUSINESS" PROHIBITED. (1) The purpose of a license issued under this chapter to an agent~~,~~ <u>or</u> broker~~,-or-solicitor~~ is to authorize and enable the licensee actively and in good faith to engage in the insurance business as such an agent~~,~~ <u>or</u> broker~~,-or-solicitor~~ with respect to the general public and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation as an "agent~~,~~" <u>or</u> "broker~~,~~" ~~or-"solicitor,"~~ or to enable the licensee to receive commissions or other compensation based upon insurance or annuity business solicited or procured by or through him upon his own interests or those of other persons with whom he is closely associated in capacities other than as insurance agent~~,~~ <u>or</u> broker~~,-or-solicitor~~.

(2) The director shall not grant, renew, continue, or permit to exist any such license as to any applicant therefor or licensee thereunder if he finds that the license has been or is being or will probably be used by the applicant or licensee principally for the purpose of writing "controlled business," that is, insurance of the insurable interests of, or insurance or annuity contracts covering, himself or members of his family or the officers, directors, stockholders, partners or employees of a partnership, association, or corporation of which he or a member of his family is an officer, director, stockholder, partner or employee.

(3) Such a license shall be deemed to have been, or intended to be, used principally for the purpose of writing controlled business if the director finds that during any twelve (12) months period the aggregate commissions or other compensation accruing or to accrue from such controlled business written under the license have exceeded or will probably exceed the aggregate commissions or other compensation so accruing or to accrue on other business written or probably to be written by the applicant or licensee during the same period.

(4) This section shall not be deemed to prohibit the licensing as to vehicle insurance only of any individual employed by or associated with a motor vehicle sales or financing agency, with respect to insurance of the interest of such agency in a motor vehicle sold or financed by it. This section shall not apply as to the interest of a real estate mortgagee in or as to insurance covering such interest, or in the real estate subject to such mortgage; nor as to the interest of a vendor or lender insured under credit life or credit disability insurance on the life or health of the vendee or borrower.

SECTION 6. That Section 41-1034, Idaho Code, be, and the same is hereby amended to read as follows:

41-1034. QUALIFICATIONS -- AGENTS~~,~~ OR BROKERS~~,--SOLICITORS~~. For the protection of the people of this state, the director shall not issue, continue, or permit to exist any agent~~,~~ or broker ~~or--solicitor~~ license except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(1) Must be a natural person eighteen (18) years or more of age;

(2) Must be a citizen of the United States of America, or have applied to the United States department of immigration for permanent residency and declared to the director of the department of insurance intention to apply for citizenship. If citizenship is not granted within six (6) years of such declaration, any license issued to such person shall be revoked automatically;

(3) Must be currently domiciled in and ~~have been~~ be a bona fide resident of this state ~~for not less than the six (6) months next preceding the date of application for the license; except that the director may, in his discretion, waive such advance residence requirement as to an applicant who (a) has been engaged full time in the insurance business as a licensed insurance agent, broker, or solicitor as to the same kind or kinds of insurance in another state for not less than the eighteen (18) months next preceding application for license in this state, or (b) is brought into this state by an authorized insurer or by an established licensed insurance agency or brokerage to fill a vacancy in this state resulting from the death, disability, or termination in this state of another licensed agent, broker, or solicitor, or for other justifiable reason satisfactory to the director.~~ This provision does not apply as to any person licensed as a nonresident agent or broker under section 41-1066, Idaho Code;

(4) Must be trustworthy, be of good character and reputation as to morals, integrity, financial responsibility, and must not have been convicted of or pled guilty to a felony or ~~of any crime involving moral turpitude~~ a misdemeanor. The misdemeanor must have been one which evidences (a) bad moral character, dishonesty, or a lack of integrity and financial responsibility, or (b) an unfitness and inability to provide acceptable service to the consuming public. The director may at his discretion waive the requirement that the individual must not have been convicted of a felony or ~~of any crime involving moral turpitude~~ a misdemeanor, if the director finds that the individual has been rehabilitated and is otherwise qualified to hold the license;

(5) If for a broker's license, must have had experience either as an agent, consultant, service representative, adjuster, managing general agent, or broker, or other special experience, education or training, all of sufficient content and duration as deemed by the director to be reasonably necessary for competence in fulfilling the responsibilities of a broker, and must have filed the bond required by section 41-1054, Idaho Code;

(6) Must be competent as to the business to be transacted under the license applied for, and pass to the director's satisfaction any written examination required under this chapter to test such competency;

(7) Must not be a service representative, as defined in section 41-1032(3), Idaho Code;

(8) Must intend in good faith to engage actively in the insurance

business under the license with respect to the general public, and not use or intend to use the license principally for the purpose of writing controlled business as defined in section 41-1033, Idaho Code.

SECTION 7. That Section 41-1035, Idaho Code, be, and the same is hereby amended to read as follows:

41-1035. QUALIFICATIONS -- CONSULTANTS. For the protection of the people of this state the director shall not issue, continue, or permit to exist any license as consultant as to any individual, firm or corporation, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(1) Must be an individual of twenty-five (25) years or more of age; or if a firm or corporation, the license powers must be exercised by individuals qualified as for an individual license as consultant;

(2) Must have had special experience, education or training, all of sufficient content and duration as deemed by the director to be reasonably necessary for competence in fulfilling the responsibilities of a consultant;

(3) Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;

(4) Must pass all written examinations required under this chapter for the license;

(5) Must be competent, trustworthy under the highest fiduciary standards, financially responsible, of good personal and business reputation, must not have been convicted of ~~any~~ or pled guilty to a felony or ~~of any crime involving moral turpitude~~ a misdemeanor. The misdemeanor must have been one which evidences (a) bad moral character, dishonesty, or a lack of integrity and financial responsibility, or (b) an unfitness and inability to provide acceptable service to the consuming public; and

(6) Must have filed the bond required by section 41-1070, Idaho Code.

SECTION 8. That Section 41-1037, Idaho Code, be, and the same is hereby amended to read as follows:

41-1037. APPLICATION FOR LICENSE. (1) Written application for an agent, broker~~,--solicitor,~~ or consultant license shall be made to the director by the applicant on forms prepared and furnished by the director, accompanied by the applicable license application and ~~examination--application~~ fees shown in section 41-401, Idaho Code (fee schedule). If the same are not already on file with the director in connection with a previous application, the application shall also be accompanied by the applicant's fingerprints on a standard police form as used for fingerprint purposes, and by a recent photograph of the applicant. The application shall be signed and duly sworn to by the applicant before a notary public or other person authorized by law to take acknowledgements of deeds.

(2) The application form shall require the applicant to state:

(a) His full name;

(b) His residences, occupations, and places of business during the five (5) years next preceding date of the application;

(c) If for an agent, broker, or consultant license, the kind or kinds of insurance to be covered by the license;

(d) Whether he has ever held a license to transact or advise with respect to any kind of insurance in any state; and whether any such license has been refused, suspended or revoked or any administrative disciplinary action has been taken with respect to such license;

(e) What insurance experience, if any, he has had;

(f) What instruction in the kinds of insurance or contracts proposed to be solicited or concerned with, and in the insurance laws of this state, he has had or expects to have;

(g) Whether any insurer or general agent or consultant client claims that he is indebted under any agency contract or otherwise and, if so, the name of the claimant, the nature of the claim and the applicant's defense thereto;

(h) Whether he has had a general agency contract or agency contract cancelled and if so when, by what insurer or general agent and the reasons therefor;

(i) Whether he will devote all or part of his efforts to acting as such agent, broker~~, solicitor,~~ or consultant, and if part only, how much time he will devote to such work, and in what other business or businesses he expects to be engaged or employed;

(j) Whether, if applicant is married, the applicant's spouse has ever applied for or held a license to transact any kind of insurance in any state and whether such license has been refused, suspended, or revoked; and

(k) Such other information as the director may reasonably require.

(3) If for an agent license, the application shall be accompanied by written appointment by an authorized insurer of the applicant as agent for a kind or kinds of insurance to be transacted under the license, subject to issuance of the license.

(4) ~~If for a solicitor license, the application shall be accompanied by written appointment of applicant as solicitor--by--a--licensed resident--general--lines agent or licensed resident general lines broker, subject to issuance of the license.~~

~~(5)~~ If the applicant is a firm or corporation, as provided in section 41-1036, Idaho Code, the application shall show, in addition, the names and residence addresses of all members, officers and directors, and shall designate the name and residence address of each individual who is to exercise the license powers; and each such individual shall furnish information with respect to himself as though for an individual license.

(6~~5~~) If for agent ~~or solicitor~~ license, the application shall also be accompanied by the certificate (on a form designated and furnished by the director) of an officer or representative of the insurer proposed to be represented or of the applicant's employer~~,~~ (in the case of applicants for agent license)~~, or of the proposed employing agent or broker (in the case of applicants for solicitor license)~~ that the insurer, agent or broker has investigated, or caused an investigation to be made of, the character and business record of the applicant and the uses to be made of the license, if granted, and the findings of such investigation as to applicant's trustworthiness, integrity,

financial responsibility, competence and other qualifications for the license, and whether the applicant will use the license principally for the purpose of writing controlled business, as referred to in section 41-1033, Idaho Code. In lieu of, or in addition to, the certificate of the insurer, agent, or broker provided for in this subsection, the director may, in his discretion, cause an investigation to be made of the applicant by an independent established reporting agency; and in such event the applicant, insurer, agent, or broker, as the case may be, shall pay to the director in advance an amount equal to the cost of such investigation as determined by the director.

(~~7~~6) No applicant for any license under this chapter shall wilfully withhold or misrepresent any fact or information called for in the application form or otherwise by the director. Violation of this provision shall be a misdemeanor.

SECTION 9. That Section 41-1038, Idaho Code, be, and the same is hereby amended to read as follows:

41-1038. EXAMINATION FOR LICENSE -- APPLICATION FOR EXAMINATION. (1) ~~After--completion--and--filing--of-the-application-for-license-as required-under-section-41-1037,-Idaho-Code,-the-director-shall-subject each-applicant~~ Each person who applies for a license shall have taken or will take (unless exempted therefrom under section 41-1039, Idaho Code) ~~to~~ a personal written examination as to his competence to act as ~~such~~ an agent, broker~~,-solicitor~~ or consultant.

(2) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one (1) or more of the following classifications:

(a) Life insurance and annuity contracts.

(b) Disability insurance.

(c) Credit life and credit disability insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(d) Involuntary unemployment insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(e) Credit property insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(f) Motor vehicle physical damage insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(g) Vehicle insurance as defined in section 41-506(1)(a), Idaho Code.

(h) Property insurance as defined in section 41-504, Idaho Code.

(i) Marine and transportation insurance as defined in section 41-505, Idaho Code.

(j) Casualty insurance as defined in section 41-506, Idaho Code.

(k) Surety insurance as defined in section 41-507, Idaho Code.

(3) An applicant for license as a life broker or life consultant must take and pass an examination as to life insurance, disability insurance, and annuity contracts. An applicant for license as a general lines broker must take and pass an examination as to property, casualty, surety, and marine and transportation insurances, as identified in subsection (2) of this section.

(4) An applicant for license as both a life agent or life broker

and a general lines agent or general lines broker shall be separately examined as to life insurance and as to such general lines, and shall pay a separate examination application fee as to each of such two (2) examinations.

(5) If the applicant is a firm or corporation, the examination shall be taken by each individual who is to be named in or registered as to the license, as provided in section 41-1036, Idaho Code.

(6) ~~Examination--of--an-applicant-for-a-solicitor's-license-shall cover-all-kinds-of-insurance,-other-than-life-insurance,-as--to--which the-appointing-agent-or-broker-is-licensed.~~

~~(7)~~ If the applicant for license as a life agent or life broker is to be authorized also to transact variable annuities or variable life insurance business, the director shall ascertain that the applicant ~~must-take-and-pass-an-additional-written-examination~~ has met all state and federal qualifications as to such variable contracts.

(8) Written application for the examination shall be filed with the director or his designee by or on behalf of the applicant not less than ten (10) days prior to the date fixed for the examination, as provided in section 41-1041, Idaho Code, and shall be accompanied by the fee for such application as specified in section 41-401, Idaho Code (fee schedule). This application fee is earned when paid, and is not subject to refund. If the applicant does not take the examination within ninety (90) days after applying therefor, a new application and fee shall be required as to a subsequent examination.

SECTION 10. That Section 41-1040, Idaho Code, be, and the same is hereby amended to read as follows:

41-1040. SCOPE OF EXAMINATION -- REFERENCE MATERIAL. (1) Each examination for license as agent ~~or-solicitor~~ shall be of such scope as the director deems reasonably necessary to test the applicant's competence, his knowledge of the kinds of insurance, policies, and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and the pertinent provisions of the laws of this state.

(2) The examination for a broker license shall be more comprehensive than that for an agent ~~or-solicitor~~ license. The examination for a consultant license shall be substantially more comprehensive than for a broker license and shall be a thorough testing of the applicant's competence to provide expert advice within the field to be covered by the license applied for.

(3) The director shall prepare and make available to applicants for license information as to the general scope of, and principal subjects to be covered by, the examination for a particular license, together with information as to published books and other reference sources which may be studied by the applicant in preparation for the examination; but the director shall not furnish lists of examination questions and answers nor select examination questions from any list thereof furnished applicants.

SECTION 11. That Section 41-1041, Idaho Code, be, and the same is hereby amended to read as follows:

41-1041. CONDUCT OF EXAMINATION. (1) The director shall make any examination required under section 41-1038, Idaho Code, available to applicants from time to time with reasonable frequency, and at places in this state reasonably accessible to such applicants. The director shall make each such examination available at Boise on at least one (1) day of each week.

(2) The director may permit the applicant to take, on the same day and at the same place, all examinations required for the license or licenses for which his application has theretofore been completed and is then pending, and for which the examinations fees have been paid. This provision shall not apply as to examination for license as to variable annuity contracts.

(3) The director shall give, conduct and grade all examinations in a fair and impartial manner, and without unfair discrimination as between individuals examined.

~~(4)--The--director--shall--require-an-applicant-failing-to-pass-an examination-covering-the-same-kind-or-kinds-of-insurance-to-wait-for-a period-of-twenty-eight-(28)-days-from-the-date-the-applicant-last-took the-examination-before-reexamination.~~

SECTION 12. That Section 41-1043, Idaho Code, be, and the same is hereby amended to read as follows:

41-1043. ISSUANCE, REFUSAL OF LICENSE. If after completion of application for a license, the taking and passing of any examination required under this chapter and a report from the federal bureau of investigation has been received by the director on the fingerprints of the applicant, the director finds that the applicant has fully met the requirements therefor, the director shall issue the license to the applicant; otherwise, the director shall refuse to issue the license and shall promptly notify the applicant and appointing insurer (if application is for an agent's license) ~~or-agent-or-broker-(if-application-is-for-a-solicitor-license)--or~~ of such refusal, stating the grounds thereof. Pending the receipt of the report from the federal bureau of investigation the director may in his discretion, issue a temporary license if all other qualifications have been met. ~~The-temporary-license-shall-be-issued-in-accord-with--section--41-1051(b)(3), (4)-and-(5),-Idaho-Code.~~

SECTION 13. That Section 41-1044, Idaho Code, be, and the same is hereby amended to read as follows:

41-1044. LICENSE CONTENTS -- NUMBER OF LICENSES REQUIRED. (1) The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, the kind or kinds of insurance covered by the license as classified in section 41-1038(2)(a), Idaho Code, and except as provided in section 41-1045, Idaho Code, and such other conditions of the license as the director deems proper for inclusion in the license certificate. No license shall be issued in a trade name unless the name has been duly registered or filed as required by law.

(2) The license of an agent shall not specify the name of any particular insurer by which the licensee is appointed as agent; and

the licensee may, subject to section 41-1048, Idaho Code (representation of additional insurers), as to life or disability agents, represent as such agent under the one (1) license as many authorized insurers as may appoint him therefor, with respect to the kind or kinds of insurance covered by the license, in accordance with this chapter.

(3) The license of a firm or corporation shall list the location of the principal place of business maintained by the licensee in this state.

~~(4) The license of a solicitor shall also show the name and address of the appointing agent or broker.~~

SECTION 14. That Section 41-1046, Idaho Code, be, and the same is hereby amended to read as follows:

41-1046. CONTINUATION, EXPIRATION OF LICENSE. (1) All agent, broker, ~~solicitor,~~ consultant, limited agent, adjuster, and surplus line broker licenses issued under this code shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to payment of the applicable continuation fee to the director at his office in Boise no less often than biennially on or before the expiration date referred to in subsection (2) of this section, accompanied by written request for such continuation and a continuing education statement verifying that the licensee has completed any continuing education requirements imposed by the director of insurance. An application for renewal is not complete and sufficient unless it is submitted with both the applicable fee and the completed continuing education statement. The continuation fees as stated in section 41-401, Idaho Code (fee schedule), are for a one (1) year continuation; and licenses continued for two (2) years shall be subject to payment of a two (2) year continuation fee. Request for continuation shall be made in writing on forms to be supplied by the director.

(2) The director may, in his discretion, fix the dates of expiration of respective licenses and appointments in such manner as is deemed by him to be advisable for an efficient distribution of the work load of his office. If as to a particular license or appointment the expiration date so fixed would upon first occurrence shorten the period for which license or appointment continuation fee has theretofore been paid, no refund of unearned fee shall be made; and if the expiration date so fixed as to a particular license or appointment would upon first occurrence lengthen the period for which license or appointment continuation fee had theretofore been paid, the director shall charge no additional fee for such lengthened period. If another date is not so fixed by the director, each such license shall, unless continued as hereinabove provided, expire at midnight on March 31.

(3) Any license referred to in subsection (1) of this section as to which request for continuation, fee and completed continuing education statement is not so received by the director shall be deemed to have expired at midnight on the applicable expiration date. Request for continuation of any such license or payment of the continuation fee therefor which is received by the director within thirty (30) days after such expiration date may be accepted and effectuated by the director, in his discretion, if accompanied by a continuation fee of

two (2) times the amount otherwise required.

(4) ~~Subject--to-continuation-as-above-provided,-the-license-of-an agent-shall-continue-in-force-as-long-as-there-is-in-effect-as-to-such agent,-as-shown-by-the-director's-records,-an-appointment-or--appointments-as-agent-of-authorized-insurers-covering-collectively-all-of-the kinds--of-insurance-or-classifications-thereof-included-in-the-agent's license.-Upon-termination-of-all-of-such--licensee's--agency--appointments--as--to-a-particular-kind-of-insurance-or-classification-thereof and-failure-to-replace-such-appointment-within-sixty-(60)-days--thereafter,--the--licensee's-license-as-agent-shall-automatically-thereupon expire-and-terminate-as-to-such-kind-of--insurance--or--classification and--the-licensee-shall-promptly---deliver-his-license-to-the-director for-reissuance,-without-fee-or-charge,-as-to-the-kinds-of-insurance-or classifications-thereof,-if-any,-covered-by-the--licensee's--remaining agency--appointments.-Upon-termination-of-all-of-the-licensee's-agency appointments-the-license-shall-forthwith-terminate.~~

~~(5)~~ As a condition to or in connection with the continuation of any agent~~,~~ or broker ~~or-solicitor~~ license the director may require the licensee to file with him information relative to use made of the license during the next preceding two (2) calendar years, and especially showing whether the license has been used principally for the writing of controlled business, as defined in section 41-1033, Idaho Code.

(6~~5~~) All sums tendered as fee for continuation of license as agent, broker, ~~solicitor,~~ consultant, limited agent, adjuster and surplus line broker shall be deemed earned when paid and shall not be subject to refund; except that the director shall refund any duplicate payment of any such fee.

(~~7~~6) (a) For the protection of the people of this state the director shall, by rule, establish additional educational requirements designed to maintain and improve the insurance skills and knowledge of agents, brokers~~,-solicitors,~~ and consultants after being duly licensed by the department of insurance. The director shall also, by rule, establish an advisory committee, including limits on the term of service for members of the committee, comprised of representatives from each segment of the insurance industry, to assist the director in prescribing additional educational requirements and fulfilling the purposes of this legislation.

(b) Subject to subsection (3) above, the director shall not permit to be continued the license of any agent, broker~~,-solicitor,~~ or consultant who is licensed pursuant to section 41-1030, Idaho Code, and who is a resident of this state, unless such person has demonstrated to the satisfaction of the director that in addition to meeting the standards contained in section 41-1034, Idaho Code (qualifications for agents~~,~~ or brokers~~,-and-solicitors~~), or section 41-1035, Idaho Code (qualifications for consultants), as may be applicable, all the additional educational requirements as the director may prescribe by rule adopted pursuant to this subsection have been met. The provisions of this paragraph shall not apply to employees or owners of travel agencies if the employee's or owner's license allows the sale of travel or trip insurance to customers booking travel plans with the travel agency, or to a

limited agent who is licensed pursuant to section 41-1045, Idaho Code, or to persons regulated or licensed by the department of finance pursuant to chapter 46, title 28, Idaho Code, national or state chartered banks, federal or state chartered savings and loan associations, or federal or state chartered credit unions dealing with insurance licensed pursuant to section 41-1045, Idaho Code (limited agent's license).

SECTION 15. That Section 41-1052, Idaho Code, be, and the same is hereby amended to read as follows:

41-1052. PLACE OF BUSINESS -- GENERAL LINES AGENTS, BROKERS -- DISPLAY OF LICENSE -- RECORDS. (1) Every resident general lines agent or resident general lines broker shall have and maintain in this state a place of business accessible to the public. The place of business shall be that wherein the licensee principally conducts transactions under his license. The address of such place shall appear upon the license, and the licensee shall promptly notify the director in writing of any change thereof. Nothing in this section shall prohibit maintenance of such a place of business in the licensee's place of residence in this state.

(2) The licenses of the licensee ~~and the licenses of solicitors appointed by the licensee~~ shall be conspicuously displayed by the licensee in his place of business in a part thereof customarily open to the public~~;~~, unless such licensee ~~or solicitor appointed by the licensee~~ is also a life and disability agent and carries his license on his person pursuant to section 41-1053, Idaho Code.

(3) The licensee shall keep at his place of business complete records of transactions under his license ~~and those of his solicitors~~. Such records shall show, as to each insurance policy or contract placed through or countersigned by the licensee, not less than:

(a) The names of insurer and insured;

(b) The number and expiration date of the policy or contract;

(c) The premium payable as to the policy or contract;

(d) The date, time, insurer, insured and coverage of every binder made by the agent; and

(e) Such information as the director may reasonably require.

The record shall be kept available for inspection by the director for at least three (3) years after completion of the respective transactions.

(4) This section does not apply as to life and disability insurances.

SECTION 16. That Section 41-1059, Idaho Code, be, and the same is hereby repealed.

SECTION 17. That Section 41-1064, Idaho Code, be, and the same is hereby amended to read as follows:

41-1064. REPORTING AND ACCOUNTING FOR PREMIUMS. (1) All premiums or return premiums received by an agent~~,~~ or broker ~~or solicitor~~ shall be trust funds so received by the licensee in a fiduciary capacity, and the agent~~,~~ or broker~~, or solicitor~~ shall in the applicable regular

course of business account for and pay the same to the insured, insurer or agent entitled thereto. If the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent~~,~~ or broker ~~or solicitor~~ who, not being lawfully entitled thereto, diverts or appropriates such trust or fiduciary funds or any portion thereof to his own use and whether or not such funds have been separately deposited, shall upon conviction be guilty of a felony of the third degree.

SECTION 18. That Section 41-1073, Idaho Code, be, and the same is hereby amended to read as follows:

41-1073. CONSULTANTS -- SHARING IN COMMISSIONS PROHIBITED -- PENALTY. (1) A consultant shall not, directly or indirectly, receive or share in any commission or compensation paid, directly or indirectly, by any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated or otherwise disposed of pursuant to any recommendation given or transaction engaged in by the licensee under his license. ~~This subsection shall not apply as to transactions wherein the licensee was licensed and so acting as a broker, with the knowledge of the insured, and did not receive and was not entitled to receive any compensation therefor other than the brokerage commission paid or to be paid by the insurer.~~

~~(2) If the licensee has received or is to receive any fee, commission, or compensation from the insured or proposed insured, or from any other person other than the insurer, directly or indirectly, with respect to any insurance transaction or proposed insurance transaction, or with respect to any insurance or annuity contract existing or proposed, it shall conclusively be presumed that the licensee was acting solely as a consultant with respect such transaction or contract.~~

(~~3~~2) In addition to any applicable suspension, revocation or refusal to continue the licensee's license, violation of this section shall be a misdemeanor.

SECTION 19. That Section 41-1077, Idaho Code, be, and the same is hereby amended to read as follows:

41-1077. ADMINISTRATIVE PENALTY -- SUSPENSION, REVOCATION, REFUSAL OF LICENSE. (1) The director may impose an administrative penalty not to exceed one thousand dollars ($1,000), for deposit in the general fund of the state of Idaho, suspend for not more than twelve (12) months, or may revoke or refuse to continue any license issued under this chapter, or under chapter 11, title 41, Idaho Code (adjusters), or any surplus lines broker's license if, after hearing held on not less than twenty (20) days' advance notice of such hearing and of the charges against the licensee given as provided in section 41-212(3), Idaho Code, to the licensee and to the insurers represented (as to an agent) ~~or to the appointing agent or broker (as to a solici-~~

~~tor)~~, he finds that as to the licensee any one (1) or more of the following causes exist:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the director.

(b) For obtaining or attempting to obtain any such license through fraud or through wilful misrepresentations or misstatements as to any material matter.

(c) For violation of or noncompliance with any applicable provision of this code, or for wilful violation of any lawful rule~~,~~ ~~regulation,~~ or order of the director.

(d) For misappropriation or conversion to his own use, or illegal withholding, of moneys or property belonging to policyholders, or insurers, or beneficiaries, or others and received in conduct of business under the license.

(e) Conviction~~,--by--final--judgment,~~ of a crime ~~involving moral turpitude~~ which evidences (a) bad moral character, dishonesty, or a lack of integrity and financial responsibility, or (b) an unfitness and inability to provide acceptable service to the consuming public.

(f) For material misrepresentation of the terms of any insurance contract or proposed insurance contract or misrepresentation of any fact material to any insurance transaction or proposed transaction.

(g) If in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices, or has shown himself to be incompetent, untrustworthy or a source of injury and loss to the public or others.

(h) Failure to comply with any applicable additional educational requirements prescribed by the director by rule ~~or regulation~~ pursuant to section 41-1046(7)(a), Idaho Code, by the expiration date of any license held by the licensee shall be grounds for the director to refuse to continue any such license ~~until such time as the licensee takes and passes the applicable insurance examination and--has--otherwise--complied with all of the requirements of this chapter.~~ The licensee may reinstate his or her license by submitting proof of all required education requirements within ninety (90) days from the date of expiration of the license and submitting an additional administrative penalty of one hundred dollars ($100) for a delinquency of one (1) day to thirty (30) days, two hundred dollars ($200) for a delinquency of thirty-one (31) days to sixty (60) days, and three hundred dollars ($300) for a delinquency of sixty-one (61) days to ninety (90) days. Following the ninetieth day from the date of expiration of the license and up to one (1) year from the expiration date the licensee must complete all requirements for licensure including retesting, submission of a new application and payment of all new licensing fees. In addition, the individual must submit proof of completion of the required education requirements for the licensing period in which the license expired. After the license has been expired for one (1) year or more the individual must reapply and retest as though a new applicant.

(2) The license of an agent or broker or consultant firm or corporation may be suspended, revoked or refused for any of such causes

as relate to any individual designated in, or registered with the director as to, the license to exercise its powers.

(3) The director shall, without hearing, suspend for not more than twelve (12) months, or shall revoke or refuse to continue any license issued under this chapter to a nonresident where the director has received a final order of suspension, revocation or refusal to continue from the insurance regulatory official or court of jurisdiction of the licensee's state of domicile.

SECTION 20. That Section 41-1078, Idaho Code, be, and the same is hereby amended to read as follows:

41-1078. PROCEDURE FOLLOWING SUSPENSION, REVOCATION -- REINSTATEMENT. (1) Upon suspension, revocation, or refusal to continue any license, the director shall forthwith notify the licensee thereof as provided in section 41-212(3), Idaho Code, and give like notice to the insurers represented in case of an agent's license~~,-and-to-the-agent or-broker-by-whom-appointed-in-the-case-of-a-solicitor's-license~~.

(2) Suspension, revocation, or refusal of any one (1) license held by the licensee under this code shall automatically likewise suspend, revoke or refuse continuation of all other licenses held by the licensee under this code.

(3) ~~Suspension,-revocation-or-refusal-to-continue-a-general-lines agent's-or-broker's--license--shall--automatically--likewise--suspend, revoke,--or--refuse--to--continue--the-licenses-of-all-solicitors-then licensed-as-to-the-license.~~

~~(4)~~ The director shall not again issue license under this code to or as to any person whose license has been revoked or continuance refused, until after expiration of one (1) year from the date of such revocation or refusal, or if judicial review of such revocation or refusal is sought, then within one (1) year from the date of final court order or decree affirming the revocation or refusal. In event the former licensee again files application for a license under this code, the director may require the applicant to show good cause why the prior revocation or refusal to continue his license shall not be deemed a bar to the issuance of a new license.

SECTION 21. That Section 41-1079, Idaho Code, be, and the same is hereby amended to read as follows:

41-1079. RETURN OF LICENSE. (1) All licenses, although issued and delivered as to the licensee agent, broker, ~~solicitor,~~ consultant, adjuster, or surplus lines broker, shall at all times be the property of the state of Idaho. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the director either by personal delivery or by mail.

(2) As to any license lost, stolen or destroyed while in the possession of any such licensee or persons, the director may accept in lieu of return of the license the affidavits of the licensee and other person responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft or destruction.

SECTION 22. That Section 41-1080, Idaho Code, be, and the same is hereby amended to read as follows:

41-1080. INACTIVE AGENT STATUS. (1) Any individual resident agent, broker, or consultant who desires not to actively continue in the business of insurance may apply for inactive status of his resident license on forms prescribed by the director. The director, in his discretion, may grant or deny the application for inactive status and shall notify the licensee of his decision in writing. Inactive status of such resident license, once granted, shall apply to all licenses held by the licensee and shall continue in force:

(a) Until reactivated pursuant to this section; or

(b) Until the license is suspended or revoked pursuant to chapter 10, title 41, Idaho Code.

(2) During the period that a licensee remains on inactive status, the licensee may not transact the business of insurance in this state, or engage in any other insurance activities, in which an active licensee may engage. A licensee on inactive status may continue, subject to the terms of an insurer's contract with the licensee, to receive commissions or other compensation relative to business written by such licensee during active license status pursuant to section 41-1063, Idaho Code.

(3) Any individual resident agent, broker or consultant whose license is placed on inactive status shall be exempt from compliance with section 41-1046(7)(a), Idaho Code, as to continuing education.

(4) An individual resident agent, broker or consultant whose license is placed on inactive status shall be subject to payment of the applicable continuation fees pursuant to section 41-1046, Idaho Code.

(5) An individual resident agent, broker or consultant whose license is on inactive status may apply for reactivation of such license on forms prescribed by the director. The director, in his discretion, may grant or deny the application for reactivation. ~~The agent shall not be required to meet examination requirements as to any line or kind of insurance to be transacted under the reactivated license.~~ However, the request shall include a company appointment as required in chapter 10, title 41, Idaho Code, along with proof of ~~ten (10) hours of continuing education in the three (3) months prior to reactivation~~ completion of twenty (20) hours of continuing education earned during the twelve (12) months prior to reactivation or by retesting and meeting the examination requirements as to any line or kind of insurance to be transacted under the reactivated license.

Approved March 24, 1997.

CHAPTER 281

(H.B. No. 290, As Amended in the Senate, As Amended in the Senate)

AN ACT

RELATING TO THE EDUCATION TRANSPORTATION SUPPORT PROGRAM; AMENDING SECTION 33-1006, IDAHO CODE, TO PROVIDE FOR REIMBURSEMENT TO A

SCHOOL DISTRICT OF THE COSTS OF CONTRACT PAYMENTS TO OTHER PUBLIC OR PRIVATE TRANSPORTATION PROVIDERS IF THE DISTRICT ESTABLISHES THAT SUCH PAYMENTS ARE EQUAL TO OR LESS THAN THE COSTS OF SCHOOL BUSES.

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

SECTION 1. That Section 33-1006, Idaho Code, be, and the same is hereby amended to read as follows:

33-1006. TRANSPORTATION SUPPORT PROGRAM. The state board of education shall determine what costs of transporting pupils, including maintenance, operation and depreciation of vehicles, insurance, payments under contract with other public transportation providers whose vehicles used to transport pupils comply with federal transit administration regulations, "bus testing," 49 C.F.R. part 665, and any revision thereto, as provided in subsection 4. of this section, or other state department of education approved private transportation providers, salaries of drivers, and any other costs, shall be allowable in computing the transportation support program of school districts. Each school district shall maintain records and make reports as are required for the purposes of this section.

The transportation support program of a school district shall be based upon the allowable costs of:

1. Transporting public school pupils one and one-half (1 1/2) miles or more to school;

2. Transporting pupils less than one and one-half (1 1/2) miles as provided in section 33-1501, Idaho Code, when approved by the state board of education;

3. The costs of payments when transportation is not furnished, as provided in section 33-1503, Idaho Code;

4. The transportation program for grades six (6) through (12), upon the costs of payments pursuant to a contract with other public or private transportation providers entered into as provided in section 33-1510, Idaho Code, if the school district establishes that the reimbursable costs of transportation under the contract are equal to or less than the costs for school buses.

5. The costs of providing transportation to and from approved school activities as may be approved by rules of the state board of education;

~~5~~6. The employer's share of contributions to the public employee retirement system and to social security.

The state's share of the transportation support program shall be eighty-five percent (85%) of allowable transportation costs of the district for the next preceding year.

Approved March 24, 1997.

CHAPTER 282
(H.B. No. 309, As Amended in the Senate)

AN ACT

RELATING TO THE NONPROFIT CORPORATION ACT; AMENDING SECTION 30-3-1, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE ACT TO ANY LAWFUL NONPROFIT CORPORATION FORMED UNDER THE ACT OR OTHER LAWS OF THIS STATE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 30-3-11, IDAHO CODE, TO ADD A DEFINITION OF "MEMBER" AND TO PROVIDE THAT "MEMBERSHIP" INCLUDES STOCKHOLDERS OR SHARES OF STOCK AND APPLIES TO NONPROFIT CORPORATIONS ISSUING SHARES OF STOCK INSTEAD OF MEMBERSHIPS; AMENDING SECTION 30-3-17, IDAHO CODE, TO PROVIDE FOR ASSESSMENTS UPON OUTSTANDING SHARES OF STOCK WHERE THE NONPROFIT CORPORATION ISSUES SHARES OF STOCK INSTEAD OF MEMBERSHIPS; AMENDING SECTION 30-3-24, IDAHO CODE, TO AUTHORIZE A NONPROFIT CORPORATION TO DEAL WITH WATER AND WATER RIGHTS AND TO LEVY ASSESSMENTS UPON OUTSTANDING SHARES OF STOCK; AMENDING SECTION 30-3-35, IDAHO CODE, TO PROVIDE FOR ADMISSION OF MEMBERS FOR CONSIDERATION AS PROVIDED IN THE ARTICLES OF INCORPORATION; AMENDING SECTION 30-3-41, IDAHO CODE, TO PROVIDE THAT A PERSON CEASES TO BE A STOCKHOLDER WHEN THE PERSON'S SHARES OF STOCK HAVE BEEN DISPOSED OF AND TO PROVIDE APPLICATION OF THE PROVISIONS OF TITLE 42, IDAHO CODE; AMENDING SECTION 30-3-55, IDAHO CODE, TO PROVIDE FOR VOTING OF EACH SHARE OF STOCK IN A NONPROFIT CORPORATION ISSUING STOCK INSTEAD OF MEMBERSHIPS; AND AMENDING CHAPTER 3, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-3-143A, IDAHO CODE, TO PROVIDE APPLICATION TO CANAL COMPANIES AND CAREY ACT COMPANIES.

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

SECTION 1. That Section 30-3-1, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-1. SHORT TITLE. This act shall be known and may be cited as the "Idaho Nonprofit Corporation Act~~.~~," and shall apply to any type of lawful nonprofit corporation formed under the provisions of this act or other laws of this state.

SECTION 2. That Section 30-3-11, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-11. DEFINITIONS. Unless the context otherwise requires in this act:

(1) "Approved by (or approval by) the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present, which affirmative votes also constitute a majority of the required quorum, or by a written ballot or written consent in conformity with this act or by the affirmative vote, written ballot or written consent of such greater proportion, including the votes of all the members of any class, unit or grouping as may be provided in the articles, bylaws ~~of~~ or this act for any specified member action.

(2) "Articles of incorporation" or "articles" includes amended and restated articles of incorporation and articles of merger.

(3) "Board" or "board of directors" means the board of directors by whatever name it is designated, except that no person or group of persons are the board of directors merely because of powers delegated to that person or group pursuant to section 30-3-63, Idaho Code.

(4) "Bylaws" means the code or codes of rules, other than the articles, adopted pursuant to this act for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(5) "Class" refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

(6) "Cooperative corporation" or "cooperative" means any nonprofit corporation, operating on a cooperative basis, owned, operated, organized and maintained by its members, for the purpose of providing goods or services to its members.

(7) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(8) "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

(9) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers.

(10) "Domestic corporation" means a corporation organized under the laws of Idaho.

(11) "Effective date of notice" is defined in section 30-3-12, Idaho Code.

(12) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(13) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States; and foreign government.

(14) "File," "filed," or "filing" means filed in the office of the secretary of state.

(15) "Foreign corporation" means a corporation organized under a law other than the laws of this state which would be a nonprofit corporation if formed under the laws of this state.

(16) "Governmental subdivision" includes authority, county, district and municipality.

(17) "Includes" denotes a partial definition.

(18) "Individual" includes the estate of an incompetent individual.

(19) "Means" denotes a complete definition.

(20) "Member" shall also mean stockholder(s) or shareholder(s) wherever and whenever those terms are used in this act, and shall

apply to all nonprofit corporations formed under this act or other laws of this state which have stockholders or shareholders and issue shares of stock instead of memberships.

(21) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and this act.

(2~~1~~2) "Notice" is defined in section 30-3-12, Idaho Code.

(2~~2~~3) "Person" includes any individual or entity.

(2~~3~~4) "Principal office" means the office, in or out of this state, so designated in the annual report filed pursuant to section 30-3-136, Idaho Code, where the principal office of a domestic or foreign corporation is located.

(2~~4~~5) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(2~~5~~6) "Record date" means the date on which a corporation determines the identity of its members for the purposes of this act.

(2~~6~~7) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 30-3-83(2), Idaho Code, for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(2~~7~~8) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory, and insular possession, and their agencies and governmental subdivisions, of the United States.

(2~~8~~9) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(~~29~~30) "Vote" includes authorization by written ballot, absentee ballot and written consent.

(3~~0~~1) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

SECTION 3. That Section 30-3-17, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-17. ARTICLES OF INCORPORATION. (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of section 30-3-27, Idaho Code;

(b) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(c) The names and addresses of the individuals who are to serve as the initial directors;

(d) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(e) The name and address of each incorporator;

(f) Whether or not the corporation will have members; and

(g) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting and regulating the powers of the corporation, its board of directors, and members or any class of members; and

(iii) The characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(b) Any provision that under this act is required or permitted to be set forth in the bylaws.

(3) Each incorporator named in the articles must sign the articles.

(4) The articles of incorporation need not set forth any of the corporation powers enumerated in this act.

(5) The articles of incorporation may authorize assessments to be levied upon all members or classes of membership alike, or upon the outstanding shares of stock of the corporation that issues shares of stock instead of memberships pursuant to its articles of incorporation, or in different amounts or proportions or upon a different basis upon different members or classes of membership, and may exempt some members or classes of membership from assessments. The articles of incorporation may fix the amount and method of collection of assessments, or may authorize the board of directors to fix the amount thereof, from time to time, and may make them payable at such times or intervals, and upon such notice and by such methods as the directors may prescribe. Assessments may be made enforceable by civil action or by the forfeiture of membership, or both, or by the sale of shares of the capital stock of a stockholder in a corporation that issues shares of stock instead of memberships, when authorized by the articles of incorporation of said corporation, upon notice given in writing twenty (20) days before commencement of such action or such forfeiture. If the articles of incorporation so provide, assessments may be secured by a lien upon real property to which membership rights are appurtenant, if appropriate, or upon the shares of stock of a stockholder or shareholder corporation, when authorized by its articles of incorporation.

SECTION 4. That Section 30-3-24, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-24. GENERAL POWERS. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any

other manner reproducing it;

(3) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(4) To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real ~~or~~ property, including water and water rights, and personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in or obligations of any entity;

(7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 30-3-82, Idaho Code;

(9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) To conduct its activities, locate offices and exercise the powers granted by this act within or without this state;

(11) To elect or appoint directors, officers, employees and agents of the corporation, define their duties and fix their compensation;

(12) To pay pensions and establish pension plans, pension trusts and other benefit and incentive plans for any or all of its current or former directors, officers, employees and agents;

(13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific or educational purposes and for other purposes that further the corporate interest;

(14) To impose dues, assessments, admission and transfer fees upon its members, and to levy assessments upon the outstanding shares of stock, of a corporation with capital stock, if authorized by the articles of incorporation of that corporation;

(15) To establish conditions for admission of members, admit members and issue memberships;

(16) To carry on a business;

(17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

SECTION 5. That Section 30-3-35, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-35. CONSIDERATION. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board, or by the articles of incorporation.

SECTION 6. That Section 30-3-41, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-41. RESIGNATION. (1) A member may resign at any time. A person ceases to be a stockholder only when that person's shares of stock have all been disposed of.

(2) The resignation of a member, or the disposal of all stock of a stockholder, does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

(3) The provisions of title 42 shall also apply to all resignations pursuant to this section if a company or corporation is regulated or governed pursuant to that title.

SECTION 7. That Section 30-3-55, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-55. VOTING ENTITLEMENT GENERALLY. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one (1) vote on each matter voted on by the members, or by one (1) vote for each share of stock in a corporation that issues shares of stock instead of memberships, when authorized by the articles of incorporation of said corporation.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two (2) or more persons, their acts with respect to voting shall have the following effect:

(a) If only one (1) votes, such act binds all; and

(b) If more than one (1) votes, the vote shall be divided on a pro rata basis.

SECTION 8. That Chapter 3, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-3-143A, Idaho Code, and to read as follows:

30-3-143A. APPLICATION TO CANAL COMPANIES AND CAREY ACT COMPANIES. Should any provision of this chapter, as it pertains to canal companies or carey act companies, conflict with title 42, Idaho Code, the provisions of title 42, Idaho Code, shall prevail.

Approved March 24, 1997.

CHAPTER 283
(H.B. No. 319, As Amended in the Senate)

AN ACT

RELATING TO POSTSECONDARY ENROLLMENT OPTIONS; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 51, TITLE 33, IDAHO CODE, TO PROVIDE LEGISLATIVE PURPOSE, TO PROVIDE DEFINITIONS, TO PROVIDE AUTHORIZATION FOR ENROLLMENT AND NOTIFICATION OF ACCEPTANCE, TO PROVIDE COUNSELING BY SCHOOL DISTRICTS, TO PROVIDE FOR DISSEMINATION OF INFORMATION AND NOTIFICATION OF INTENT TO ENROLL, TO PLACE LIMITATIONS OF PARTICIPATION, TO PROVIDE FOR PRIORITY OF ENROLLMENT, TO PROVIDE FOR COURSES ACCORDING TO AGREEMENTS, TO PROVIDE

FOR GRANTING OF CREDIT AND TO PROVIDE FINANCIAL ARRANGEMENTS.

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

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 51, Title 33, Idaho Code, and to read as follows:

CHAPTER 51
POSTSECONDARY ENROLLMENT OPTIONS

33-5101. PURPOSE. The purpose of this chapter is to promote rigorous academic pursuits and to provide a wider variety of options to high school pupils by encouraging and enabling secondary pupils to enroll full-time or part-time in nonsectarian courses or programs in eligible postsecondary institutions as defined in section 33-5102, Idaho Code.

33-5102. DEFINITIONS. As used in this chapter:

(1) "Course" means a course of instruction or a program of instruction.

(2) "Eligible institution" means an Idaho public postsecondary institution; a private two-year trade and technical school accredited by a reputable accrediting association; or a private, residential, two-year or four-year liberal arts, degree-granting college or university located in Idaho.

33-5103. AUTHORIZATION -- NOTIFICATION. Notwithstanding any other law, administrative rule or local policy to the contrary, an eleventh or twelfth grade pupil enrolled in a public school, except a foreign exchange pupil enrolled in a district under a cultural exchange program, may apply to an eligible institution to enroll in nonsectarian courses offered by that postsecondary institution. If an institution accepts a secondary pupil for enrollment under the provisions of this chapter, the institution shall send written notice to the pupil and the pupil's school district within ten (10) days of acceptance. The notice shall indicate the course and hours of enrollment of that pupil. If the pupil enrolls in a course for postsecondary credit, the institution shall notify the pupil about payment in the customary manner used by the institution.

33-5104. COUNSELING. (1) To the extent possible, the school district shall provide counseling services to pupils and their parents or guardians before the pupil enrolls in courses under the provisions of this chapter to ensure that the pupil and parents or guardian are fully aware of the risks and possible consequences of enrolling in postsecondary courses. The district shall provide information on the program including who may enroll, what institutions and sources are available under this program, the decision-making process for granting academic credits, financial arrangements for tuition, books and materials, eligibility criteria for transportation aid, available support services, the need to arrange an appropriate schedule, consequences of failing or not completing a course in which the pupil enrolls, the

effect of enrolling in this program on the pupil's ability to complete the required high school graduation requirements, and the academic and social responsibilities that must be assumed by the pupil and the parents or guardian. The person providing counseling shall encourage pupils and their parents or guardian to also use available counseling services at the postsecondary institutions prior to the semester of enrollment to ensure that anticipated plans are appropriate and adequate.

(2) Prior to enrolling, the pupil and the pupil's parents or guardian must sign a form that shall be provided by the school district and may be obtained from a postsecondary institution stating that they have received the information specified herein and that they understand the responsibilities that must be assumed in enrolling in this program. The superintendent of public instruction shall, upon request, provide technical assistance to a school district in developing appropriate forms and counseling guidelines.

33-5105. DISSEMINATION OF INFORMATION -- NOTIFICATION OF INTENT TO ENROLL. By March 1 of each year, a school district shall provide general information about the program to all pupils in grades ten (10) and eleven (11). To assist the district in planning, a pupil shall inform the district by March 30 of each year of the pupil's intent to enroll in postsecondary courses during the following school year. A pupil is not bound by notifying or not notifying the district by March 30.

33-5106. LIMIT ON PARTICIPATION. (1) A pupil who first enrolls in grade eleven (11) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of two (2) academic years.

(2) A pupil who first enrolls in grade twelve (12) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of one (1) academic year.

(3) A pupil shall be enrolled in courses for secondary credits approved by the local school district for a minimum of four (4) hours a day.

(4) A pupil who has completed course requirements for graduation but who has not received a diploma may participate in the program.

(5) A pupil who has graduated from high school cannot participate in the program.

33-5107. ENROLLMENT PRIORITY. A postsecondary institution shall give priority to its postsecondary students when enrolling eleventh and twelfth grade pupils in courses for secondary credit. Once a pupil has been enrolled in a postsecondary course under the provisions of this chapter, the pupil shall not be displaced by another student.

33-5108. COURSES ACCORDING TO AGREEMENTS. An eligible pupil may enroll in a nonsectarian course taught by a secondary teacher or a postsecondary faculty member and offered at a secondary school, or another location, according to an agreement between a school board and the governing body of an eligible public postsecondary system or an eligible private postsecondary institution. All provisions of this

section shall apply to a pupil, school board, school district and the governing body of a postsecondary institution, except as otherwise provided.

33-5109. CREDITS. (1) A pupil may enroll in a course under the provisions of this chapter for secondary credit, for postsecondary credit or for dual credit. At the time a pupil enrolls in a course, the pupil shall designate the type of credit desired. A pupil taking several courses may designate some for secondary credit, some for postsecondary credit and some for dual credit.

(2) A school district shall grant academic credit to a pupil enrolled in a course for secondary credit if the pupil successfully completes the course. Four (4) semester college credits equal at least one (1) full year of high school credit in that subject. Fewer college credits may be prorated.

(3) The secondary credits granted to a pupil shall be counted toward the graduation requirements and subject area requirements of the school district. Evidence of successful completion of each course and secondary credits granted shall be included in the pupil's secondary school record. A pupil shall provide the school with a copy of the pupil's grade in each course taken for secondary credit under the provisions of this chapter. Upon the request of a pupil, the pupil's secondary school record shall also include evidence of successful completion and credits granted for a course taken for postsecondary credit. In either case, the record shall indicate that the credits were earned at a postsecondary institution.

(4) If a pupil enrolls in a postsecondary institution after leaving secondary school, the postsecondary institution shall award postsecondary credit for any course successfully completed for secondary credit at that institution. Other postsecondary institutions may award, after a pupil leaves secondary school, postsecondary credit for any courses successfully completed under the provisions of this chapter. An institution shall not charge a pupil for the award of credit.

33-5110. FINANCIAL ARRANGEMENTS. (1) For a pupil enrolled in a course under the provisions of this chapter, the school district may make payments or partial payments according to the provisions of this section for courses that were taken for secondary credit.

(2) The school district superintendent shall not make payments to a postsecondary institution for a course taken for postsecondary credit only. The district superintendent shall not make payments to a postsecondary institution for a course from which a student officially withdraws during the first fourteen (14) days of the semester or for courses for audit.

Approved March 24, 1997.

CHAPTER 284
(H.B. No. 337, As Amended)

AN ACT

RELATING TO TRANSPLANTS OF BIGHORN SHEEP; AMENDING SECTION 36-106, IDAHO CODE, TO PROVIDE CONDITIONS PRECEDENT BEFORE THE FISH AND GAME DIRECTOR CAN APPROVE ANY FUNDS OR TO TAKE ANY ACTION TO PROVIDE FOR THE TRANSPLANTS OF BIGHORN SHEEP INTO AREAS THEY DID NOT INHABIT; AND DECLARING AN EMERGENCY.

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 regulations of the commission relating to wild animals, birds, and fish and, further, shall perform all the duties prescribed by section 67-2405, Idaho Code, and other laws of the state not inconsistent with this act, and shall exercise all necessary powers incident thereto not specifically conferred on the commission.

2. The director is hereby authorized to appoint as many classified employees as the commission may deem necessary to perform administrative duties, to enforce the laws and to properly implement management, propagation, and protection programs established for carrying out the purposes of the Idaho fish and game code.

3. The appointment of such employees shall be made by the director in accordance with the Idaho personnel commission act and rules promulgated pursuant to chapter 53, title 67, Idaho Code, and they shall be compensated as provided therein. Said employees shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

4. The director is hereby authorized to establish and maintain fish hatcheries for the purpose of hatching, propagating, and distributing all kinds of fish.

5. (A) The director, or any person appointed by him in writing to do so, may take wildlife of any kind, dead or alive, or import the same, subject to such conditions, restrictions and regulations as he may provide, for the purpose of inspection, cultivation, propagation, distribution, scientific or other purposes deemed by him to be of interest to the fish and game resource of the state.

(B) The director shall have supervision over all of the matters pertaining to the inspection, cultivation, propagation and distribution of the wildlife propagated under the provisions of title 36, Idaho Code. He shall also have the power and authority to obtain, by purchase or otherwise, wildlife of any kind or variety which he may deem most suitable for distribution in the state and may have the same properly cared for and distributed throughout the state of Idaho as he may deem necessary.

(C) The director is hereby authorized to issue a license/tag/permit to a nonresident landowner who resides in a contiguous state for the purpose of taking one (1) animal during an emergency depredation hunt which includes the landowner's Idaho property subject to such conditions, restrictions or regulations as the director may provide. The fee for this license/tag/permit shall be equal to the costs of a resident hunting license, a resident tag fee and a resident depredation permit.

(D) Notwithstanding the provisions of section 36-408, Idaho Code, to the contrary, on and after the effective date of this act, the director shall not expend any funds, or take any action, or authorize any employee or agent of the department or other person to take any action, to undertake actual transplants of bighorn sheep into areas they do not now inhabit or to augment the number of bighorn sheep in existing herds until:

(i) The boards of county commissioners of the counties in which the release is proposed to take place have been given reasonable notice of the proposed release.

(ii) The affected federal and state land grazing permittees and owners or leaseholders of private land in or contiguous to the proposed release site have been

given reasonable notice of the proposed release.

(iii) The president pro tempore of the senate and the speaker of the house of representatives have received from the director a plan for the forthcoming year that details, to the best of the department's ability, the proposed transplants which shall include the estimated numbers of bighorn sheep to be transplanted and a description of the areas the proposed transplant or transplants are planned for.

Upon request, the department shall grant one (1) hearing per transplant if any affected individual or entity expresses written concern within ten (10) days of notification regarding any transplants of bighorn sheep and shall take into consideration these concerns in approving, modifying or canceling any proposed bighorn sheep transplant. Any such hearing shall be held within thirty (30) days of the request. Upon any transplant of bighorn sheep into areas they do not now inhabit or a transplant to augment existing populations, the department shall provide for any affected federal or state land grazing permittees or owners or leaseholders of private land a written letter signed by all federal, state and private entities responsible for the transplant stating that the existing sheep or livestock operations in the area of any such bighorn sheep transplant are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.

6. (A) The director shall have the power, at any time when it is desired to introduce any new species, or if at any time any species of wildlife of the state of Idaho shall be threatened with excessive shooting, trapping, or angling or otherwise, to close any open season for such time as he may designate; in the event an emergency is declared to exist such closure shall become effective forthwith upon written order of the director; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(B) In order to protect property from damage by wildlife, the fish and game commission may delegate to the director or his designee the authority to declare an open season upon that particular species of wildlife to reduce its population. The director or his designee shall make an order embodying his findings in respect to when, under what circumstances, in which localities, by what means, and in what amounts, numbers and sex the wildlife subject to the hunt may be taken. In the event an emergency is declared to exist such open season shall become effective forthwith upon written order of the director or his designee; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(C) Any order issued under authority hereof shall be published in at least one (1) newspaper of general circulation in the area affected by the order for at least once a week for two (2) consecutive weeks, and such order shall be posted in public places in each county as the director may direct.

(D) During the closure of any open season or the opening of any special depredation season by the director all provisions of laws relating to the closed season or the special depredation season on such wildlife shall be in force and whoever violates any of the provisions shall be subject to the penalties prescribed therefor.

(E) Prior to the opening of any special depredation hunt, the director or his designee shall be authorized to provide up to a maximum of fifty percent (50%) of the available permits for such big game to the landholder(s) of privately owned land within the hunt area or his designees. If the landholder(s) chooses to designate hunters, he must provide a written list of the names of designated individuals to the department. If the landholder(s) fails to designate licensed hunters, then the department will issue the total available permits in the manner set by rule. All hunters must have a current hunting license and shall have equal access to both public and private lands within the hunt boundaries. It shall be unlawful for any landholder(s) to receive any form of compensation from a person who obtains or uses a depredation controlled hunt permit.

7. The director shall make an annual report to the governor, the legislature, and the secretary of state, of the doings and conditions of his office, which report shall be made in accordance with section 67-2509, Idaho Code.

8. The director may sell or cause to be sold publications and materials in accordance with section 59-1012, Idaho Code.

9. Any deer, elk, antelope, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture. Any moneys expended by the department of fish and game on wildlife disease research shall be mutually agreed upon by the department of fish and game and the department of agriculture.

In addition, a comprehensive animal health program for all deer, elk, antelope, moose, bighorn sheep, or bison imported into, transported, or resident within the state of Idaho shall be implemented after said program is mutually agreed upon by the department of fish and game and the department of agriculture.

In order to enhance and protect the health of wildlife within the state, as well as safeguard the health of livestock resources, the director of the department of agriculture shall employ at least one (1) veterinarian licensed in Idaho whose duties shall include, but not be limited to, addressing wildlife disease issues and coordinating disease prevention work between the department of fish and game and the department of agriculture. The employing of said veterinarian shall be by mutual agreement of the director of the department of fish and game and of the director of the department of agriculture. The veterinarian shall be on the staff of the division of animal industries, department of agriculture. The salary or compensation to be paid said veterinarian or veterinarians

shall be divided equally between the department of fish and game and the department of agriculture, and the department of fish and game's portion shall be deposited directly into the livestock disease control account. The veterinarian shall be employed on and after July 1, 1989.

10. In order to monitor and evaluate the disease status of wildlife and to protect Idaho's livestock resources, any suspicion by fish and game personnel of a potential communicable disease process in wildlife shall be reported within twenty-four (24) hours to the department of agriculture. All samples collected for disease monitoring or disease evaluation of wildlife shall be submitted to the division of animal industries, department of agriculture.

11. (A) The director is authorized to enter into an agreement with an independent contractor for the purpose of providing a telephone order and credit card payment service for controlled hunt permits, licenses, tags, and permits.

(B) The contractor may collect a fee for its service in an amount to be set by contract.

(C) All moneys collected for the telephone orders of such licenses, tags, and permits shall be and remain the property of the state, and such moneys shall be directly deposited by the contractor into the state treasurer's account in accordance with the provisions of section 59-1014, Idaho Code. The contractor shall furnish a good and sufficient surety bond to the state of Idaho in an amount sufficient to cover the amount of the telephone orders and potential refunds.

(D) The refund of moneys for unsuccessful controlled hunt permit applications and licenses, tags, and permits approved by the department may be made by the contractor crediting the applicant's or licensee's credit card account.

SECTION 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 24, 1997.

CHAPTER 285
(H.B. No. 345)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; PROVIDING LEGISLATIVE INTENT REGARDING THE IDAHO WILDLIFE MAGAZINE; AND AMENDING SECTION 36-112, IDAHO CODE, TO PROVIDE THAT THE STATE CONTROLLER SHALL TRANSFER AN ADDITIONAL FIFTY THOUSAND DOLLARS PER YEAR FROM THE FISH AND GAME ACCOUNT TO THE ANIMAL DAMAGE CONTROL ACCOUNT TO BE USED FOR THREE YEARS TO FUND ANIMAL DAMAGE CONTROL EFFORTS IN CONJUNCTION WITH RESEARCH PROJECTS FOR THE PROTECTION OF UPLAND GAME AND BIG GAME AND TO PROVIDE THAT UPON COMPLETION OF THE THREE YEAR PERIOD THE ADDITIONAL MONEYS TRANSFERRED

ANNUALLY SHALL BE ADDED TO THE ANIMAL DAMAGE CONTROL ACCOUNT.

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

SECTION 1. There is hereby appropriated to the Department of Fish and Game the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
Fish and Game Fund	$ 1,706,700	$ 2,043,600	$ 51,100	$260,000	$ 4,061,400
Fish and Game Set-aside Fund	16,500	14,700			31,200
Fish and Game Depredation Claim Fund		900			900
Fish and Game Expendable Trust Fund		1,000			1,000
Fish and Game Nonexpendable Trust Fund		100			100
Fish and Game Federal Fund	2,065,800	1,905,000	32,100		4,002,900
TOTAL	$ 3,789,000	$ 3,965,300	$ 83,200	$260,000	$ 8,097,500
B. ENFORCEMENT:					
FROM:					
Fish and Game Fund	$ 5,274,600	$ 1,007,800	$ 120,700		$ 6,403,100
Fish and Game Set-aside Fund		35,000			35,000
Fish and Game Expendable Trust Fund		20,000			20,000
Fish and Game Federal Fund	298,300	163,000	128,000		589,300
TOTAL	$ 5,572,900	$ 1,225,800	$ 248,700		$ 7,047,400
C. FISHERIES:					
FROM:					
Fish and Game Fund	$ 2,860,300	$ 1,941,400	$ 158,900		$ 4,960,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Set-aside Fund	109,500	250,100	375,000		734,600
Fish and Game Expendable Trust Fund	182,700	48,400			231,100
Fish and Game Nonexpendable Trust Fund		31,400			31,400
Fish and Game Federal Fund	7,214,000	4,896,200	2,616,100		14,726,300
TOTAL	$10,366,500	$ 7,167,500	$3,150,000		$20,684,000
D. WILDLIFE:					
FROM:					
Fish and Game Fund	$ 2,275,700	$ 1,664,700	$ 76,400		$ 4,016,800
Fish and Game Set-aside Fund	223,300	98,600			321,900
Fish and Game Expendable Trust Fund	123,500	228,900			352,400
Fish and Game Nonexpendable Trust Fund	8,000	1,900			9,900
Fish and Game Federal Fund	2,513,800	1,124,900	86,400		3,725,100
TOTAL	$ 5,144,300	$ 3,119,000	$ 162,800		$ 8,426,100
E. INFORMATION AND EDUCATION:					
FROM:					
Fish and Game Fund	$ 923,300	$ 609,800	$ 15,900		$ 1,549,000
Fish and Game Expendable Trust Fund		24,000			24,000
Fish and Game Federal Fund	344,300	250,100	33,000		627,400
TOTAL	$ 1,267,600	$ 883,900	$ 48,900		$ 2,200,400
F. ENGINEERING:					
FROM:					
Fish and Game Fund	$ 608,000	$ 50,400	$ 53,000		$ 711,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
G. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund	$ 502,000	$ 70,200	$ 500		$ 572,700
Fish and Game Federal Fund	1,013,100	295,100	28,000		1,336,200
TOTAL	$ 1,515,100	$ 365,300	$ 28,500		$ 1,908,900
H. WINTER FEEDING AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund	$ 348,600	$ 50,000	$ 500		$ 399,100
Fish and Game Set-aside Fund	32,700	2,061,300	$1,701,900		3,795,900
Fish and Game Primary Depredation Fund				$ 200,000	200,000
Fish and Game Secondary Depredation Fund				100,000	100,000
TOTAL	$ 381,300	$ 2,111,300	$1,702,400	$300,000	$ 4,495,000
GRAND TOTAL	$28,644,700	$18,888,500	$5,477,500	$560,000	$53,570,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Fish and Game is authorized no more than five hundred five and two one-hundredths (505.02) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 legislative intent that the Idaho Wildlife magazine be completely self-supporting from revenues earned by the magazine through subscription fees, advertising income or private donations, and that no hunting or fishing license or tag moneys, nor any federal moneys by used in support of the magazine. This intent language shall be in full force and effect on and after March 1, 1998.

SECTION 4. That Section 36-112, Idaho Code, be, and the same is hereby amended to read as follows:

36-112. ANIMAL DAMAGE CONTROL ACCOUNT. (1) The animal damage control account is hereby established in the state treasury. Moneys in the account are subject to appropriation to the state animal damage

control board established by section 25-128, Idaho Code, for the control of predatory animals and birds. The state controller shall annually, by August 1 of each year, transfer the sum of fifty thousand dollars ($50,000) from the fish and game account to the animal damage control account. The state animal damage control board in using these moneys shall give priority to any proposed actions on predatory animals or birds forwarded by the department by the same date.

(2) Beginning July 1, 1997 and each year thereafter, the state controller shall transfer an additional fifty thousand dollars ($50,000) from the fish and game account to the animal damage control account by August 1. The additional moneys transferred shall be used for three (3) years beginning July 1, 1997 to fund animal damage control efforts, in conjunction with research projects, to best accomplish the protection of upland game and big game animals from predation. The fish and game commission shall advise the animal damage control board of the commission's priorities regarding expenditures of these moneys. Upon the completion of the three (3) year period, the additional moneys transferred annually shall be added to the animal damage control account for use and appropriation as provided in subsection (1) of this section.

Approved March 24, 1997.

CHAPTER 286
(H.B. No. 370, As Amended in the Senate)

AN ACT

RELATING TO PUBLIC UTILITIES; AMENDING SECTION 63-201, IDAHO CODE, TO PROVIDE A DEFINITION OF COGENERATORS AND TO PROVIDE THAT COGENERATORS ARE NOT PUBLIC UTILITIES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 63-201, Idaho Code, be, and the same is hereby amended to read as follows:

63-201. DEFINITIONS. As used for property tax purposes in title 63, chapters 1 through 23, Idaho Code, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) "Appraisal" means an estimate of property value for property tax purposes.

(a) For the purpose of estimated property value to place the value on any assessment roll, the value estimation must be made by the assessor or a certified property tax appraiser.

(b) For the purpose of estimating property value to present for an appeal filed pursuant to sections 63-501A, 63-407 and 63-409, Idaho Code, the value estimation may be made by the assessor, a certified property tax appraiser, a licensed appraiser, or a certified appraiser or any party as specified by law.

(2) "Bargeline" means those water transportation tugs, boats,

barges, lighters and other equipment and property used in conjunction with waterways for bulk transportation of freight or ship assist.

(3) "Cogenerators" means facilities which produce electric energy, and steam or forms of useful energy which are used for industrial, commercial, heating or cooling purposes.

(4) "Collection costs" are amounts authorized by law to be added after the date of delinquency and collected in the same manner as property tax.

(~~4~~5) "Delinquency" means any property tax, special assessment, fee, collection cost, or charge collected in the same manner as property tax, that has not been paid in the manner and within the time limits provided by law.

(~~5~~6) "Improvements" means all buildings, structures, fixtures and fences erected upon or affixed to the land, and all fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock.

(~~6~~7) "Late charge" means a charge of two percent (2%) of the delinquency.

(~~7~~8) "Lawful money of the United States" means currency and coin of the United States at par value and checks and drafts which are payable in dollars of the United States at par value, payable upon demand or presentment.

(~~8~~9) "Manufactured home" means a structure defined as a manufactured home in section 39-4105, Idaho Code.

(~~9~~10) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

(~~10~~1) "Operating property" means all franchises; rights-of-way; roadbed; tracks; pipelines; bargelines; equipment and docks; terminals; rolling stock; equipment; power stations; power sites; lands; reservoirs, generating plants, transmission lines, distribution lines and substations; and all immovable or movable property operated in connection with any public utility, railroad or private railcar fleet, wholly or partly within this state, and necessary to the maintenance and operation of such road or line, or in conducting its business, and shall include all title and interest in such property, as owner, lessee or otherwise.

(~~11~~2) "Party in interest" means a person who holds a properly recorded mortgage, deed of trust or security interest.

(~~12~~3) "Person" means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entities as recognized by the state of Idaho.

(~~13~~4) "Personal property" includes all goods, chattels, stocks and bonds, equities in state lands, easements, reservations, manufactured homes not declared as real property pursuant to section 63-304, Idaho Code, leasehold real properties and all other property which the law defines, or the courts may interpret, declare and hold to be personal property under the letter, spirit, intent and meaning of the law, for the purposes of property taxation.

(~~14~~5) "Private railcar fleet" means railroad cars or locomotives

owned by, leased to, occupied by or franchised to any person other than a railroad company operating a line of railroad in Idaho or any company classified as a railroad by the interstate commerce commission and entitled to possess such railroad cars and locomotives except those possessed solely for the purpose of repair, rehabilitation or remanufacturing of such locomotives or railroad cars.

(~~15~~6) "Public utility" means electrical companies, telephone companies, pipeline companies, natural gas distribution companies, ~~cogenerators~~ or ~~other~~ power producers included within federal law, telecommunications companies providing intercounty or interstate service or charging their users a separately stated fee for the use of its services, bargelines, and water companies which are under the jurisdiction of the Idaho public utilities commission.

This term does not include cogenerators, mobile telephone service or companies, nor does it include pager service or companies, except when such services are an integral part of services provided by a certificated utility company nor does the term "public utility" include companies or persons engaged in the business of providing solely on a resale basis, any telephone or telecommunication service which is purchased from a telephone corporation or company.

(~~16~~7) "Railroad" means every kind of railway, whether its line of rails or tracks be at, above or below the surface of the earth, and without regard to the kind of power used in moving its rolling stock, and shall be considered to include every kind of street railway, suburban railway or interurban railway excepting facilities established solely for maintenance and rebuilding of railroad cars or locomotives.

(~~17~~8) "Real property" means land, and all standing timber thereon, including standing timber owned separately from the ownership of the land upon which the same may stand, except as modified in chapter 17, title 63, Idaho Code, and all buildings, structures and improvements, or other fixtures of whatsoever kind on land, including water ditches constructed for mining, manufacturing or irrigation purposes, water and gas mains, wagon and turnpike toll roads, and toll bridges, and all rights and privileges thereto belonging, or any way appertaining, all quarries and fossils in and under the land, and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, for the purposes of property taxation. Manufactured homes constitute real property when located on taxable land, and after a statement of intent to declare as real property has been recorded, provided said statement has not been revoked. Timber, forest, forest land, and forest products shall be defined as provided in chapter 17, title 63, Idaho Code.

(~~18~~9) "Record owner" means the person or persons in whose name or names the property stands upon the records of the county recorder's office. Where the record owners are husband and wife at the time of notice of pending issue of tax deed, notice to one (1) shall be deemed and imputed as notice to the other spouse.

(~~19~~20) "Special assessment" means a charge imposed upon property for a specific purpose, collected and enforced in the same manner as property taxes.

(~~20~~1) "System value" means the market value for assessment purposes of the operating property when considered as a unit.

(2~~1~~2) "Tax code area" means a geographical area made up of one (1) or more taxing districts with one (1) total levy within the geographic area, except as otherwise provided by law.

(2~~2~~3) "Taxing district" means any entity or unit with the statutory authority to levy a property tax.

(2~~3~~4) "Taxable value" means market value for assessment purposes, less applicable exemptions or other statutory provisions.

(2~~4~~5) "Transient personal property" is personal property, specifically such construction, logging or mining machinery and equipment which is kept, moved, transported, shipped, hauled into or remaining for periods of not less than thirty (30) days, in more than one (1) county in the state during the same year.

(2~~5~~6) "Warrant of distraint" means a warrant ordering the seizure of personal property to enforce payment of property tax, special assessment, expense, fee, collection cost or charge collected in the same manner as personal property tax.

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 24, 1997.

CHAPTER 287
(H.B. No. 386)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO STATE HISTORICAL SOCIETY FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED GENERAL FUND BALANCES FOR THE HISTORICAL PRESERVATION AND EDUCATION PROGRAM; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the Idaho State Historical Society the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR LUMP SUM	TOTAL
A. HISTORICAL PRESERVATION AND EDUCATION:					
FROM:					
General Fund				$1,311,200	$1,311,200
Federal Grant Fund				588,400	588,400
Miscellaneous Revenue Fund				188,900	188,900
TOTAL				$2,088,500	$2,088,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR LUMP SUM	TOTAL
B. HISTORIC SITES MAINTENANCE AND INTERPRETATION:					
FROM:					
General Fund	$ 77,600	$ 37,600			$ 115,200
Miscellaneous Revenue Fund	106,200	92,400	$800		199,400
TOTAL	$183,800	$130,000	$800		$ 314,600
GRAND TOTAL	$183,800	$130,000	$800	$2,088,500	$2,403,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the agency is authorized no more than thirty-seven and thirty-six hundredths (37.36) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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. There is hereby reappropriated to the State Board of Education for the Idaho State Historical Society the unexpended and unencumbered balance of any General Fund appropriation made for the Historical Preservation and Education Program contained in Section 1, Chapter 293, Laws of 1996, to be used as nonrecurring expenditures for the Historical Preservation and Education Program for the period July 1, 1997, through June 30, 1998.

SECTION 4. The reappropriation granted in Section 3 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation in Section 3 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 3 of this act shall be in the proportion that the reappropriation for the Idaho State Historical Society Preservation and Education Program bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 24, 1997.

CHAPTER 288
(H.B. No. 387)

AN ACT

RELATING TO THE ANIMAL DAMAGE CONTROL PROGRAM; AMENDING SECTION 36-112, IDAHO CODE, AS AMENDED BY SECTION 4, HOUSE BILL 345, ENACTED BY THE FIRST REGULAR SESSION OF THE FIFTY-FOURTH IDAHO

LEGISLATURE, TO PROVIDE THAT THE STATE ANIMAL DAMAGE CONTROL BOARD SHALL FOLLOW FISH AND GAME COMMISSION DIRECTION.

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

SECTION 1. That Section 36-112, Idaho Code, as amended by Section 4, House Bill 345, enacted by the First Regular Session of the Fifty-fourth Idaho Legislature, be, and the same is hereby amended to read as follows:

36-112. ANIMAL DAMAGE CONTROL ACCOUNT. (1) The animal damage control account is hereby established in the state treasury. Moneys in the account are subject to appropriation to the state animal damage control board established by section 25-128, Idaho Code, for the control of predatory animals and birds. The state controller shall annually, by August 1 of each year, transfer the sum of fifty thousand dollars ($50,000) from the fish and game account to the animal damage control account. The state animal damage control board in using these moneys shall ~~give priority to any proposed~~ follow fish and game commission direction on actions ~~on~~ regarding predatory animals or birds forwarded by the department by the same date.

(2) Beginning July 1, 1997 and each year thereafter, the state controller shall transfer an additional fifty thousand dollars ($50,000) from the fish and game account to the animal damage control account by August 1. The additional moneys transferred shall be used for three (3) years beginning July 1, 1997 to fund animal damage control efforts, in conjunction with research projects, to best accomplish the protection of upland game and big game animals from predation. The animal damage control board shall follow fish and game commission ~~shall advise the animal damage control board of the commission's priorities~~ direction regarding expenditures of these moneys. Upon the completion of the three (3) year period, the additional moneys transferred annually shall be added to the animal damage control account for use and appropriation as provided in subsection (1) of this section.

Approved March 24, 1997.

CHAPTER 289
(H.B. No. 388)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 1997; INCREASING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS AUTHORIZED IN THE DEPARTMENT; 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 154, Laws of 1996, there is hereby appropriated to the Depart-

ment of Correction the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ADMINISTRATION:				
FROM:				
General Fund		$ 54,300	$26,000	$ 80,300
B. PRISONS DIVISION:				
POCATELLO WOMENS CORRECTIONAL CENTER:				
FROM:				
General Fund	$85,700	73,200	62,800	221,700
TOTAL	$85,700	$127,500	$88,800	$302,000

SECTION 2. In addition to the full-time equivalent positions previously authorized for fiscal year 1997, and in accordance with Section 67-3519, Idaho Code, the Department of Correction is authorized an additional nine and thirty hundredths (9.30) full-time equivalent positions, for a total of no more than one thousand one hundred eight and seventy-seven hundredths (1,108.77) full-time equivalent positions.

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 24, 1997.

CHAPTER 290
(H.B. No. 389)

AN ACT

APPROPRIATING MONEYS TO THE SUPREME COURT FOR FISCAL YEAR 1998; APPROPRIATING MONEYS FROM THE GENERAL FUND TO THE GUARDIAN AD LITEM FUND; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; EXPRESSING LEGISLATIVE INTENT SUPPORTING RECOMMENDATIONS OF IDAHO CASA ASSOCIATION; APPROPRIATING ADDITIONAL MONEYS TO THE SUPREME COURT FOR FISCAL YEAR 1997; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated to the Supreme Court, the following amounts, to be expended from the listed funds for the period July 1, 1997, through June 30, 1998:

FROM:	
General Fund	$19,299,900
Miscellaneous Revenue Fund	238,800
ISTARS Technology Fund	1,069,200
Guardian Ad Litem Fund	390,000
TOTAL	$20,997,900

SECTION 2. There is hereby appropriated from the General Fund to be transferred to the Guardian Ad Litem Fund the sum of $390,000.

SECTION 3. It is legislative intent that of the amount appropriated in Section 1 of this act, an amount not to exceed $5,000 may be used at the discretion of the Chief Justice, to assist in defraying expenses relating to or resulting from the discharge of the Supreme Court Justices' official duties and the official duties of the Supreme Court. Further, it is legislative intent that an amount, not to exceed $1,500 of the amount appropriated in Section 1 of this act, may be used at the discretion of the Chief Judge of the Court of Appeals to assist in defraying expenses relating to or resulting from the discharge of the Court of Appeals Judges' official duties and the official duties of the Court of Appeals. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 4. It is legislative intent that in order to avoid the appearance of a conflict of interest, the Joint Finance-Appropriations Committee supports the recommendation of the Idaho CASA Association that program governing boards not have as members any known potential parties to a child protection matter.

SECTION 5. In addition to the appropriation made in Section 1, Chapter 355, Laws of 1996, there is hereby appropriated to the Supreme Court the following amount to be expended for the designated program from the listed fund for the period July 1, 1996, through June 30, 1997:

JUDICIAL COUNCIL:
FROM:
General Fund $45,000

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, Section 5 of this act shall be in full force and effect on and after its passage and approval.

Approved March 24, 1997.

CHAPTER 291
(H.B. No. 390)

AN ACT
APPROPRIATING MONEYS FOR VOCATIONAL EDUCATION FOR FISCAL YEAR 1998; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED GENERAL FUND BALANCES; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the State Board for Vocational Education the following amount, to be expended by the Division of Vocational Education for the designated programs according to

the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
A. STATE LEADERSHIP AND TECHNICAL ASSISTANCE:						
FROM:						
General Fund	$1,427,500	$228,000	$20,000			$ 1,675,500
Federal Grant Fund	174,200	81,300				255,500
TOTAL	$1,601,700	$309,300	$20,000			$ 1,931,000
B. GENERAL PROGRAMS:						
FROM:						
General Fund	$ 194,400	$ 36,600	$ 7,600	$ 6,784,700		$ 7,023,300
Federal Grant Fund	192,500	15,100		3,501,500		3,709,100
Hazardous Materials/ Waste Enforcement Fund				66,800		66,800
Hazardous Waste, Emergency and Monitoring Fund				61,900		61,900
Miscellaneous Revenue Fund		4,000		95,000		99,000
TOTAL	$ 386,900	$ 55,700	$ 7,600	$10,509,900		$10,960,100
C. POST-SECONDARY PROGRAMS:						
FROM:						
General Fund					$23,730,600	$23,730,600
Unrestricted Fund					217,000	217,000
TOTAL					$23,947,600	$23,947,600
D. UNDERPREPARED ADULTS/DISPLACED HOMEMAKER PROGRAM:						
FROM:						
General Fund				$ 30,600		$ 30,600
Displaced Homemaker Fund				170,000		170,000
Federal Grant Fund				1,807,000		1,807,000
TOTAL				$ 2,007,600		$ 2,007,600
GRAND TOTAL	$1,988,600	$365,000	$27,600	$12,517,500	$23,947,600	$38,846,300

SECTION 2. There is hereby reappropriated to the State Board for Vocational Education for the Division of Vocational Education, subject to the provisions of Section 3 of this act, the unexpended and unencumbered balance of any General Fund appropriation contained in Section 1, Chapter 378, Laws of 1996, to be used for nonrecurring expenditures for the period July 1, 1997, through June 30, 1998.

SECTION 3. The reappropriation 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, 1997, is zero, the reappropriation in Section 2 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, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 2 of this act shall be in the proportion that the reappropriation for the Division of Vocational Education bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 24, 1997.

CHAPTER 292
(H.B. No. 391)

AN ACT

APPROPRIATING MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 1998; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND CHANGING THE EFFECTIVE DATES OF THE APPROPRIATION FOR THE SPECIAL LITIGATION PROGRAM MADE IN SECTION 1, CHAPTER 219, LAWS OF 1996.

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

SECTION 1. There is hereby appropriated to the Attorney General the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. STATE LEGAL SERVICES:				
FROM:				
General Fund	$3,157,200	$ 402,000	$64,100	$3,623,300
Federal Grant Fund	249,700	37,700		287,400
Consumer Protection Fund	213,400	83,500		296,900
State Legal Services Fund	6,263,900	148,700		6,412,600
TOTAL	$9,884,200	$ 671,900	$64,100	$10,620,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
B. SPECIAL LITIGATION:				
FROM:				
General Fund		$ 839,400		$ 839,400
GRAND TOTAL	$9,884,200	$1,511,300	$64,100	$11,459,600

SECTION 2. It is legislative intent that an amount, not to exceed $1,000, of the amounts appropriated in Section 1 of this act, may be used at the discretion of the Attorney General to assist in defraying expenses relating to or resulting from the discharge of the Attorney General's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Attorney General is authorized no more than one hundred seventy-one and nine-tenths (171.9) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 4. The appropriation made in Section 1, Chapter 219, Laws of 1996, for the Special Litigation Program shall be for the period July 1, 1996, through June 30, 1998.

Approved March 24, 1997.

CHAPTER 293
(H.B. No. 392)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT.

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

SECTION 1. There is hereby appropriated to the Department of Law Enforcement the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. CENTRAL ADMINISTRATION:					
FROM:					
General Fund	$ 1,145,000	$ 416,100			$ 1,561,100
Indirect Cost Recovery Fund	51,300	4,900			56,200
Miscellaneous Revenue Fund		10,000			10,000
TOTAL	$ 1,196,300	$ 431,000			$ 1,627,300
B. POLICE SERVICES:					
FROM:					
General Fund	$ 5,274,800	$2,011,000	$ 526,500		$ 7,812,300
Idaho Law Enforcement Telecommunications Fund	177,200	262,800	10,800		450,800
Drug Donation Fund		260,000	7,300		267,300
Federal Grant Fund	120,000	363,300	25,000		508,300
Miscellaneous Revenue Fund	393,100	665,900	393,300		1,452,300
TOTAL	$ 5,965,100	$3,563,000	$ 962,900		$10,491,000
C. IDAHO STATE POLICE:					
FROM:					
General Fund	$ 1,833,300	$ 9,800	$ 374,500		$ 2,217,600
Idaho Law Enforcement Fund	10,274,200	2,645,000	1,104,100		14,023,300
Hazardous Materials/ Waste Enforcement Fund	110,300	41,100		$ 66,800	218,200
Federal Grant Fund	792,300	1,193,800	332,000	3,585,000	5,903,100
Miscellaneous Revenue Fund	56,000	12,800			68,800
TOTAL	$13,066,100	$3,902,500	$1,810,600	$3,651,800	$22,431,000
D. ALCOHOL BEVERAGE CONTROL:					
FROM:					
General Fund	$ 664,200	$ 114,100	$ 38,000		$ 816,300
Miscellaneous Revenue Fund		1,000			1,000
TOTAL	$ 664,200	$ 115,100	$ 38,000		$ 817,300
E. POST ACADEMY:					
FROM:					
Peace Officers Fund	$ 474,300	$ 612,100	$ 105,100	$ 68,200	$ 1,259,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Federal Grant Fund	74,600	431,200	20,000	25,000	550,800
Miscellaneous Revenue Fund		5,000	15,000		20,000
TOTAL	$ 548,900	$1,048,300	$ 140,100	$ 93,200	$ 1,830,500
F. BRAND INSPECTION:					
FROM:					
State Brand Board Fund	$ 1,708,900	$ 246,600	$ 75,000		$ 2,030,500
G. RACING COMMISSION:					
FROM:					
Idaho State Racing Commission Fund	$ 271,300	$ 457,300			$ 728,600
Pari-mutuel Distributions Fund				$ 367,500	367,500
TOTAL	$ 271,300	$ 457,300		$ 367,500	$ 1,096,100
GRAND TOTAL	$23,420,800	$9,763,800	$3,026,600	$4,112,500	$40,323,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Law Enforcement is authorized no more than four hundred ninety-one and eight-tenths (491.8) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 received from the sale of motor vehicles in the Idaho State Police Program be used to buy replacement vehicles.

Approved March 24, 1997.

CHAPTER 294
(H.B. No. 393)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR FISCAL YEAR 1998; AND LIMITING THE NUMBER OF APPROVED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. It is legislative intent that the expenditures for the Department of Administration not exceed the following amount for the period July 1, 1997, through June 30, 1998:

FOR:	
Personnel Costs	$ 7,125,300
Operating Expenditures	6,987,400
Capital Outlay	1,167,500
Trustee and Benefit Payments	7,401,600
TOTAL	$22,681,800
FROM:	
General Fund	$ 3,767,300
Indirect Cost Recovery Fund	431,000
Administration and Accounting Services Fund	9,503,600
Employee Assistance Program Fund	41,900
Permanent Building Fund	6,650,700
Federal Surplus Property Revolving Fund	444,400
Employee Group Insurance Fund	678,200
Retained Risk Fund	470,300
Administrative Code Fund	510,000
Industrial Special Indemnity Fund	184,400
TOTAL	$22,681,800

SECTION 2. There is hereby appropriated to the Department of Administration the following amounts, to be expended for the designated programs according to the designated standard classification from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DIRECTOR'S OFFICE:					
FROM:					
General Fund	$ 134,500	$ 61,400			$ 195,900
Indirect Cost Recovery Fund	314,100	116,900			431,000
Employee Assistance Program Fund	17,100	24,800			41,900
Employee Group Insurance Fund	225,600	452,600			678,200
Retained Risk Fund	300,700	169,600			470,300
Industrial Special Indemnity Fund	116,700	62,800	$ 4,900		184,400
TOTAL	$1,108,700	$ 888,100	$ 4,900		$ 2,001,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. GENERAL SERVICES:					
FROM:					
General Fund	$ 652,200	$ 303,600	$ 138,200		$ 1,094,000
Administration and Accounting Services Fund	1,460,000	1,094,500	851,100		3,405,600
TOTAL	$2,112,200	$1,398,100	$ 989,300		$ 4,499,600
III. PUBLIC WORKS:					
FROM:					
General Fund				$1,881,600	$ 1,881,600
Permanent Building Fund	$1,090,500	$ 353,200	$ 33,000	5,174,000	6,650,700
Administration and Accounting Services Fund	1,176,900	2,686,000	16,000	346,000	4,224,900
TOTAL	$2,267,400	$3,039,200	$ 49,000	$7,401,600	$12,757,200
IV. PURCHASING:					
FROM:					
General Fund	$ 400,200	$ 131,400	$ 12,500		$ 544,100
Federal Surplus Property Revolving Fund	197,700	239,200	7,500		444,400
Administration and Accounting Services Fund	553,800	955,800	101,900		1,611,500
TOTAL	$1,151,700	$1,326,400	$ 121,900		$ 2,600,000
V. OFFICE OF ADMINISTRATIVE RULES COORDINATOR:					
FROM:					
Administrative Code Fund	$ 249,400	$ 260,600			$ 510,000
VI. INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL:					
FROM:					
General Fund	$ 51,700				$ 51,700
Administration and Accounting Services Fund	184,200	$ 75,000	$ 2,400		261,600
TOTAL	$ 235,900	$ 75,000	$ 2,400		$ 313,300
GRAND TOTAL	$7,125,300	$6,987,400	$1,167,500	$7,401,600	$22,681,800

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Department of Administration is authorized no more than one hundred sixty-nine and sixty hundredths (169.60) full-time equivalent positions at any point during the period July 1, 1997, through June 30,

1998, for the programs specified in Section 2 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 24, 1997.

CHAPTER 295
(H.B. No. 394)

AN ACT
APPROPRIATING MONEYS FOR THE STATE INSURANCE FUND FOR FISCAL YEAR 1998; 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 administration of the State Insurance Fund the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds, for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. WORKER'S COMPENSATION:				
FROM:				
State Insurance Fund	$8,070,300	$2,365,000	$113,600	$10,548,900
II. PETROLEUM STORAGE TANKS:				
FROM:				
Petroleum Clean Water Trust Fund	$ 682,400	$ 446,300		$ 1,128,700
TOTAL	$8,752,700	$2,811,300	$113,600	$11,677,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Insurance Fund is authorized no more than two hundred twenty-eight (228) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 296
(H.B. No. 395)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 1998; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Labor the following amounts, to be expended according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. WAGE AND HOUR:			
FROM:			
General Fund	$255,100	$146,000	$401,100
Miscellaneous Revenue Fund		10,000	10,000
TOTAL	$255,100	$156,000	$411,100
B. RURAL DEVELOPMENT COUNCIL:			
FROM:			
Federal Grant Fund	$ 70,000	$ 74,000	$144,000
Miscellaneous Revenue Fund		25,700	25,700
TOTAL	$ 70,000	$ 99,700	$169,700
GRAND TOTAL	$325,100	$255,700	$580,800

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, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 297
(H.B. No. 396)

AN ACT

APPROPRIATING MONEYS TO THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 1998; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO EXPENDITURE OF FUNDS.

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

SECTION 1. There is hereby appropriated to the State Board of Education, the following amount for technology in learning projects, to be expended for the period July 1, 1997, through June 30, 1998:

FROM:

General Fund $1,250,000

SECTION 2. It is legislative intent that the State Council for Technology in Learning make a recommendation, subject to review and approval by the State Board of Education, on the use and allocation of funds appropriated for technology in learning projects in Section 1 of this act.

Approved March 24, 1997.

CHAPTER 298
(H.B. No. 397)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT.

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

SECTION 1. There is hereby appropriated to the Department of Juvenile Corrections the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	$ 453,300	$ 421,400	$186,000		$ 1,060,700
Miscellaneous Revenue Fund	14,300				14,300
TOTAL	$ 467,600	$ 421,400	$186,000		$ 1,075,000
B. FIELD SERVICES:					
FROM:					
General Fund	$ 455,000	$ 81,500		$ 2,632,500	$ 3,169,000
C. INSTITUTIONS:					
FROM:					
General Fund	$ 9,166,200	$1,153,300	$550,800	$ 6,100,300	$16,970,600
Juvenile Corrections Fund				140,000	140,000
State Juvenile Corrections Center Fund		774,200			774,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Federal Grant Fund	77,100	182,000		1,689,900	1,949,000
Miscellaneous Revenue Fund	75,000			140,000	215,000
TOTAL	$ 9,318,300	$2,109,500	$550,800	$ 8,070,200	$20,048,800
D. JUVENILE JUSTICE COMMISSION:					
FROM:					
General Fund	$ 67,300	$ 11,100			$ 78,400
Federal Grant Fund	56,300	125,700		$ 803,400	985,400
Miscellaneous Revenue Fund		1,000		149,000	150,000
TOTAL	$ 123,600	$ 137,800		$ 952,400	$ 1,213,800
GRAND TOTAL	$10,364,500	$2,750,200	$736,800	$11,655,100	$25,506,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Juvenile Corrections is authorized no more than two hundred seventy-eight (278) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 Department of Juvenile Corrections shall reimburse counties for the cost of transitional care up to $250,000 from moneys appropriated through the fiscal year 1998 block grant program. The Department shall track and designate any portion of the unexpended block grant appropriation, in excess of that necessary to reimburse counties for actual expenses, to be available to pay for transitional care. Counties may apply for reimbursement of transitional care expenses over and above their original block grant if all other designated sources of funding for transitional care have been maximized. Transitional care shall mean a placement in a home of a person not related to the juvenile, in lieu of parental care, that allows for the safety and physical care of the juvenile in cases where a realistic home setting is not available and/or as a transition from another form of placement which allows for assessment and/or reintegration into a waiting home. Such placement in a home, which accepts one (1) or more juveniles who are not related to the transitional parent for the purpose of providing substitute parental care, can be for any period of time until the juvenile reaches the age of majority.

Approved March 24, 1997.

CHAPTER 299
(H.B. No. 398)

AN ACT

APPROPRIATING MONEYS TO THE STATE TREASURER FOR FISCAL YEAR 1998; PROVIDING FOR THE RECOVERY OF BANKING SERVICES COSTS TO THE GENERAL FUND; AUTHORIZING AN AMOUNT FOR PAYMENT OF BANK SERVICE FEES; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES TO THE STATE TREASURER; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the State Treasurer the following amounts, to be expended for the designated program according to the standard classifications from the listed funds, for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR LUMP SUM	TOTAL
A. ADMINISTRATION:				
FROM:				
General Fund	$648,700	$400,900		$1,049,600
Treasurer's Office - Professional Services Fund			$ 92,400	92,400
Treasurer's Office-LGIP Fund			150,900	150,900
TOTAL	$648,700	$400,900	$243,300	$1,292,900

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, 1998, the State Controller shall transfer the moneys in the Indirect Cost Recovery Fund, up to a maximum of nine hundred ninety-four thousand dollars ($994,000), to the state General Fund.

SECTION 3. Of the amount appropriated for Operating Expenditures in Section 1 of this act, $356,000, or so much thereof as is necessary, is to be used solely and only for the payment of bank service fees for the period July 1, 1997, through June 30, 1998, any other provisions of law notwithstanding.

SECTION 4. There is hereby reappropriated to the State Treasurer the unexpended and unencumbered balance of any appropriation made to the State Treasurer from the Treasurer's Office LGIP Fund or the Treasurer's Office - Professional Services Fund for the period July 1, 1996, through June 30, 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998.

SECTION 5. It is legislative intent that an amount, not to exceed $1,000 of the amount appropriated in Section 1 of this act, may be used at the discretion of the State Treasurer to assist in defraying expenses relating to or resulting from the discharge of the State Treasurer's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 6. In accordance with Section 67-3519, Idaho Code, the Office of the State Treasurer is authorized no more than fifteen and nine-tenths (15.9) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 300
(H.B. No. 405)

AN ACT

RELATING TO THE PRACTICE OF OPTOMETRY; AMENDING SECTION 54-1501, IDAHO CODE, TO FURTHER DEFINE THE PRACTICE OF OPTOMETRY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-1502, IDAHO CODE, TO REQUIRE A VALID LICENSE TO PRACTICE OPTOMETRY.

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

SECTION 1. That Section 54-1501, Idaho Code, be, and the same is hereby amended to read as follows:

54-1501. PRACTICE OF OPTOMETRY DEFINED. Optometry is defined as the science which relates to the examination and treatment of conditions of or relating to the eyes and/or eyelids, the analysis of their function and the employment of preventive or corrective measures to insure maximum vision and comfort. The practice of optometry is declared to be a learned profession. The practice of optometry affects the public health, welfare and safety and the public interest requires regulation and control of the practice of optometry and limitation of the practice to qualified persons. ~~Any person, not expressly exempted from the provisions of this chapter, shall be deemed to be practicing optometry within the meaning of this chapter who shall~~ The "practice of optometry" means:

1. To e~~E~~ngage in the profession of examining, testing, measuring, treating, correcting, developing, or improving the human visual apparatus;

2. To d~~D~~isplay any sign, circular, advertisement, or device ~~purporting or~~ offering ~~in any manner~~ to examine eyes, test eyes, fit glasses, adjust frames or prescribe lenses, or by any means or method set ~~himself~~ oneself forth as an optometrist, doctor of optometry,

optometric physician, optical doctor, doctor of optical science, O.D., Opt. D., optician, optical specialist, eye specialist, or refractionist, or any other designation of like import~~,-with-intent-to induce-people-to-patronize-himself-or-any-other-persons--for--examination,--diagnosis,-development,-or-correction-of-the-human-visual-apparatus~~;

3. To e~~E~~mploy in the examination, diagnosis, or treatment of another, any means, including the use of diagnostic pharmaceutical agents and pharmaceutical agents for therapeutic use, for the measurement, improvement, or development of any or all functions of human vision or the assistance of the powers of range of human vision or the determination of the accommodative or refractive status of human vision or the scope of its functions in general. The state board of optometry may, pursuant to ~~regulations~~ rules adopted by it, issue a certificate to optometrists licensed in this state authorizing the optometrist to prescribe, administer and dispense such therapeutic pharmaceutical agents for the treatment of conditions of the eye and/or eyelid, as approved by the board of optometry and as identified in rules ~~and-regulations~~ adopted by the board of optometry. Such certificate shall only be issued to an optometrist who: (~~1~~a) has successfully passed the "treatment and management of ocular disease" section of the optometrist examination approved by the international association of boards of examiners in optometry, inc. or an equivalent examination as may be approved by the state board of optometry; (~~2~~b) is the holder of a certificate for the use of diagnostic pharmaceutical agents issued by the state board of optometry; and (~~3~~c) has completed such appropriate additional educational and clinical experience requirements as shall be established by the state board of optometry pursuant to section 54-1509, Idaho Code;

4. To remove superficial foreign bodies and to diagnose and treat superficial conditions of the eye and eyelid. The practice of optometry shall not include the use of lasers;

5. To s~~S~~ell or offer for sale, otherwise than on prescription, any lens with spherical, prismatic or cylindrical power for the aid of human vision;

~~5~~6. To p~~P~~rescribe or adapt lenses, including contact lenses, exercises, orthoptics, vision therapy, or other physical means to correct defects or adjust human vision to the conditions of a special occupation; or

~~6~~7. To d~~D~~o or offer to do any of the foregoing with intent of receiving therefor, either directly or indirectly, any fee, gift, remuneration, or compensation whatsoever.

SECTION 2. That Section 54-1502, Idaho Code, be, and the same is hereby amended to read as follows:

54-1502. LICENSE A PREREQUISITE TO PRACTICE. It is unlawful for any person to practice optometry unless he shall obtain a license to do so as provided in this chapter.

Any person who shall practice or attempt to practice optometry, as defined in this chapter, without having at the time of so doing a valid~~,-unexpired,-unrevoked-and-unsuspended~~ license to practice optometry issued by the state board of optometry shall be deemed guilty of

a misdemeanor. Any person licensed under another chapter of Idaho Code to perform these functions shall be exempt from the provisions of this chapter. An optician lawfully practicing within the state of Idaho is not in violation of the provisions of this chapter.

Approved March 24, 1997.

CHAPTER 301
(H.B. No. 406)

AN ACT

TRANSFERRING MONEYS COLLECTED PURSUANT TO SECTIONS 63-2506 AND 63-2552A, IDAHO CODE, TO THE JUVENILE CORRECTIONS FUND; APPROPRIATING MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR DISTRIBUTION TO THE COUNTIES IN FISCAL YEAR 1997; APPROPRIATING MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR DISTRIBUTION TO THE COUNTIES IN FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. All moneys collected pursuant to Sections 63-2506 and 63-2552A, Idaho Code, as amended in House Bill 346, As Amended, First Regular Session of the Fifty-fourth Idaho Legislature, and subject to appropriation to the Department of Juvenile Corrections, shall be transferred quarterly to the Juvenile Corrections Fund.

SECTION 2. In addition to the appropriation made in Section 1, Chapter 295, Laws of 1996, as amended in Senate Bill 1270, First Regular Session of the Fifty-fourth Idaho Legislature, there is hereby appropriated to the Department of Juvenile Corrections the following amount to be expended for the Field Services Program according to the designated standard classification from the listed fund for the period July 1, 1996, through June 30, 1997:

FOR:	
Trustee and Benefit Payments	$1,175,000
FROM:	
Juvenile Corrections Fund	$1,175,000

SECTION 3. There is hereby appropriated to the Department of Juvenile Corrections the following amount, to be expended for the Field Services Program according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998:

FOR:	
Trustee and Benefit Payments	$4,700,000
FROM:	
Juvenile Corrections Fund	$4,700,000

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval.

Approved March 24, 1997.

CHAPTER 302
(H.B. No. 407)

AN ACT

RELATING TO THE IDAHO FOOD QUALITY ASSURANCE INSTITUTE; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE A REFERENCE TO THE IDAHO FOOD QUALITY ASSURANCE LABORATORY; AMENDING SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT EMPLOYEES OF THE IDAHO FOOD QUALITY ASSURANCE INSTITUTE SHALL BE NONCLASSIFIED EMPLOYEES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-8302, IDAHO CODE, TO INCREASE THE NUMBER OF COMMISSIONERS, TO PROVIDE FOR A REPRESENTATIVE OF THE PRIVATE LABORATORY INDUSTRY AND TO PROVIDE FOR COMPENSATION OF LEGISLATIVE ADVISORS TO THE INSTITUTE; AMENDING SECTION 67-8304, IDAHO CODE, TO PROVIDE POWERS OF THE INSTITUTE REGARDING FEES FOR TESTING, ANALYSIS AND OTHER SERVICES PROVIDED TO BENEFIT AGRICULTURAL COMMODITY PRODUCERS AND TO CORRECT A CODIFIER'S ERROR; AMENDING CHAPTER 83, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-8305, IDAHO CODE, TO PROVIDE FOR DEPOSIT AND DISBURSEMENT OF FUNDS BY THE INSTITUTE; AMENDING CHAPTER 83, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-8306, IDAHO CODE, TO PROVIDE A LIMIT ON STATE LIABILITY AND TO PROVIDE FOR COMPENSATION AND EXPENSES OF MEMBERS OF THE INSTITUTE; AND DECLARING AN EMERGENCY.

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

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

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(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 cir-

cumstances to maintain its secrecy.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) 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.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

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

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

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

(e) Vital statistics records;

(f) Except as provided in this subsection, all information provided to a law enforcement agency for sex offender registration pursuant to the provisions of section 18-8306, Idaho Code:

(i) Such information shall be available upon request to a law enforcement agency; and

(ii) The information provided pursuant to the provisions of subsections (1) and (3) of section 18-8306, Idaho Code, shall be provided to any person upon written request. Such written request shall include the name, date of birth and social security number of the person for whom the information is requested.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) 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.

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

(15) 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.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(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.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) 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.

(19) 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.

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

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) 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.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

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

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(27) Records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protec-

tion, welfare and treatment of the juvenile. If the juvenile is fourteen (14) years or older and is adjudicated guilty of an offense which would be a felony if committed by an adult, the name, offense of which the juvenile was adjudicated and disposition of the court shall be subject to disclosure. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(28) 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.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) 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.

(37) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(38) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(39) 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.

(40) 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.

(41) Records of laboratory test results provided by or retained by the ~~department--of-agriculture's~~ Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(42) 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.

(43) Records of the sheriff or department of law enforcement received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(44) 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.

(45) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(46) 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.

SECTION 2. That Section 67-5303, Idaho Code, be, and the same is hereby amended to read as follows:

67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state of Idaho and all employees in such departments, except those employees specifically defined as nonclassified, shall be classified

employees, who are subject to this act and to the system of personnel administration which it prescribes. Nonclassified employees shall be:

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

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

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

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

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

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

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

(h) All employees of the Idaho state bar.

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

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

(k) Employees of the military division not assigned to the bureau of disaster services.

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

(m) Persons employed in positions established under federal grants, which, by law, restrict employment eligibility to specific

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

(n) Temporary employees.

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

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

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

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

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

(t) Any division administrator.

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

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

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

SECTION 3. That Section 67-8302, Idaho Code, be, and the same is hereby amended to read as follows:

67-8302. COMMISSIONERS -- CHAIRMAN -- APPOINTMENTS. The governor shall appoint ~~nine--(9)~~ ten (10) persons to be commissioners of the Idaho food quality assurance institute. The commissioners shall serve at the pleasure of the governor and shall include the following:

(1) One (1) representative of a row crop commodity commission;

(2) One (1) representative of an orchard commodity commission;

(3) One (1) representative of a grain commodity commission;

(4) One (1) representative of a specialty commodity commission;

(5) One (1) representative of an animal products commodity commission;

(6) One (1) consumer;

(7) One (1) representative of the Idaho department of agriculture;

(8) One (1) representative of the college of southern Idaho;

(9) One (1) scientist with practical experience in quality certification procedures and standards;

(10) One (1) representative of the private laboratory industry.

The governor shall appoint a chairman from among the nine (9) commissioners. The commissioners shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term. The terms of the first nine (9) commissioners shall end on July 1, 2000; the terms of four (4) of the commissioners next appointed shall end on July 1, 2002, and the terms of the remaining five (5) commissioners next appointed shall end on July 1, 2004. A commissioner shall hold office until a successor has been appointed and qualifies. A certificate of the appointment or reappointment of any commissioner shall be filed in the office of the secretary of state and in the office of the institute, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. The governor, the state treasurer, the state controller and the administrator of the division of financial management shall serve as advisors to the commissioners of the institute.

In addition, two (2) members of the Idaho senate, one (1) from the majority party and one (1) from the minority party, and two (2) members of the Idaho house of representatives, one (1) from the majority party and one (1) from the minority party, may be appointed by the legislative council to serve as advisors to the commissioners of the institute. Such appointments shall be for a term of two (2) years beginning on January 1 of each odd-numbered year, and no appointee shall serve more than two (2) terms. Actual and necessary expenses and per diem shall be allowed to the legislative advisors as provided for members of the legislative council, and shall be paid from legislative funds.

SECTION 4. That Section 67-8304, Idaho Code, be, and the same is hereby amended to read as follows:

67-8304. POWERS OF THE INSTITUTE. The Idaho food quality assurance institute is an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers which are hereby declared to be public purposes necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(1) To provide an ongoing quality assurance testing program for Idaho agricultural commodities by analyzing and documenting the food safety practices of Idaho producers;

(2) To provide for the management and operation of the quality assurance laboratory at Twin Falls, Idaho;

(3) To establish fees for testing and analysis of agricultural commodities and for any other services to be provided to ~~Idaho~~ benefit

agricultural commodity producers by the laboratory or the institute;

(4) To provide for certification of testing results;

(5) To sue and to be sued, to have a seal and to alter the same at pleasure, to have perpetual succession, and to make and execute agreements, contracts and other instruments necessary or convenient to the exercise of the powers and duties of the institute;

(6) To insure or provide for the insurance of any real or personal property or operation of the institute against any risks or hazards;

(7) To own, hold and improve personal property; to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise or otherwise, any personal property or any interest therein;

(8) To make and from time to time amend and repeal bylaws and rules, not inconsistent with this act, to carry into effect the powers and purposes of the institute.

~~Idaho food quality assurance laboratory~~

SECTION 5. That Chapter 83, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-8305, Idaho Code, and to read as follows:

67-8305. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all moneys received by the institute shall be deposited in one (1) or more separate accounts in the name of the institute in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The institute shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the institute.

(3) The right is reserved to the state of Idaho to audit the funds of the institute at any time.

(4) On or before January 15 of each year, the institute shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the institute during the preceding fiscal year. The report shall also include an estimate of income to the institute for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1998, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the institute shall be audited annually by a certified public accountant designated by the institute, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the institute are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

SECTION 6. That Chapter 83, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-8306, Idaho Code, and to read as follows:

67-8306. LIMIT ON STATE LIABILITY -- COMPENSATION AND EXPENSES. All expenses incurred by the institute in performing its duties and exercising its powers shall be without liability on the part of the state.

No member of the institute shall receive any compensation for his services as such member, but members and employees of the institute and other persons acting under the direction of the institute shall be reimbursed, if approved by the institute, for their actual and reasonable expenses incurred in performing their duties under 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.

Approved March 24, 1997.

CHAPTER 303
(S.B. No. 1040, As Amended)

AN ACT

RELATING TO THE INDUSTRIAL SPECIAL INDEMNITY FUND; AMENDING CHAPTER 3, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-334, IDAHO CODE, TO PROVIDE THAT ANY CLAIMANT, EMPLOYEE OR SURETY MAKING CLAIM FOR BENEFITS FROM THE INDUSTRIAL SPECIAL INDEMNITY FUND SHALL BE OBLIGATED TO FILE A NOTICE OF CLAIM WITH THE MANAGER AT LEAST SIXTY DAYS PRIOR TO THE FILING OF A COMPLAINT AGAINST THE INDUSTRIAL SPECIAL INDEMNITY FUND WITH THE INDUSTRIAL COMMISSION, TO IDENTIFY THOSE RECORDS WHICH SHALL BE INCLUDED WITH THE NOTICE OF CLAIM, TO PROVIDE THAT A FAILURE TO TIMELY FILE A NOTICE OF CLAIM WITH THE MANAGER WILL BAR ANY INDUSTRIAL SPECIAL INDEMNITY FUND PROCEEDING BEFORE THE INDUSTRIAL COMMISSION, AND TO PROVIDE THAT THE MANAGER OF THE INDUSTRIAL SPECIAL INDEMNITY FUND SHALL HAVE THE AUTHORITY TO EXTEND THE SIXTY DAY EVALUATION PERIOD FOR A MAXIMUM PERIOD OF THIRTY DAYS; PROVIDING AN EFFECTIVE DATE AND PROVIDING A SUNSET CLAUSE.

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

SECTION 1. That Chapter 3, 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 72-334, Idaho Code, and to read as follows:

72-334. FILING NOTICE OF CLAIM WITH THE INDUSTRIAL SPECIAL INDEMNITY FUND -- TIME FOR FILING -- RECORDS TO BE INCLUDED WITH NOTICE OF CLAIM -- JURISDICTIONAL EFFECT. Any claimant, employer or surety making a claim for benefits with the industrial special indemnity fund shall file a notice of claim with the manager not less than sixty (60) days prior to the date of filing of a complaint against the industrial special indemnity fund with the industrial commission seeking benefits from the industrial special indemnity fund. Such notice of claim shall include, but not be limited to, a detailed statement describing the disability claim and supporting documentation including relevant medical and vocational rehabilitation records. Failure to timely file a notice of claim with the manager shall require the involuntary dismissal of any complaint against the industrial special indemnity fund regarding the claim for benefits which the party seeking to join the industrial special indemnity fund may cause to be filed with the industrial commission. The manager shall evaluate the notice of claim and shall approve or deny the claim or make an offer of settlement within the sixty (60) day period. If, in the discretion of the manager, the notice of claim is determined to be incomplete, the manager may, upon written notice to the party seeking to join the industrial special indemnity fund, extend the time period for evaluation of the claim for a maximum of thirty (30) days in order to request the necessary documents and records. The manager shall approve or deny the claim or make an offer of settlement within the extended period.

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, 1999.

Approved March 24, 1997.

CHAPTER 304
(S.B. No. 1044, As Amended in the House)

AN ACT

RELATING TO ENFORCEMENT OF THE COMPENSATION REQUIREMENT OF THE WORKER'S COMPENSATION LAW; AMENDING SECTION 72-319, IDAHO CODE, TO INCLUDE LIMITED LIABILITY COMPANIES, THEIR EMPLOYEES AND MANAGERS, TO CLARIFY THE LANGUAGE REGARDING THE ONGOING ENFORCEMENT OF AN INJUNCTION FOR FAILURE TO COMPLY WITH THE COMPENSATION REQUIREMENT OF THE WORKER'S COMPENSATION LAW AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 72-319, Idaho Code, be, and the same is hereby amended to read as follows:

72-319. PENALTY FOR FAILURE TO SECURE COMPENSATION. (1) Any employer required to secure the payment of compensation under this law who fails to secure the payment thereof shall be guilty of a misde-

meanor. In any case where the employer is a corporation or a limited liability company, any officer or employee of the corporation or manager or employee of a limited liability company who had authority to secure payment of compensation on behalf of the corporation or limited liability company and failed to do so shall individually be guilty of a misdemeanor.

(2) Such officer, ~~or~~ employee or manager shall be personally liable jointly and severally with such corporation or limited liability company for any compensation which may accrue under this law in respect to any injury or occupational disease suffered by any employee of such corporation or limited liability company while it shall so fail to secure the payment of compensation.

(3) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes or destroys any property or records belonging to such employer, after one (1) of its employees has been afflicted by an injury or occupational disease, with intent to avoid the payment of compensation to such employee or his dependents, shall be guilty of a misdemeanor. In any case where such employer is a corporation or limited liability company, any officer, ~~or~~ employee or manager thereof, if knowingly participating or acquiescing in any such act, shall also be individually guilty of a misdemeanor.

(4) Any employer required to secure the payment of compensation under this law, who fails to do so, may be liable for a penalty of either two dollars ($2.00) for each employee for each day or twenty-five dollars ($25.00) for each day during which such failure continues, whichever is greater, and in cases where the employer is a corporation or limited liability company and is unable to pay the fine, any officer or employee of the corporation or manager of a limited liability company who had authority to secure payment of compensation on behalf of the corporation or a limited liability company and failed to do so, shall be liable for a like penalty, to be recovered for the time during which such failure continued, but for not more than three (3) consecutive years, in an action brought by the commission in the name of the state of Idaho; any amount so collected shall be paid into the industrial administration fund; for this purpose the district court of any county in which the employer carries on any part of its trade or occupation shall have jurisdiction. In determining whether penalties should be assessed or collected for the employer's failure to secure the payment of compensation, the commission may consider the following factors:

(a) When the employer was notified that such employer's ~~workers'~~ worker's compensation insurance coverage had been cancelled or that such insurance was required;

(b) The length of time that elapsed between when the employer was notified that ~~workers'~~ worker's compensation insurance coverage was required or that such employer's coverage had been cancelled, and the date that such coverage was put into effect;

(c) Whether the employer is able to document attempts to secure ~~workers'~~ worker's compensation insurance coverage during the period of time that such employer was without such coverage;

(d) Whether there were prior instances in which the employer failed to keep ~~workers'~~ worker's compensation insurance in effect

or such coverage was cancelled, and the reasons for such failure or cancellation;

(e) The reasons that the employer is unable to obtain or keep in effect ~~workers'~~ worker's compensation insurance coverage;

The above factors are not exclusive and the commission may consider any other relevant factor.

(5) If any employer required to secure the payment of compensation under this law ~~shall be~~ is or has been in default under section 72-301, Idaho Code, the employer may be enjoined by the district court of any county in which such employer carries on any part of its trade or occupation from carrying on such business while ~~such~~ any default ~~continues~~ under section 72-301, Idaho Code, exists. All proceedings in the courts under this section are to be brought by the industrial commission in the name of the state of Idaho.

(6) An employer who fails to secure the payment of compensation and who has been assessed a penalty within the previous three (3) years pursuant to section 72-319(4), Idaho Code, shall be liable for the following penalty in addition to the penalty provided by section 72-319(4), Idaho Code:

(a) Five hundred dollars ($500) for the second failure to secure the payment of compensation;

(b) One thousand dollars ($1,000) for the third and any subsequent failure to secure the payment of compensation.

Approved March 24, 1997.

CHAPTER 305
(S.B. No. 1064, As Amended)

AN ACT

RELATING TO FEES FOR RECREATIONAL DREDGE PERMITS; AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE AN INCREASED APPLICATION FEE FOR NONRESIDENTS OF THE STATE OF IDAHO FOR RECREATIONAL DREDGE PERMITS.

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

SECTION 1. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $50.00

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $100

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... $100 plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... $480 plus $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... $1,280 plus $5.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... $3,280 plus $1.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing application for change of point of diversion, place, period, or nature of use of water of established rights; or for an extension of time within which to resume the use of water under a vested right $100

C. For filing application for amendment of permit $50.00

D. For filing claim to use right under section 42-243, Idaho Code $100

E. For filing an assignment of permit $25.00

F. For readvertising application for permit, change, exchange, or extension to resume use $50.00

G. For certification, each document $1.00

H. For making photo copies of office records, maps and documents for public use .... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit $50.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use .... A reasonable charge as determined by the department.

K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... $50.00 except no fee shall be charged for domestic use for which a permit is not required.

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet, but not exceeding 100 acre feet $100

3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet $100

plus $25.00 for each additional c.f.s. or part thereof, or 100 acre feet or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maximum fee not to exceed $600.

L. For filing a protest or request to intervene in a protested matter $25.00

M. For filing an application to alter a stream channel pursuant to chapter 38, title 42, Idaho Code:

1. Application for recreational dredge permits by residents of the state $10.00

2. Application for recreational dredge permits by nonresidents of the state $30.00

3. Other applications $20.00

N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

Approved March 24, 1997.

CHAPTER 306
(S.B. No. 1073)

AN ACT

RELATING TO CHILDREN; AMENDING SECTION 18-1501, IDAHO CODE, TO PROVIDE THAT A PERSON OVER THE AGE OF EIGHTEEN COMMITS THE CRIME OF INJURY TO A CHILD IF THE PERSON TRANSPORTS A MINOR IN A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, INTOXICATING LIQUOR OR A CONTROLLED SUBSTANCE, TO PROVIDE THAT THE CRIME IS A MISDEMEANOR, TO PROVIDE THAT IF THE MINOR SUFFERS BODILY INJURY OR DEATH THE CRIME IS A FELONY AND TO PROVIDE PENALTIES.

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

SECTION 1. That Section 18-1501, Idaho Code, be, and the same is hereby amended to read as follows:

18-1501. INJURY TO CHILDREN. (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of

any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(3) A person over the age of eighteen (18) commits the crime of injury to a child if the person transports a minor in a motor vehicle while under the influence of alcohol, intoxicating liquor, a controlled substance, or any combination thereof, in violation of section 18-8004, Idaho Code. Any person convicted of violating this subsection is guilty of a misdemeanor. If a child suffers bodily injury or death due to a violation of this subsection, the violation will constitute a felony punishable by imprisonment for not more than ten (10) years, unless a more severe penalty is otherwise prescribed by law.

(4) The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

Approved March 24, 1997.

CHAPTER 307
(S.B. No. 1074)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCES; AMENDING SECTION 18-8004, IDAHO CODE, TO PROVIDE IT IS UNLAWFUL FOR ANY PERSON WHO IS AN HABITUAL USER OF, OR UNDER THE INFLUENCE OF ANY NARCOTIC DRUG, OR WHO IS UNDER THE INFLUENCE OF ANY OTHER DRUG OR ANY COMBINATION OF ALCOHOL AND ANY DRUG TO A DEGREE WHICH IMPAIRS THE DRIVER'S ABILITY TO SAFELY OPERATE A MOTOR VEHICLE, TO DRIVE OR BE IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE UPON A HIGHWAY, STREET OR BRIDGE, OR UPON PUBLIC OR PRIVATE PROPERTY OPEN TO PUBLIC USE.

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

SECTION 1. That Section 18-8004, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004. PERSONS UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCES.

(1) (a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.10, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(b) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.04 through 0.09, as defined in subsec-

tion (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(c) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.10 or higher, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(d) It is unlawful for any person under the age of twenty-one (21) who has an alcohol concentration of at least 0.02 but less than 0.10, as defined in subsection (4) of this section, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public. Any person violating this subsection shall be subject to the penalties provided in section 18-8004A, Idaho Code.

(2) Any person having an alcohol concentration of less than 0.10, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, by a test requested by a police officer shall not be prosecuted for driving under the influence of alcohol, except as provided in subsection (3), subsection (1)(b) or subsection (1)(d) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or any other intoxicating substances, on other competent evidence.

(3) If the results of the test requested by a police officer show a person's alcohol concentration of less than 0.10, as defined in subsection (4) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant.

(4) For purposes of this chapter, an evidentiary test for alcohol concentration shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the alcohol concentration shall be performed by a laboratory operated by the Idaho department of law enforcement or by a laboratory approved by the Idaho department of law enforcement under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho department of law enforcement. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho department of law enforcement or by any other method approved by the Idaho department of law enforcement shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reli-

ability of the testing procedure for examination.

(5) It is unlawful for any person who is an habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug or any combination of alcohol and any drug to a degree which ~~renders him--incapable--of--safely--driving~~ impairs the driver's ability to safely operate a motor vehicle, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to public use. The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provisions of this subsection.

(6) "Actual physical control" as used in this section, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(7) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

Approved March 24, 1997.

CHAPTER 308
(S.B. No. 1082)

AN ACT

RELATING TO THE IDAHO POTATO COMMISSION; AMENDING SECTION 22-1207, IDAHO CODE, TO PROVIDE 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 AND TO PROVIDE CONTENTS OF THE SUBPOENA AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 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~~,--regulations~~ and orders for the exercise of its powers and the performance of its duties under this act.

2. To contract and be contracted with.

3. To employ and at its pleasure discharge an advertising manager, agents, advertising agencies and such other help as it deems

necessary and to outline their powers and duties and fix their compensation.

4. To make in the name of the commission such advertising contracts and other agreements as may be necessary.

5. To keep books, records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.

6. To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this act.

7. To define and describe such grade or grades of potatoes that may be advertised in accordance with the provisions of this act.

8. To define and designate the character of the brands, labels, stencils, or other distinctive marks under which said potatoes may be marketed in order to secure the greatest returns to producers and meet the requirements of their advertising campaign.

9. To devise and require the application of either a seal, label, brand, package, or any other suitable device that will protect the identity of the original Idaho pack of potatoes as near to the final consumer as possible.

10. Whenever and wherever it deems it to be necessary the commission shall use its offices to prevent any substitution of other potatoes for Idaho potatoes and to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes at any and all times at any and all points where they discover the same is being done and to require the disclosure of the growing area of origin upon potato containers by all persons doing business in the state of Idaho.

11. To make, conduct or carry on studies and research in connection with the raising, production and marketing of potatoes, including study and research dealing with the industrial and other uses of potatoes and their by-products, and the extension and stabilization of markets for such commodities; to disseminate information with respect to such study and research as a part of the commission's advertising, publicity and sales promotion activities authorized by this act and to assist, aid and educate growers, dealers and handlers in the raising, production and marketing of potatoes.

12. To require all persons with their principal place of business located in the state of Idaho to pay a one hundred dollar ($100) annual license fee for use of any Idaho potato trade or certification mark and to require all persons with their principal place of business located outside of the state of Idaho to pay a three hundred dollar ($300) annual license fee for use of any Idaho potato trade or certification mark.

For the accomplishment of such ends the commission is hereby empowered to employ the necessary persons or contract for the performance of required services; to cooperate with any organization of growers in this state, whether organized by authority of law or voluntary, engaged in carrying on similar activities and to participate jointly with any such organization, by contract or otherwise, in financing such study and research or paying for the employment of persons or services required or in carrying out projects and programs as herein contemplated; provided, however, expenditures authorized by the

commission for the purposes herein mentioned shall not exceed an amount equal to twelve and one-half per cent (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 11 of this section shall be exercised, and no expenditure of revenue as provided in subsection 11 of this section shall be authorized except upon the affirmative vote of six (6) or more of the members of the commission.

13. The commission, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The commission may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the commission, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he had not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission and regularly served, the court shall thereupon order that said witness appear before the commission at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court. Provided that in proceedings before the commission where evidence is sought from witnesses who are not residents of this state, the commission is authorized to obtain subpoenas issued by the clerk of the district court. Subpoenas so requested shall be issued by the clerk of the district court under the seal of the court, shall state the name of the court and the title of the administrative action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. Subpoenas shall be used only to require attendance of a witness at a deposition or hearing. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

SECTION 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 24, 1997.

CHAPTER 309
(S.B. No. 1087)

AN ACT

RELATING TO THE MINIMUM WAGE LAW; AMENDING SECTION 44-1502, IDAHO CODE, TO PROVIDE A SCHEDULE OF MINIMUM WAGES, TO PROVIDE FOR A TIP CREDIT, AND TO PROVIDE FOR AN OPPORTUNITY WAGE FOR EMPLOYEES UNDER TWENTY YEARS OF AGE; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 44-1502, Idaho Code, be, and the same is hereby amended to read as follows:

44-1502. MINIMUM WAGES AND OVERTIME PAY. (1) Except as hereinafter otherwise provided, no employer shall pay to any of his employees any wages computed at a rate of less than ~~three~~ four dollars and ~~eighty~~ seventy-five cents (~~$3.80~~4.75) commencing April 1, 199~~0~~7, and ~~four~~ five dollars and ~~twenty-five~~ fifteen cents (~~$4.25~~5.15) commencing ~~April~~ September 1, 199~~1~~7, per hour for employment.

(2) In determining the wage of a tipped employee, the amount paid such employee by an employer shall be deemed to be increased on account of tips actually received by the employee but not by an amount in excess of ~~twenty-five~~ thirty-three percent (~~25~~33%) of the applicable minimum wage, beginning April 1, 1997, and until August 31, 1997, and thirty-five percent (35%) on and after September 1, 1997, as set forth in subsection (1) of this section. In the event a dispute arises between the employee and the employer with respect to the amount of tips actually received by the employee, it shall be the employer's burden to demonstrate the amount of tips actually received by the employee. Any portion of tips paid to an employee, which is shared with other employees under a tip pooling or similar arrangement, shall not be deemed, for the purpose of this section, to be tips actually received by the employee.

(3) Except as hereinafter otherwise provided in the case of overtime pay only and subject to the same exemptions and/or exceptions for overtime as provided now or hereafter under the federal fair labor standards act; i.e., those employers not exempted or excepted by the overtime provisions of the federal fair labor standards act shall pay overtime as provided in this section, no employer shall employ any employee longer than forty (40) hours in a workweek consisting of seven (7) consecutive twenty-four (24) hour periods unless such employee receives compensation for employment in excess of forty (40) hours at a rate of not less than one and one-half (1 1/2) times the employee's regular rate of pay.

(4) In lieu of the rate prescribed by subsection (1) of this section, an employer may pay an employee who has not attained twenty (20) years of age a wage which is not less than four dollars and twenty-five cents ($4.25) an hour during the first ninety (90) consecutive calendar days after such employee is initially employed. No employer may take any action to displace employees (including partial

displacements such as reduction in hours, wages or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

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 April 1, 1997.

Approved March 24, 1997.

CHAPTER 310
(S.B. No. 1123)

AN ACT

RELATING TO BANKS AND BANKING; REPEALING CHAPTERS 18 AND 19, TITLE 26, IDAHO CODE; AMENDING SECTION 26-101, IDAHO CODE, TO ADD CHAPTER 18, TITLE 26, IDAHO CODE, TO THE IDAHO BANK ACT; AMENDING TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18, TITLE 26, IDAHO CODE, TO PERMIT STATE CHARTERED SAVINGS BANKS IN IDAHO, TO PROVIDE A SHORT TITLE, TO STATE PURPOSES, TO DEFINE TERMS, TO APPLY THE IDAHO BANK ACT AND THE GENERAL CORPORATION LAWS TO SAVINGS BANKS, TO PROHIBIT THE USE OF THE TERM "SAVINGS BANK" WITHOUT AN IDAHO OR A FEDERAL CHARTER, TO REQUIRE DEPOSIT INSURANCE, TO REQUIRE QUALIFICATION AS A THRIFT INSTITUTION UNDER FEDERAL TAX LAW, TO PERMIT TRUST POWERS, TO PROVIDE FOR PARITY WITH FEDERAL SAVINGS BANKS OR SAVINGS BANKS OF OTHER STATES, TO PERMIT DEMAND DEPOSITS, TO DESCRIBE OWNERSHIP, ORGANIZATION AND CAPITAL REQUIREMENTS FOR MUTUAL SAVINGS BANKS, TO PROVIDE FOR CONVERSIONS FROM OTHER FORMS OF FINANCIAL INSTITUTIONS TO SAVINGS BANKS AND FROM SAVINGS BANKS TO OTHER FORMS OF FINANCIAL INSTITUTIONS, TO ESTABLISH A PROCESS FOR CONVERSION FROM A MUTUAL SAVINGS BANK TO A STOCK SAVINGS BANK, TO PERMIT ACQUISITIONS BETWEEN SAVINGS BANKS AND OTHER FINANCIAL INSTITUTIONS AND TO PERMIT FOREIGN SAVINGS AND LOAN ASSOCIATIONS AND SAVINGS BANKS TO OPERATE WITH A PERMIT FROM THE DIRECTOR.

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

SECTION 1. That Chapters 18 and 19, Title 26, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 26-101, Idaho Code, be, and the same is hereby amended to read as follows:

26-101. TITLE. This act, comprising chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 26, title 26, Idaho Code, as such chapters may be hereafter amended, shall be known as the "Idaho Bank Act" and shall be applicable to all corporations, copartnerships, cooperative associations and persons engaged in the business of banking in the state of Idaho.

SECTION 3. That Title 26, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 18, Title 26, Idaho Code, and to read as follows:

CHAPTER 18
SAVINGS BANKS

26-1801. SHORT TITLE. This chapter shall be known as the "Idaho Savings Bank Act."

26-1802. PURPOSE. The purpose of this act is to allow any federal savings bank, federal mutual savings bank or federal savings and loan association, located in Idaho to convert its charter to that of an Idaho bank, an Idaho stock savings bank or an Idaho mutual savings bank. Banks and credit unions chartered either under this title or federal law are also allowed to convert to savings banks as provided herein. Once converted, an Idaho stock savings bank or mutual savings bank shall operate and be supervised pursuant to this act. A savings bank operating under this act may convert to a federal charter as a federal savings bank or federal savings and loan association if authorized by federal law. A savings bank under this act may also convert to a bank charter or to a credit union charter. Wherever the term "savings and loan association" is used in the Idaho Code, it shall include savings banks chartered under this act or associations doing business in this state pursuant to section 26-1815, Idaho Code.

26-1803. DEFINITIONS. Unless the context requires otherwise, the terms below have the meaning assigned:

(1) "Department" means the Idaho department of finance.

(2) "Director" means the director of the Idaho department of finance.

(3) "Mutual savings bank" means a savings bank owned by the members of the savings bank and operating under this act.

(4) "Savings bank" means a bank converted and operating pursuant to this act whether in stock form or in mutual form.

(5) "Stock savings bank" means a savings bank owned by holders of capital stock and operating under this act.

26-1804. IDAHO BANK ACT AND GENERAL BUSINESS CORPORATION LAWS. (1) Except as otherwise provided in this chapter, the Idaho bank act shall apply to all corporations converted and operating under this act.

(2) Except as otherwise provided herein or in the Idaho bank act, the general business corporation laws of this state shall apply to all savings banks converted and operating under this act.

26-1805. PROHIBITIONS. Unless chartered under this act or federal law, it shall be unlawful for any person in this state to use in connection with a business name the term "savings bank" or words of similar import that lead the public reasonably to believe that the business so conducted is that of a savings bank.

26-1806. INSURANCE REQUIRED. All savings banks shall obtain and

maintain federal deposit insurance through an insurance corporation created by an act of Congress.

26-1807. QUALIFICATION AS THRIFT INSTITUTION. All savings banks shall qualify for and maintain the status of a thrift institution under the internal revenue code of 1986 and any amendments thereto.

26-1808. TRUST POWERS. Savings banks may exercise trust powers subject to the prior written authorization by the director to establish a trust department in the savings bank in accordance with chapter 13, title 26, Idaho Code.

26-1809. POWERS. In addition to the powers granted to banks under provisions of the Idaho bank act, and specifically section 26-1101, Idaho Code, savings banks may exercise any power or engage in any activity authorized either for federal savings banks or savings and loan associations or state savings banks or savings and loan associations.

26-1810. DEMAND DEPOSITS. Savings banks may accept deposits subject to withdrawal or to be paid upon checks of the depositor. All such deposits shall be payable on demand, without notice, except when the deposit agreement provides otherwise.

26-1811. MUTUAL SAVINGS BANKS -- OWNERSHIP -- MEMBERSHIP -- DIRECTORS -- CAPITAL. (1) Members of a mutual savings bank are the owners of the mutual savings bank and shall possess voting rights and any other rights as are provided in the articles of incorporation or bylaws of the mutual savings bank.

(2) The membership of a mutual savings bank shall consist of those persons who either:

(a) Hold deposit accounts in the mutual savings bank; or

(b) Borrow funds or become obligated on a loan from the mutual savings bank, for as long as the loan remains unpaid and the debtor remains liable to the mutual savings bank for repayment of the loan.

(3) The board of directors of a mutual savings bank shall be elected by the members at the annual meeting required by section 26-213, Idaho Code. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by the members, subject to any maximum number of votes per member which a mutual savings bank may provide in its articles of incorporation. Voting rights for borrowers shall be fully described in a detailed manner in the articles of incorporation of the mutual savings bank.

(4) Mutual savings banks operating under this chapter shall at all times maintain capital at a level determined by the director to be adequate for the safe and sound operation of the savings bank. In addition to the capital plan required to be submitted to the director by section 26-1812, Idaho Code, each mutual savings bank shall periodically revise its capital plan upon written request by the director. All capital plans are subject to the approval of the director. Either failing to maintain adequate capital or operating without an approved

capital plan are both violations of this chapter and grounds for sanctions under chapter 11, title 26, Idaho Code.

26-1812. CONVERSIONS. All conversions from one (1) form of charter to another issued by the department shall be approved in advance in writing by the director. All conversion applications filed with the director involving savings banks, including conversion applications under section 26-1813, Idaho Code, shall include a plan for establishing and maintaining adequate capital to assure the continued safe and sound operation of the bank, savings bank or credit union. Capital plans shall be subject to the approval of the director.

(1) A federal savings and loan association or a federal savings bank, if organized on a capital stock basis, may convert its charter to that of an Idaho bank or a savings bank by proceeding in accordance with section 26-906, Idaho Code.

(2) A federal savings bank organized on a mutual basis may converts its charter to that of an Idaho mutual savings bank by filing an application in a form approved by the director.

(3) A savings bank may convert its state charter to a federal charter by complying with applicable federal law.

(4) A mutual savings bank may convert its form of organization to that of a stock savings bank by complying with section 26-1813, Idaho Code.

(5) A mutual savings bank may convert its form of organization to that of a credit union by filing an application in a form approved by the director.

(6) A stock savings bank may convert its charter to that of a state bank by proceeding in accordance with section 26-906, Idaho Code.

(7) A bank chartered under the Idaho bank act may convert its charter to that of a stock savings bank by filing an application on a form approved by the director.

(8) A credit union organized under chapter 21, title 26, Idaho Code, may change its charter to that of a mutual savings bank by filing an application on a form approved by the director.

(9) If permitted by federal law, a national bank may convert its charter to that of a stock savings bank by filing an application on a form approved by the director.

(10) If permitted by federal law, a federal credit union may convert its charter to that of a mutual savings bank by filing an application on a form approved by the director.

26-1813. MUTUAL TO STOCK CONVERSIONS. A mutual savings bank may change its form of organization to that of a stock savings bank by filing an application with the director.

As part of the application, the savings bank will include a plan of conversion, which the director may approve, with or without amendment, if it appears that:

(1) After conversion the savings bank will be in sound financial condition;

(2) The conversion will be fair and equitable to the members of the savings bank and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the con-

version;

(3) The savings bank services provided to the public by the savings bank will not be adversely affected by the conversion;

(4) The plan has been approved by a vote of two-thirds (2/3) of the board of directors of the savings bank;

(5) All shares of stock issued in connection with the conversion are offered first to the members of the savings bank;

(6) All stock shall be offered to members of the savings bank and others under a formula and procedure that is fair and equitable and will be fairly disclosed to all interested persons; and

(7) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the savings bank.

The plan shall be submitted to the members, but only after it has been approved by the director. After lawful notice to the members of the savings bank and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes that members of the savings bank are eligible and entitled to cast. The vote by the members may be in person or by proxy. Any votes by proxy must be specific to the plan and not a general proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the savings bank shall be filed with the director. The director shall then either approve or disapprove the requested change in corporate form. After approval, the director shall supervise the conversion process and shall ensure that the process is conducted lawfully and under the approved plan.

26-1814. ACQUISITIONS. All acquisitions shall be approved in advance in writing by the director.

(1) A mutual or stock savings bank may acquire, as defined by section 26-2605, Idaho Code, a savings bank organized in the same form.

(2) A stock savings bank may acquire or be acquired by either a state or national bank with the state or national bank being the surviving bank.

(3) A mutual savings bank may acquire or be acquired by a credit union, with the mutual savings bank being the surviving entity.

(4) A stock savings bank may acquire or be acquired by a national or state bank with the national or state bank being the surviving entity.

26-1815. FOREIGN SAVINGS AND LOAN ASSOCIATIONS. A savings and loan association or savings bank chartered and operating under the laws of another state which has received a valid permit from the director of finance to do business as a savings and loan association or savings bank within this state pursuant to an application filed with and approved by the director shall be authorized to conduct such business in this state.

Approved March 24, 1997.

CHAPTER 311
(S.B. No. 1125)

AN ACT

RELATING TO VEHICULAR MANSLAUGHTER; AMENDING SECTION 18-4007, IDAHO CODE, TO AUTHORIZE THE COURT TO SUSPEND THE DRIVER'S LICENSE OF A PERSON CONVICTED OF VEHICULAR MANSLAUGHTER.

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

SECTION 1. That Section 18-4007, Idaho Code, be, and the same is hereby amended to read as follows:

18-4007. PUNISHMENT FOR MANSLAUGHTER. Manslaughter is punishable as follows:

1. Voluntary--by a fine of not more than fifteen thousand dollars ($15,000), or by a sentence to the custody of the state board of correction not exceeding fifteen (15) years, or by both such fine and imprisonment.

2. Involuntary--by a fine of not more than ten thousand dollars ($10,000), or by a sentence to the custody of the state board of correction not exceeding ten (10) years, or by both such fine and imprisonment.

3. Vehicular--in the operation of a motor vehicle:

(a) For a violation of section 18-4006 3. (a) or (b), Idaho Code, by a fine of not more than ten thousand dollars ($10,000), or by a sentence to the custody of the state board of correction not exceeding ten (10) years, or by both such fine and imprisonment.

(b) For a violation of section 18-4006 3. (c), Idaho Code, by a fine of not more than two thousand dollars ($2,000), or by a jail sentence not exceeding one (1) year, or by both such fine and jail sentence.

(c) In addition to the foregoing, any person convicted of a violation of section 18-4006 3., Idaho Code, which resulted in the death of the parent or parents of minor children may be ordered by the court to pay support for each such minor child until the child reaches the age of eighteen (18). Support shall be established in accordance with the child support guidelines then in effect, and the nonpayment of such support shall be subject to enforcement and collection by the surviving parent or guardian of the child in the same manner that other child support orders are enforced as provided by law. In no event shall the child support judgment or order imposed by the court under this section be paid or indemnified by the proceeds of any liability insurance policy.

(d) In addition to the foregoing, the driver's license of any person convicted of a violation of section 18-4006 3., Idaho Code, may be suspended for a time determined by the court.

Approved March 24, 1997.

CHAPTER 312
(S.B. No. 1149, As Amended, As Amended)

AN ACT

RELATING TO MOTOR VEHICLE DEALERS; AMENDING SECTION 49-1614, IDAHO CODE, TO PROVIDE PROHIBITIONS AND COMPENSATION FOR THE TERMINATION, CANCELLATION OR NONRENEWAL OF MOTOR VEHICLE FRANCHISE AGREEMENTS; AND AMENDING SECTION 49-1626, IDAHO CODE, TO CHANGE THE PERIOD OF TIME THAT MANUFACTURERS HAVE A RIGHT TO AUDIT WARRANTY CLAIMS.

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

SECTION 1. That Section 49-1614, Idaho Code, be, and the same is hereby amended to read as follows:

49-1614. TERMINATION, CANCELLATION OR NONRENEWAL. (1) Notwithstanding the terms, provisions or conditions of any franchise, or any waiver, a manufacturer shall not cancel, terminate or fail to renew any franchise with a dealer unless the manufacturer has satisfied the notice requirement of subsection (2) of this section, and has good cause for cancellation, termination or nonrenewal.

(2) Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the department and the dealer:

(a) In the manner described in paragraph (b) of this subsection; and

(b) Not less than ninety (90) days prior to the effective date of termination, cancellation or nonrenewal; or

(c) Not less than fifteen (15) days prior to the effective date of termination, cancellation or nonrenewal with respect to any of the following:

1. Insolvency of the dealership, or filing of any petition by or against the dealership under any bankruptcy or receivership law;

2. Failure of the dealership to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer;

3. Conviction of the dealer, or any owner or his operator, resulting in imprisonment exceeding thirty (30) days;

4. Revocation of any license which the dealer is required to have to operate a dealership; and

(d) Not less than one hundred eighty (180) days prior to the effective date of termination or cancellation, where the manufacturer is discontinuing the sale of the product line.

(3) Notification under this section shall be in writing, by certified mail or personally delivered to the dealer; and shall contain a statement of intention to terminate, cancel or not to renew the franchise, and a statement of the reasons for and the date on which termination, cancellation or nonrenewal takes effect.

(4) Notwithstanding the terms, provisions or conditions of any franchise or of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when there is a failure by the dealer to comply with a provision of the franchise, where the provision is both reasonable and of material significance to the franchise relationship, and provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days prior to termination, cancellation or nonrenewal. A protest may be filed in accordance with the provisions of section 49-1617, Idaho Code.

(5) Notwithstanding any agreement, the following shall not constitute good cause for a termination, cancellation or nonrenewal of a franchise agreement: the fact that the dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of motor vehicles; or that the dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor which existed prior to January 1, 1997; or is approved in writing by the manufacturer.

(6) The manufacturer shall have the burden of proof under this section concerning the issue of good cause, which shall include, but not be limited to, termination, nonrenewal or cancellation of any franchise by the manufacturer for insolvency, license revocation, conviction of a felony, fraud by a dealer or failure by a dealer to comply with a provision of the franchise, where the provision is both reasonable and of material significance to the franchise relationship.

(~~6~~7) (a) Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer ~~pursuant to this section, the licensee shall be allowed fair and reasonable compensation by the manufacturer for the:~~

~~(a) New vehicle inventory which has been acquired from the manufacturer;~~

~~(b) Supplies and parts which have been acquired from the manufacturer;~~

~~(c) Equipment and furnishings, provided the licensee purchased from the manufacturer or its approved sources; and~~

~~(d) Special tools~~, other than the manufacturer of recreational vehicles as defined in section 49-119, Idaho Code, with the exception of van type vehicles converted to recreational use, without good cause, the manufacturer shall pay to the dealer the fair market value of his business as a going concern. On payment, the dealer shall convey his business, free of liens and encumbrances, to the manufacturer, distributor or factory branch.

(b) Upon the termination, nonrenewal or cancellation of any franchise by a manufacturer of recreational vehicles without good cause, the recreational vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

1. New vehicle inventory which has been acquired from the manufacturer;

2. Supplies and parts which have been acquired from the manufacturer;

3. Equipment and furnishings, provided the licensee purchased from the manufacturer or its approved source; and

4. Special tools.

(~~7~~8) Fair and reasonable compensation for the above shall be paid by the manufacturer within ninety (90) days of the tender of the property, provided the licensee has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.

(~~8~~9) In the event of a termination, cancellation or nonrenewal by the manufacturer under this section except termination, cancellation or nonrenewal by the manufacturer for insolvency, license revocation, conviction of a crime or fraud by a dealer, the manufacturer shall pay a sum equivalent to rent of the unexpired term of the lease or one (1) year rent, whichever is less, if the motor vehicle dealer is leasing its motor vehicle dealership facility from a lessor other than manufacturers or distributors, or a sum equivalent to reasonable rental value of the dealership facility for one (1) year or the reasonable rental value of the facility until facilities are leased, whichever is less, if the motor vehicle dealer owns the motor vehicle dealer facility.

(~~9~~10) The rental payment required under subsection (~~8~~9) of this section is only required to the extent that the facilities were used for the sale and service of the manufacturer's or distributor's product, and only to the extent they are not leased for other purposes. Payment under subsection (~~8~~9) of this section shall entitle the manufacturers or distributors to possession and use of the facility.

SECTION 2. That Section 49-1626, Idaho Code, be, and the same is hereby amended to read as follows:

49-1626. PAYMENT FOR DELIVERY PREPARATION AND WARRANTY SERVICE. (1) Each manufacturer shall specify in writing to each of its dealers licensed in this state, the dealer's obligations for predelivery preparation and warranty service on its products, compensate the dealer for service required of the dealer by the manufacturer, provide the dealer a schedule of compensation to be paid the dealer for parts, work and service in connection with its products, and the time allowance for the performance of that work and service.

(2) In no event shall a schedule of compensation fail to include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.

(3) It is unlawful for a new vehicle manufacturer to fail to perform any warranty obligations or to fail to include in written notices of factory recalls to new vehicle owners and dealers, the expected date by which necessary parts and equipment will be available to dealers for the correction of those defects, or to fail to compensate any of the dealers in this state for repairs affected by recall.

(4) All claims made by dealers pursuant to this section for labor and parts shall be paid within thirty (30) days following their approval. The manufacturer retains the right to audit claims and to charge the dealer for unsubstantiated, incorrect, or false~~, or fraudulent~~ claims for a period of ~~two~~ one (~~2~~1) years following payment. Provided however, that the manufacturer may audit and charge the dealer for fraudulent claims during any period for which an action for fraud may be commenced. All claims shall be either approved or disapproved

within thirty (30) days after their receipt, on forms and in the manner specified by the manufacturer, and any claim not specifically disapproved in writing within thirty (30) days after receipt shall be construed to be approved and payment must follow within thirty (30) days.

Approved March 24, 1997.

CHAPTER 313
(S.B. No. 1208, As Amended in the House)

AN ACT

RELATING TO THE HAZARDOUS WASTE MANAGEMENT ACT; AMENDING SECTION 39-4417B, IDAHO CODE, TO CHANGE THE NAME OF THE HAZARDOUS WASTE TRAINING, EMERGENCY AND MONITORING ACCOUNT TO THE HAZARDOUS WASTE MANAGEMENT ACCOUNT AND TO PROVIDE THE PURPOSES FOR WHICH FUNDS IN THE ACCOUNT MAY BE APPROPRIATED; AMENDING SECTION 39-4427, IDAHO CODE, TO PROVIDE THAT HAZARDOUS WASTES STORED AT OR TREATED AT COMMERCIAL HAZARDOUS WASTE FACILITIES OR SITES SHALL BE SUBJECT TO HAZARDOUS WASTE FEES, TO REVISE HAZARDOUS WASTE FEES AND TO CORRECT A REFERENCE; AMENDING SECTION 39-4431, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTION 39-4432, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 39-4417B, Idaho Code, be, and the same is hereby amended to read as follows:

39-4417B. HAZARDOUS WASTE ~~TRAINING, EMERGENCY AND MONITORING~~ MANAGEMENT ACCOUNT. (1) There is hereby created an account in the dedicated fund in the state treasury to be designated the hazardous waste ~~training, emergency and monitoring~~ management account.

(2) The account shall consist of:

(a) Moneys appropriated to the account;

(b) Moneys as provided in section 39-4432, Idaho Code;

(c) Donations, gifts and grants from any source; and

(d) Any other moneys which may hereafter be provided by law.

(3) Moneys in the account may be appropriated only for ~~any or all of~~ the ~~following~~ purposes~~:~~ of implementing and enforcing this act, as provided for in chapter 44, title 39, Idaho Code.

~~(a) Acquisition of property and equipment by the department of health and welfare to analyze, monitor, contain, collect or dispose of hazardous wastes;~~

~~(b) Employment of or contracting with necessary personnel to analyze, monitor, contain, collect or dispose of hazardous wastes; or~~

~~(c) Employment of individuals or contracting with individuals or corporations to respond throughout the state to health and environmental problems which may be caused by hazardous waste emergencies or spills, improperly packaged or handled hazardous waste or the alleviation of damages to the people and environment of the~~

~~state of Idaho caused by such emergencies or spills.~~

~~(d) Taking removal or remedial action relating to hazardous wastes which the department deems necessary to prevent, minimize or mitigate damage to the public health and welfare or the environment.~~

SECTION 2. That Section 39-4427, Idaho Code, be, and the same is hereby amended to read as follows:

39-4427. HAZARDOUS WASTE ~~DISPOSAL~~ FEES. (1) On and after July 1, 199~~5~~7, 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 ~~following waste disposal fees~~ lowest applicable fee for each ton of waste or fraction thereof, as follows:

(a) Hazardous wastes as defined by RCRA or section 39-4407, Idaho Code, and excluding hazardous wastes covered by paragraph (c) of this subsection: thirty dollars ($30.00) per gate ton or fraction thereof disposed of at the facility or site~~, provided however, that hazardous waste that has been delisted or has been treated so that it is no longer hazardous waste: five dollars ($5.00) per gate ton or fraction thereof disposed of at the facility or site~~;

(b) PCB and all manifested waste other than wastes as defined in paragraph (a), (c), (d) or (e) of this subsection: twenty-five dollars ($25.00) per gate ton or fraction thereof disposed of at the facility or site;

(c) Hazardous waste that is delisted or treated so that it is no longer hazardous waste: five dollars ($5.00) per gate ton or fraction thereof disposed of at the facility or site;

(d) Wastes containing PCB's in concentrations less than fifty (50) parts per million and not regulated by the toxic substances control act, as amended, 15 U.S.C. section 2601 et seq., and a~~A~~ll other waste not defined in paragraphs (a), ~~and~~ (b), (c) and (d) of this subsection: five dollars ($5.00) per gate ton or fraction thereof;

(e) For wastes defined in paragraphs (a) and/or (b) above, after twenty-five thousand (25,000) gate tons of such waste have been disposed of at a commercial hazardous waste facility or site in a calendar year: twenty dollars ($20.00) per gate ton or fraction thereof or any lower applicable fee for such waste disposed of at such facility or site, for the remainder of the calendar year.

(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 owner or operator of any such facility or site, may credit to the hazardous waste ~~training, emergency and monitoring~~ management account 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 3. That Section 39-4431, Idaho Code, be, and the same is hereby amended to read as follows:

39-4431. COLLECTION AND ENFORCEMENT. (1) The collection and enforcement procedures available to the Idaho state tax commission provided by the Idaho income tax act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042 through 63-3045A, 63-3047 through 63-3065A, 63-3068, 63-3070, 63-3071, 63-3072, 63-3073 and 63-3078, Idaho Code, as they now exist or as they may subsequently be amended, shall apply and be available to the department of health and welfare for the enforcement of the hazardous waste ~~disposal~~ management fee and for the assessment and collection of any amounts due thereunder. Said sections shall, for the aforementioned purposes, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as hazardous waste ~~disposal~~ management fee liens and proceedings.

(2) The department of health and welfare may be made a party defendant in any action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the department of health and welfare and said judgment shall be paid or satisfied out of the hazardous waste ~~disposal~~ management fee refund account.

SECTION 4. That Section 39-4432, Idaho Code, be, and the same is hereby amended to read as follows:

39-4432. DISTRIBUTION OF HAZARDOUS WASTE ~~DISPOSAL~~ MANAGEMENT FEE REVENUES. The revenues received from the fees imposed by this chapter and any penalties, interest, or deficiency additions, shall be paid over to the state treasurer by the department to be distributed as follows:

(1) An amount of money to maintain the hazardous waste ~~disposal~~ management fee refund account, which is hereby created, and from which all refunds authorized to be paid by this act shall be paid, at a monthly balance of ten thousand dollars ($10,000) or at such greater sum as in the opinion of the department may be needed to meet reasonable requirements imposed on the hazardous waste ~~disposal~~ management fee refund account.

(2) The balance remaining with the state treasurer after deducting the amounts in (1) above, shall be remitted periodically but no less frequently than quarterly as follows: ninety-five percent (95%) shall be remitted to the hazardous waste ~~training, emergency and monitoring~~ management account created in section 39-4417B, Idaho Code, and the remaining five percent (5%) shall be remitted to the county trea-

surer of the county or counties where the activity occurred which caused the fees to be assessed pursuant to this chapter. Moneys shall be apportioned to the counties in the same proportional manner in which they were collected. Moneys returned to counties shall be utilized by the county to respond to health and environmental problems which may be caused by hazardous waste emergencies or spills, or improperly handled or packaged hazardous waste.

Approved March 24, 1997.

CHAPTER 314
(S.B. No. 1223)

AN ACT

RELATING TO CRIMES; AMENDING CHAPTER 9, TITLE 18, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 18-920, 18-921 AND 18-922, IDAHO CODE, TO CREATE A MISDEMEANOR CRIME OF VIOLATION OF A "NO CONTACT ORDER," PROVIDING A DEFINITION OF THE CRIME AND PROVIDING PENALTIES, PROVIDING PEACE OFFICER IMMUNITY FOR ENFORCEMENT, AND PROVIDING A MEANS OF TRANSMITTAL TO LAW ENFORCEMENT AGENCIES OF THE REQUIRED INFORMATION TO ARREST; AND AMENDING SECTION 19-603, IDAHO CODE, TO ADD VIOLATION OF A NO CONTACT ORDER TO THE LIST OF CRIMES FOR WHICH A PEACE OFFICER MAY ARREST.

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

SECTION 1. That Chapter 9, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-920, Idaho Code, and to read as follows:

18-920. VIOLATION OF NO CONTACT ORDER. (1) When a person is charged with an offense under section 18-901, 18-903, 18-905, 18-907, 18-911, 18-913, 18-915, 18-918 or 18-919, Idaho Code, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.

(2) A violation of a no contact order is committed when:

(a) A person has been charged under any offense defined in subsection (1) of this section; and

(b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and

(c) The person charged has had contact with the stated person in violation of an order.

(3) A violation of a no contact order is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or both. No bond shall be set for this violation until the person charged is brought before the court which will set bond. Further, any such violation may result in the increase, revocation or modification of the bond set in the underlying charge for which the no contact order was imposed.

(4) A peace officer may arrest without a warrant and take into

custody a person whom the peace officer has probable cause to believe has violated a no contact order issued under this section if the person restrained had notice of the order.

SECTION 2. That Chapter 9, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-921, Idaho Code, and to read as follows:

18-921. PEACE OFFICERS -- IMMUNITY. No peace officer may be held criminally or civilly liable for actions or omissions in the performance of the duties of his office under this chapter, if the peace officer acts in good faith and without malice.

SECTION 3. That Chapter 9, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-922, Idaho Code, and to read as follows:

18-922. ORDER -- TRANSMITTAL TO LAW ENFORCEMENT AGENCY. (1) A no contact order may be imposed either by order of the court or by an Idaho criminal rule, as a condition of bond.

(2) (a) Notice of a no contact order shall be forwarded by the clerk of the court, or by the arresting agency where the defendant is given notice of the bond condition under an Idaho court rule, on or before the next judicial day, to the appropriate law enforcement agency.

(b) Upon receipt of such notice, the law enforcement agency shall forthwith enter the order into the Idaho law enforcement telecommunications system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the Idaho law enforcement telecommunications system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident may be informed of the existence of such no contact order.

(4) A no contact order shall remain in effect for the term set by the court or an Idaho criminal rule, or until terminated by the court.

SECTION 4. That Section 19-603, Idaho Code, be, and the same is hereby amended to read as follows:

19-603. WHEN PEACE OFFICER MAY ARREST. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon a reasonable cause, of the commission

of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony.

6. When at the scene of a domestic disturbance there is reasonable cause to believe, based upon physical evidence observed by the officer or statements made in the presence of the officer upon immediate response to a report of a commission of such a crime, that the person arrested has committed a violation of section 18-902 (assault), 18-903 (battery), 18-918 (domestic assault or battery), 18-7905 (stalking), or 39-6312 (violation of a protection order), or 18-920 (violation of a no contact order).

7. When there is reasonable cause to believe, based upon physical evidence observed by the officer or statements made in the presence of the officer upon immediate response to a report of a commission of a crime aboard an aircraft, that the person arrested has committed such a crime.

Approved March 24, 1997.

CHAPTER 315
(S.B. No. 1224, As Amended in the House)

AN ACT

RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING CHAPTER 2, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-203F, IDAHO CODE, TO PROVIDE POWERS OF THE DEPARTMENT OF HEALTH AND WELFARE TO ESTABLISH A WORK GROUP TO PLAN FOR AND IMPLEMENT REQUIRED COMPLIANCE WITH FEDERAL LAW REGARDING CHILD SUPPORT ARREARAGE COLLECTION AND TO ENTER INTO AGREEMENTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 2, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-203F, Idaho Code, and to read as follows:

56-203F. CHILD SUPPORT ENFORCEMENT -- AGREEMENTS WITH FINANCIAL INSTITUTIONS. (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 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.

(2) The department is hereby authorized to establish a work group comprised of:

(a) Representatives of the types of financial institutions identified in section 469A(d)(1) of 42 U.S.C. 666(a);
(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;
(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 compliance with section 455(a)(17) of 42 U.S.C. 666(a);
(b) Define the type of information in the hands of financial institutions and utilities which is not otherwise available and 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, limit authority to engage match functions and access to all information received to the smallest number of upper management in the department as is possible;
(d) Develop written protocol within the department for the foregoing, delineating which functions would be performed by which personnel and under what circumstances;
(e) Limit engagement of contracted data match functions to those obligors who are in arrears of at least five thousand dollars ($5,000) or for one (1) year and only after all other methods available to the department have failed;
(f) 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;
(g) Design the data match system identified herein in such a manner that it will be the least intrusive, least expensive and most confidential system possible.
(h) 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) The department is authorized to enter into agreements with the entities represented by members of the work group, and pay reasonable compensation to such entities, not to exceed actual costs incurred by such entity in developing the data match system.

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

Approved March 24, 1997.

CHAPTER 316
(S.B. No. 1226, As Amended)

AN ACT

RELATING TO THE PROVISION OF PERSONAL CARE SERVICES; AMENDING SECTION 39-5602, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-5603, IDAHO CODE, TO ELIMINATE INDEPENDENT PROVIDER AGREEMENTS AND PAYMENTS FROM PROVISION OF PERSONAL CARE, TO PROVIDE FOR INDEPENDENT CONTRACTORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5605, IDAHO CODE, TO AUTHORIZE DIFFERENT LEVELS OF TRAINING FOR DIFFERENT SERVICES PROVIDED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-5606, IDAHO CODE, TO PROVIDE FOR PAYMENT OF INDEPENDENT CONTRACTORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 56, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-5607, IDAHO CODE, TO ESTABLISH THE EFFECT OF AGENCY RATES ON DETERMINATION OF ELIGIBILITY; AMENDING SECTION 39-5607, IDAHO CODE, TO REDESIGNATE THE SECTION; PROVIDING A STATEMENT OF LEGISLATIVE INTENT IN IMPLEMENTATION OF THE PROVISIONS OF THIS ACT; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 39-5602, Idaho Code, be, and the same is hereby amended to read as follows:

39-5602. DEFINITIONS. As used in this chapter, the following terms shall have the following meaning:

(1) "Associated services" means those tasks performed which do not require hands-on care such as incidental housekeeping, cooking, laundry, shopping, and transportation included in the care plan.

(2) "Case management" means a service which coordinates multiple services for individual clients through a process of assessment, planning, arranging for and monitoring services.

(~~2~~3) "Department" means the department of health and welfare of the state of Idaho.

(~~3~~4) "Director" means the director of the department of health and welfare.

(~~4~~5) "Eligible recipient" or "recipient" means an individual determined eligible by the department for the services provided in the state plan for medicaid, as authorized by title XIX, of the social security act, as amended.

(~~5~~6) "Independent provider" means a personal care attendant that provides personal care services as an independent contractor.

(7) "Independent contractor" means a sole proprietorship, partnership, corporation or other business entity approved in the state of Idaho to conduct business and meeting all federal and state criteria as an independent contractor.

(~~6~~8) "Personal care attendant" means a person whose name appears on the Idaho state board of nurse's registry of certificated nurse aid's (CNA) or is determined by the director to meet equivalent requirements and holds, or works for a provider agency that holds, a

valid Idaho medicaid provider agreement; and provides hands-on personal care services.

(~~7~~9) "Personal care services" means services that involve personal and medically orientated tasks dealing with the physical requirements of the patient performed in the patient's home and accommodating the patient's needs for long-term maintenance, ~~or~~ supportive care or associated services.

(~~8~~10) "Plan of care" means a document which outlines all services, including but not limited to, personal care services, required to maintain the individual in his or her community.

(~~9~~11) "Provider agency" means an entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for care given, and provides payroll and benefits for care providers working for them.

(~~10~~2) "Representative" means an employee of the department of health and welfare.

SECTION 2. That Section 39-5603, Idaho Code, be, and the same is hereby amended to read as follows:

39-5603. STANDARDS FOR PROVISION OF PERSONAL CARE. The director shall have the power and it shall be his duty to promulgate and adopt appropriate rules ~~and regulations~~ necessary to implement and enforce standards for provision of personal care services.

The following standards for provision of personal care services and other provisions contained throughout this chapter and rules ~~and regulations~~ shall apply to recipients and providers receiving or providing personal care services either as a medicaid option service or a waivered service, unless prohibited by federal law or contents of the federal waiver agreement.

(1) Personal care services shall be included as a state plan service under medicaid. Services under a waiver shall be available to those individuals who would not qualify for medicaid in the absence of a waiver or to those whose needs cannot be met with personal care services under the plan.

(2) Personal care services shall be ordered by a physician.

(3) The department will establish by ~~regulation~~ rule maximum hours per month of personal care services available to the individual recipient.

(4) The department shall enter into contracts and/or provider agreements with ~~provider agencies and~~ independent ~~providers~~ contractors for the provision of personal care services. ~~They~~ The department may deny provider status or revoke that status when a provider is found to endanger the health, person or property of the recipient.

(5) ~~A--provider--agency~~ An independent contractor shall have the responsibility for the following:

(a) Recruitment, hiring, firing, training, supervision, scheduling, payroll, and the assurance of quality of service, of its personal care attendants;

(b) ~~Participation--in--provision-of-workmen's-compensation;-unemployment-compensation;-and-all-other-required~~ Complying with state and federal labor and tax ~~withholdings~~ laws, rules and regulations;

(c) Maintaining liability insurance coverage;

(d) Provision of an appropriately qualified nurse to complete the plan of care and ~~on-going~~ ongoing supervision of the recipients care;

(e) Assignment of a qualified personal care attendant to each authorized recipient after consultation with and prior approval of that recipient;

(f) Assuring all personal care attendants providing services, ~~as~~ whether themselves or their agent, meet the standards and qualifications of this chapter;

(g) Billing medicaid for services approved and authorized by them; ~~and~~

(h) Making referrals for personal care service recipients to case management services based on established criteria;

(i) Providing for care by a qualified replacement when the regular personal care attendant is unable to provide the services, and providing for unanticipated services approved on the plan of care when requested by the recipient; and

(j) Conducting, at least annually, client satisfaction/quality control reviews available to the department and general public.

(6) ~~An--i~~Independent providers not qualifying as independent contractors shall ~~provide-services-when-a-provider-agency-is--unavailable or--when--based--on-an-initial-assessment-involving-the-recipient,-his family,-and-the-department's-regional-medicaid-staff,-it-is-determined that-use-of-an-independent-provider-will-best-promote--the--intent--of this--chapter.--The--assessment--shall--include--consideration--of-the recipient's-ability-to-select-a-provider-and-manage-and--evaluate--the care--he--receives~~ not be eligible for medicaid payment after December 31, 1997; provided however, that the director may extend this deadline until the last day of June, 1998. The independent provider will not be considered an employee of the state or the recipient, but will be considered an independent contractor. As such he shall be responsible to~~:~~

~~(a)--Obtain-the--required--training,--certifications,--agreements, knowledge,--and--information--needed-to-function-as-an-independent provider;~~

~~(b)--Obtain-any-benefits;-such-as-life,--disability--and/or--unemployment-insurance,-that-he-may-desire;~~

~~(c)--Maintain-liability-insurance;~~

~~(d)--Report--all-income-to-the-appropriate-authorities,-pay-social security-and-all-other-state-and-federal-taxes,-as-an--independent contractor;~~

~~(e)--Bill-medicaid-for-services-approved-and-authorized-by-them;~~

~~(f)--Provide-for-care-by-a-fully-trained-and-qualified-replacement when-they-are-unable-to-provide-services-for-any-reason;-and~~

~~(g)--Provide--unanticipated--service,--that-is-part-of-the-plan-of care,-when-requested-to-do-so-by-the-recipient~~ meet requirements established by the department.

The department will provide a qualified nurse to establish a plan of care and ~~on-going~~ ongoing care supervision, where an independent provider is providing service.

(7) Case management shall be made available to personal care service recipients where and when appropriate. In order to avoid a conflict of interest, case management shall not be provided by the same

agency that provides personal care services to the recipient. Services provided by case managers include but are not limited to:

(a) Comprehensive assessment;

(b) Assistance with eligibility and application processes;

(c) Service plan development;

(d) Service plan implementation;

(e) Reassessment and service termination planning; and

(f) Supportive functions which may include client advocacy, assistance, consultation, including training to enable the recipient to manage and evaluate the care they receive, family support, crisis intervention or follow-up after termination from case management when necessary.

(8) The department's regional medicaid staff shall ~~participate in the development of~~ review and approve the plan of care, authorize personal care services, the hours of service, and make appropriate referrals for case management for eligible individuals. ~~There shall be a personal interview with each applicant as part of this process.~~

(9) The department shall establish a community awareness program that will educate Idaho citizens regarding the purpose and function of all long-term care alternatives including, but not limited to, personal care services and individual recipient rights. This program will be developed in cooperation with other state agencies including, but not limited to, the office on aging and the division of vocational rehabilitation.

(10) It shall be the responsibility of the recipient, his parents or guardian, when possible, to select the provider of personal care services.

(11) The department shall provide the recipient, his parents or guardian with a list of available providers of personal care services; however, this does not relieve the recipient, his parents or guardian of the responsibility of provider selection.

(12) In those cases where the recipient, his parents or guardian~~,~~ cannot arrange for personal care services or asks for help in making arrangements, a representative of the department may arrange for or help arrange for personal care services on behalf of the recipient.

SECTION 3. That Section 39-5605, Idaho Code, be, and the same is hereby amended to read as follows:

39-5605. TRAINING OF PROVIDERS. The director may require a provider to successfully complete a training program established by the rules before beginning to provide personal care services. Those providing personal care service when the rule is established will be given a reasonable period of time to obtain the required training. The director may establish different training requirements for different services provided and for providers serving recipients with special needs. The department shall conduct training to include, but not limited to, administrative rules ~~and regulations~~, billing procedures and service requirements.

SECTION 4. That Section 39-5606, Idaho Code, be, and the same is hereby amended to read as follows:

39-5606. PAYMENT TO BE MADE TO PROVIDER. Within the appropriations provided by law, the department shall reimburse the independent provider or provider agency, for personal care services received by the recipient. To qualify for reimbursement, personal care services must be prescribed by a physician delivered in accordance with the recipient's plan of care and be provided by an individual who is:

(a) A personal care attendant;

(b) Supervised by a registered nurse; and

(c) Not a member of the recipient's family.

The department will establish annually uniform reimbursement rates for ~~provider agencies and~~ independent contractors. This rate will be based on the prevailing hourly rate paid for comparable positions in the state for nursing home industry employees. ~~Provider agencies~~ Independent contractors shall also receive a fifty-five percent (55%) supplemental component to cover travel, administration, training and all payroll taxes and fringe benefits. ~~Independent contractor rates will have a supplemental component to cover training, worker's compensation, social security and liability insurance.~~ The department may establish different rates for associated services. When the assessment tool referred to in sections 39-3308 and 39-3508, Idaho Code, becomes available, it shall be applied to establish reimbursement levels.

All references in this chapter made to independent providers shall become null and void effective January 1, 1998; provided however, that the director may extend this deadline until the last day of June, 1998.

The director shall promulgate and adopt such necessary rules ~~and regulations~~ to implement the requirements of this section.

SECTION 5. That Chapter 56, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-5607, Idaho Code, and to read as follows:

39-5607. EFFECT OF INDEPENDENT CONTRACTOR RATES. Applicants for and recipients of personal care services shall not lose their eligibility for such services as a result of changing from an independent provider to an independent contractor, or from any increased cost of their plan of care caused by such a change.

SECTION 6. That Section 39-5607, Idaho Code, be, and the same is hereby amended to read as follows:

39-560~~7~~8. LIABILITY OF ACTIONS UNDER THIS CHAPTER. (1) The recipient, his parents or guardians, if such are responsible, shall be liable for any acts of the recipient performed or committed while receiving personal care services under the provisions of this chapter.

(2) The department shall not be held liable for any actions under this chapter, except pursuant to section 39-5603(11), Idaho Code, when the representative of the department is acting in behalf of the recipient, his parents or guardian; however, the provisions of section 39-5603(9), Idaho Code, shall remain in force.

(3) Nothing in this chapter shall exempt the provider of personal care services from any liability caused by such providers' negligence,

abuse, or other improper action of the provider.

SECTION 7. It is the intent of the Legislature that the Department of Health and Welfare shall convene a committee consisting of providers of personal care services and recipients of such services and organizations representing such recipients, and other interested parties, for the purpose of planning the implementation of changes to the Medicaid waiver and Personal Care Services Program required by this act. At least one-half of the membership of the committee shall be recipients and their representatives.

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 April 1, 1997.

Approved March 24, 1997.

CHAPTER 317
(S.B. No. 1233, As Amended)

AN ACT

RELATING TO CHILD SUPPORT ENFORCEMENT; AMENDING SECTION 7-1405, IDAHO CODE, TO CLARIFY THE FILING AND PROCEDURE GOVERNING COMMENCEMENT OF A JUDICIAL PROCEEDING; AMENDING SECTION 7-1406, IDAHO CODE, TO PROVIDE NOTICE BY MAIL TO A LICENSEE; AMENDING SECTION 7-1411, IDAHO CODE, TO PROVIDE FOR ENTRY OF A DEFAULT AND ISSUANCE OF ORDER; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 7-1405, Idaho Code, be, and the same is hereby amended to read as follows:

7-1405. COMMENCEMENT OF JUDICIAL PROCEEDING FOR SUSPENSION OF LICENSE. (1) A petition for suspension of a license may be commenced in ~~any--state-court-of-competent-jurisdiction~~ the magistrate division of the district court of the county where the child support order or order for visitation was issued; and no filing fees shall be charged for seeking only the relief provided under this chapter. The petition shall allege:

(a) The name and, if known, social security number of the licensee;

(b) The type or types of license or licenses the licensee is believed to hold and the name of each licensing authority; ~~and~~

(c) The amount owed under a child support order, the amount of support paid and the amount of the delinquency, the failure to comply with a subpoena in a paternity or child support proceeding, or the manner in which a licensee has failed to comply with an order for visitation; and

(d) The last known address of the licensee.

(2) A petition to suspend a license for a child support delinquency shall include a certified copy of the record of child support payments maintained by the department or local child support registry.

SECTION 2. That Section 7-1406, Idaho Code, be, and the same is hereby amended to read as follows:

7-1406. NOTICE. Upon commencement of a proceeding for suspension of a license under this chapter, the court shall notify the licensee by mail, to the address provided by the petitioner:

(1) Of the licensee's right to a hearing;

(2) That the licensee has twenty-one (21) days after service to request a hearing;

(3) That the license will be suspended if there is no timely request for a hearing or the licensee fails without good cause to appear for a scheduled hearing; and

(4) That the license will not be suspended if the licensee pays the delinquency and the current support obligation in full; demonstrates compliance with a subpoena in a paternity or child support proceeding; demonstrates compliance with an order for visitation; pays the current support obligation in full and enters into a reasonable schedule for repayment of any child support delinquency; or establishes good cause why the license should not be suspended.

SECTION 3. That Section 7-1411, Idaho Code, be, and the same is hereby amended to read as follows:

7-1411. DEFAULT. The court or department shall deem the allegations of the petition or notice to be admitted and shall issue an order suspending a license if the licensee fails to make a timely request for a hearing or fails to appear at a hearing without good cause. The entry of the default and issuance of any subsequent order shall be pursuant to IRCP 55.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1997.

Approved March 24, 1997.

CHAPTER 318
(S.B. No. 1236)

AN ACT

RELATING TO MEDICAL SAVINGS ACCOUNTS; AMENDING SECTION 63-3022K, IDAHO CODE, TO PROVIDE THAT CONTRIBUTIONS TO A MEDICAL SAVINGS ACCOUNT MAY BE DEDUCTED ONLY ONCE TO ARRIVE AT TAXABLE INCOME FOR THAT YEAR AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 5, CHAPTER 362, LAWS OF 1995; DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

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

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

63-3022K. MEDICAL SAVINGS ACCOUNT. (1) For taxable years commencing on and after January 1, 1995, annual contributions to a medical savings account not exceeding two thousand dollars ($2,000) for the account holder and interest earned on a medical savings account shall be deducted from taxable income by the account holder, if such amount has not been previously deducted or excluded in arriving at taxable income. For married individuals the maximum deduction shall be computed separately for each individual.

(2) For the purpose of this section, the following terms have the following meanings unless the context clearly denotes otherwise:

(a) "Account holder" means an individual, in the case of married individuals each spouse, including a self-employed person, on whose behalf the medical savings account is established.

(b) "Dependent" means a person for whom a deduction is permitted under section 151(b) or (c) of the Internal Revenue Code if a deduction for the person is claimed for that person on the account holder's Idaho income tax return.

(c) "Dependent child" means a child or grandchild of the account holder who is not a dependent if the account holder actually pays the eligible medical expenses of the child or grandchild and the child or grandchild is any of the following:

(i) Under nineteen (19) years of age, or enrolled as a full-time student at an accredited college or university.

(ii) Legally entitled to the provision of proper or necessary subsistence, education, medical care or other care necessary for his or her health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States.

(iii) Mentally or physically incapacitated to the extent that he or she is not self-sufficient.

(d) "Depository" means a state or national bank, savings and loan association, credit union or trust company authorized to act as a fiduciary or an insurance administrator or insurance company authorized to do business in this state, a broker or investment advisor regulated by the department of finance, a broker or insurance agent regulated by the department of insurance or a health maintenance organization, fraternal benefit society, hospital and professional service corporation as defined in section 41-3403, Idaho Code, or nonprofit mutual insurer regulated under title 41, Idaho Code.

(e) "Eligible medical expense" means an expense paid by the taxpayer for medical care described in section 213(d) of the Internal Revenue Code, medical insurance premiums, dental and long-term care expenses of the account holder and the spouse, dependents and dependent children of the account holder.

(f) "Long-term care expenses" means expenses incurred in providing custodial care in a skilled nursing facility or intermediate care facility as those terms are defined in section 39-1301, Idaho

Code, and for insurance premiums relating to long-term care insurance under chapter 46, title 41, Idaho Code.

(g) "Medical savings account" means an account established with a depository to pay the eligible medical expenses of the account holder and the dependents and dependent children of the account holder. Medical savings accounts shall carry the name of the account holder, a designated beneficiary or beneficiaries of the account holder and shall be designated by the depository as a "medical savings account."

(3) Upon agreement between an employer and employee, an employer may establish and contribute to the employee's medical savings account or contribute to an employee's existing medical savings account. The total combined annual contributions by an employer and the account holder shall not exceed two thousand dollars ($2,000) for the account holder. Employer contributions to an employee's medical savings account shall be owned by the employee.

(4) Funds held in a medical savings account may be withdrawn by the account holder at any time. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the tax imposed in this chapter. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the depository or the employer of the account holder. Other withdrawals shall be subject to the following restrictions and penalties:

(a) There shall be a distribution penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses. The penalty shall be ten percent (10%) of the amount of withdrawal from the account and, in addition, the amount withdrawn shall be subject to the tax imposed in this chapter. The direct transfer of funds from a medical savings account to a medical savings account at a different depository shall not be considered a withdrawal for purposes of this section. Charges relating to the administration and maintenance of the account by the depository are not withdrawals for purposes of this section.

(b) After an account holder reaches fifty-nine and one-half (59 1/2) years of age, withdrawals may be made for eligible medical expenses or for any other reason without penalty, but subject to the tax imposed by this section.

(c) Upon the death of an account holder, the account principal, as well as any interest accumulated thereon, shall be distributed without penalty to the designated beneficiary or beneficiaries.

(d) Funds withdrawn which are later reimbursed shall be taxable unless redeposited into the account within sixty (60) days of the reimbursement. Deposits of reimbursed eligible medical expenses shall not be included in calculating the amount deductible.

(e) Funds deposited in a medical savings account which are deposited in error or unintentionally and which are withdrawn within thirty (30) days of being deposited shall be treated as if the amounts had not been deposited in the medical savings account.

(f) Funds withdrawn which are, not later than the sixtieth day after the day of the withdrawal, deposited into another medical savings account for the benefit of the same account holder are not a withdrawal for purposes of this section and shall not be

included in calculating the amount deductible.

(5) Reporting -- Depositories shall provide to the state tax commission the following information regarding medical savings accounts: the name of the account holder, the address of the account holder, the taxpayer identification number of the account holder, deposits made during the tax year by the account holder, withdrawals made during the tax year by the account holder, interest earned on the proceeds of a medical savings account or other information deemed necessary by the commission. Reports shall be filed annually on or before the last day of February following the year to which the information in the report relates.

(6) Any medical care savings account established pursuant to chapter 53, title 41, Idaho Code, as enacted by ~~C~~chapter 186, ~~L~~laws of 1994, may be continued pursuant to the provisions of this section and all duties, privileges and liabilities imposed in this section upon medical care savings accounts and the beneficiaries of those accounts shall apply to medical care savings accounts and their beneficiaries established pursuant to chapter 53, title 41, Idaho Code, as enacted by ~~C~~chapter 186, ~~L~~laws of 1994, as if the medical care savings account were a medical savings account established pursuant to this section.

SECTION 2. That Section 5, Chapter 362, Laws of 1995, be, and the same is hereby repealed.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1997.

Approved March 24, 1997.

CHAPTER 319
(S.B. No. 1237)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-2141, IDAHO CODE, TO REQUIRE PROMULGATION OF RULES TO PROVIDE COORDINATION OF BENEFITS; AMENDING SECTION 41-2216, IDAHO CODE, TO REQUIRE PROMULGATION OF RULES TO PROVIDE COORDINATION OF BENEFITS; AMENDING SECTION 41-3434, IDAHO CODE, TO PROVIDE REFERENCES; AND REPEALING SECTIONS 41-2120, 41-2121 AND 41-2122, IDAHO CODE.

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

SECTION 1. That Section 41-2141, Idaho Code, be, and the same is hereby amended to read as follows:

41-2141. COORDINATION OF BENEFITS -- COORDINATION WITH SOCIAL SECURITY BENEFITS. (1) Under the authority of this section and section 41-2216, Idaho Code, the director shall promulgate rules that are in accordance with the model regulations of the national association of

insurance commissioners relating to coordination of benefits provisions in individual and group disability insurance policies. This section shall apply to all policies of individual disability insurance or coverage issued in this state pursuant to the provisions of chapters 21, 34, 39 and 52, title 41, Idaho Code. These rules shall establish uniformity in the permissive use of provisions governing the coordination of benefits between individual disability policies and between individual disability policies and group disability policies in order to avoid claim delays and misunderstandings that otherwise result from the use of inconsistent or incompatible provisions.

(2) Any provision contained in a policy of disability insurance providing for a reduction of benefits payable under the policy during a policy benefit period due to an increase in benefits payable under the federal social security act, as amended, shall be null and void with respect to any such increase which occurs on or after the effective date of this act.

SECTION 2. That Section 41-2216, Idaho Code, be, and the same is hereby amended to read as follows:

41-2216. COORDINATION OF BENEFITS -- COORDINATION WITH SOCIAL SECURITY BENEFITS. (1) Under the authority of this section and section 41-2141, Idaho Code, t~~T~~he director shall promulgate rules that are in accordance with the model regulations of the national association of insurance commissioners relating to coordination of benefits provisions in group and individual disability insurance policies. This section shall apply to all policies of group disability insurance or coverage issued in this state pursuant to the provisions of chapters 22, 34, 39 and 47, title 41, Idaho Code~~,-as-well-as--to--group--disability policies--issued--by-hospital-and-medical-service-corporations,-health maintenance-organizations,-and-benefit-insurers~~. These rules ~~may~~ shall establish uniformity in the permissive use of provisions governing the coordination of benefits ~~provisions~~ between group disability policies and between group disability policies and individual disability policies in order to avoid claim delays and misunderstandings that otherwise result from the use of inconsistent or incompatible provisions ~~among-the-several-insurers-and-nonprofit--hospital,--medical--service, and-health-care-plans~~.

(2) Any provision contained in a policy of group or blanket disability insurance providing for a reduction of benefits payable under the policy during a policy benefit period due to an increase in benefits payable under the federal social security act, as amended, shall be null and void with respect to any such increase which occurs on or after the effective date of this act.

SECTION 3. That Section 41-3434, Idaho Code, be, and the same is hereby amended to read as follows:

41-3434. OTHER PROVISIONS APPLICABLE. In addition to those contained or referred to heretofore in this chapter, the following chapters and provisions of this code shall also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications

of such express provisions, and for the purposes of such application such corporations shall be deemed to be mutual "insurers":

(1) Chapter 1 (scope of code);

(2) Chapter 2 (the director of insurance);

(3) Section 41-308(2) (general eligibility for certificate of authority -- competence, affiliations of management);

(4) Sections 41-345 through 41-347 (disclosure of material transactions);

(5) Section 41-601 ("assets" defined);

(6) Section 41-603 (assets not allowed);

(7) Section 41-604 (disallowance of "wash" transactions);

(8) Section 41-613 (valuation of bonds);

(9) Section 41-731 (prohibited investments and investment underwriting);

(10) Chapter 13 (trade practices and frauds);

(11) Section 41-2840 (vouchers for expenditures);

(12) Section 41-2841 (borrowed surplus);

(13) Sections 41-2857 (mergers and consolidations, mutual insurers), 41-2858 (bulk reinsurance, mutual insurers), and 41-2859 (mutual member's share of assets on liquidation);

(14) Chapter 33 (supervision, rehabilitation and liquidation);

(15) Sections 799 to 809 of chapter 330 of Session Laws of 1961 (transitory provisions);

(16) Section 41-2106(3) (health history application for disability insurance);

(17) Section 41-2141 (coordination of benefits -- coordination with social security benefits);

(18) Section 41-1839 (attorney fees);

(19) Chapter 46 (long-term care insurance);

(20) Section 41-1844 (prescription drug benefit restrictions prohibited);

(21) Section 41-2145 (coverage provided to person having insurance); ~~and~~

(22) Section 41-2216, (coordination of benefits -- coordination with social security benefits); and

(23) Section 41-2219 (coverage provided to person having insurance).

SECTION 4. That Sections 41-2120, 41-2121 and 41-2122, Idaho Code, be, and the same are hereby repealed.

Approved March 24, 1997.

CHAPTER 320
(S.B. No. 1240, As Amended)

AN ACT

RELATING TO THE POTATO COMMISSION; AMENDING SECTION 22-1202, IDAHO CODE, TO PROVIDE A STATUTORY REFERENCE FOR THE AMOUNT OF COMPENSATION FOR MEMBERS OF THE POTATO COMMISSION, TO PROVIDE THAT COMPENSATION PAID FROM AND AFTER APRIL 1, 1992, SHALL NOT BE CONSIDERED

SALARY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 59-509, IDAHO CODE, TO PROVIDE COMPENSATION IN THE FORM OF AN HONORARIUM OF FIFTEEN DOLLARS PER DAY AND REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES WITH LIMITATIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 22-1202, Idaho Code, be, and the same is hereby amended to read as follows:

22-1202. POTATO COMMISSION CREATED. There is hereby created and established in the department of self-governing agencies the "Idaho potato commission" to be composed of nine (9) practical potato persons, resident citizens of the state of Idaho for a period of three (3) years prior to their appointment each of whom has had active experience in growing, or shipping, or processing of potatoes produced in the state of Idaho. At least five (5) members of said commission shall be growers who are actually now engaged in the production of potatoes. Two (2) of the members shall be shippers who are actually now engaged in the shipping of potatoes, and two (2) of the members shall be processors who are actually now engaged in the processing of potatoes. The qualifications for members of said commission as above required shall continue throughout their respective terms of office. Three (3) growers shall be nominated for each grower vacancy that occurs, from which the governor shall appoint one (1). Two (2) grower commissioners shall be appointed from the district known as District No. 1, consisting of the counties of Oneida, Franklin, Bear Lake, Caribou, Bannock, Power, Bingham, Bonneville, Teton, Madison, Jefferson, Fremont, Clark, Butte, Custer, and Lemhi; one (1) grower commissioner shall be appointed from the district known as District No. 2A, consisting of the counties of Twin Falls, Jerome, Lincoln, Camas, Elmore, Boise, Valley, and Gooding; one (1) grower commissioner shall be appointed from the district known as District No. 2B, consisting of the counties of Cassia, Minidoka, Blaine, Custer and Lemhi; and one (1) grower commissioner shall be appointed from the district known as District No. 3, consisting of the counties of Owyhee, Ada, Canyon, Gem, Payette, Washington, Adams, Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone, Kootenai, Bonner, and Boundary. Three (3) shippers shall be nominated for each shipper vacancy that occurs from which the governor shall appoint one (1). Shipper commissioners do not necessarily need to be nominated from geographical areas. Three (3) processors shall be nominated for each processor vacancy that occurs from which the governor shall appoint one (1). Processor commissioners do not necessarily need to be nominated from geographical areas. Nominations must be made thirty (30) days prior to appointment. All nominations must give equal consideration to all who are eligible for appointment as defined in this act. The Idaho potato commission shall hold separate meetings of the growers, shippers, or processors, as the nominations to be made shall require, in the various districts, to determine who shall be nominated for appointment. Notice of said meetings shall be given by publication in one (1) newspaper published in each county of the district or districts in which said nominations are to be made, and the notice shall

be published in two (2) issues of each newspaper, the first to be approximately thirty (30) days and the second approximately ten (10) days before said meeting. The notice shall state the purpose, time and place of said meeting. All meetings held for the selection of nominees shall be held prior to March 31 of the year the appointment or appointments are to be made.

The term of office shall be three (3) years and no commissioner shall serve more than two (2) consecutive terms. The commissioners shall elect a chairman for a term of one (1) year.

Vacancies shall be filled as terms expire. Each of such commissioners shall hold office until his successor has been appointed and qualified. The term of office shall commence on September 15 of the year of appointment and expire on September 14 of the last year of the term of office.

A majority of the members of said commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of said commission. Before entering on the discharge of their duties as members of said commission, each member shall take and subscribe to the oath of office prescribed for state officers.

Each member of the commission shall be compensated as provided by section 59-509(~~d~~j), Idaho Code, provided however, that compensation paid to members of the commission from and after April 1, 1992, shall not be considered salary as defined in section 59-1302(31), Idaho Code.

SECTION 2. That Section 59-509, Idaho Code, be, and the same is hereby amended to read as follows:

59-509. HONORARIUMS OR COMPENSATION FOR MEMBERS OF BOARDS, COMMISSIONS AND COUNCILS. The members of part-time boards, commissions or councils shall receive for each day spent in the actual performance of duties, an honorarium, compensation, or expenses, as provided in the following schedule:

(a) Members shall serve without honorarium, compensation, or expense reimbursement of any kind.

(b) Members shall serve without honorarium or compensation of any kind, but shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(c) Members shall serve without honorarium or compensation of any kind, but shall be reimbursed for actual and necessary expenses, without being subject to the limits provided in section 67-2008, Idaho Code.

(d) Members shall receive the sum of fifteen dollars ($15.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(e) Members shall receive the sum of twenty dollars ($20.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(f) Members shall receive the sum of twenty-five dollars ($25.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(g) Members shall receive the sum of thirty-five dollars ($35.00) per day, and shall be reimbursed for actual and necessary expenses,

subject to the limits provided in section 67-2008, Idaho Code.

(h) Members shall receive the sum of fifty dollars ($50.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(i) Members shall receive the sum of seventy-five dollars ($75.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(j) Members shall receive an honorarium in the sum of fifteen dollars ($15.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code, unless otherwise provided by statute. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(k) Members shall receive an honorarium in the sum of twenty dollars ($20.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(l) Members shall receive an honorarium in the sum of twenty-five dollars ($25.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(m) Members shall receive an honorarium in the sum of thirty-five dollars ($35.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(n) Members shall receive an honorarium in the sum of fifty dollars ($50.00) per day, and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), Idaho Code.

(o) Members shall receive an honorarium in the sum of seventy-five dollars ($75.00) per day, and shall be reimbursed for actual and necessary expenses subject to the limits provided in section 67-2008, Idaho Code. Payment of an honorarium as provided in this subsection shall not be considered salary as defined in section 59-1302(31), 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.

Approved March 24, 1997.

CHAPTER 321
(S.B. No. 1249)

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS 41-2140 AND 41-2210, IDAHO CODE, TO REQUIRE COMPLIANCE WITH FEDERAL LAW WITH RESPECT TO ANY RESTRICTION OF BENEFITS FOR A HOSPITAL LENGTH OF STAY IN CONNECTION WITH CHILDBIRTH FOR A MOTHER OR NEWBORN CHILD; AMENDING SECTION 41-2221, IDAHO CODE, TO REDEFINE PREEXISTING CONDITION, TO DEFINE A LARGE EMPLOYER AS EMPLOYING NO LESS THAN FIFTY-ONE ELIGIBLE EMPLOYEES, TO REDEFINE QUALIFYING PREVIOUS COVERAGE AND TO PROVIDE FOR EFFECTIVE DATES OF COVERAGE OF A DEPENDENT; AMENDING CHAPTER 22, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-2223, IDAHO CODE, TO PROVIDE FOR RENEWABILITY OF COVERAGE FOR GROUP AND BLANKET DISABILITY INSURANCE AND TO PROVIDE WHEN SUCH INSURANCE IS NOT SUBJECT TO RENEWAL; AMENDING SECTION 41-3932, IDAHO CODE, TO REQUIRE COMPLIANCE WITH FEDERAL LAW WITH RESPECT TO ANY RESTRICTION OF BENEFITS FOR A HOSPITAL LENGTH OF STAY IN CONNECTION WITH CHILDBIRTH FOR A MOTHER OR NEWBORN CHILD; AMENDING CHAPTER 39, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-3940, IDAHO CODE, TO PROVIDE FOR PREEXISTING CONDITIONS IN A GENERAL MANAGED CARE PLAN; AMENDING SECTION 41-4603, IDAHO CODE, TO ADD DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-4605, IDAHO CODE, TO REQUIRE A STATEMENT DISCLOSING IF A POLICY IS INTENDED TO BE A QUALIFIED LONG-TERM CARE INSURANCE CONTRACT AND TO REQUIRE A PHYSICIAN'S STATEMENT IF THE PROPOSED INSURED IS OVER EIGHTY; AMENDING SECTION 41-4606, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE; AMENDING CHAPTER 46, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-4607, IDAHO CODE, TO PROVIDE AUTHORITY TO PROMULGATE RULES; AMENDING CHAPTER 46, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-4608, IDAHO CODE, TO PROVIDE PENALTIES; AMENDING SECTION 41-4703, IDAHO CODE, TO ADD AND AMEND DEFINITIONS; AMENDING SECTION 41-4707, IDAHO CODE, TO PROVIDE EXCEPTIONS TO RENEWABILITY OF COVERAGE OF SMALL EMPLOYER HEALTH BENEFIT PLANS AND TO CORRECT A REFERENCE; AMENDING SECTION 41-4708, IDAHO CODE, TO REQUIRE ISSUANCE OF A CATASTROPHIC HEALTH BENEFIT PLAN BY A SMALL EMPLOYER CARRIER, TO REDEFINE PREEXISTING CONDITION AND TO CORRECT A NUMERICAL REFERENCE; AMENDING SECTION 41-4711, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 41-4712, 41-4714, 41-4716 AND 41-5202, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 41-5203, IDAHO CODE, TO ADD AND AMEND DEFINITIONS; AMENDING SECTION 41-5207, IDAHO CODE, TO PROVIDE EXCEPTIONS TO RENEWABILITY OF COVERAGE WITH RESPECT TO CERTAIN INDIVIDUAL HEALTH INSURANCE; AMENDING SECTION 41-5208, TO REQUIRE ISSUANCE OF A CATASTROPHIC HEALTH BENEFIT PLAN BY AN INDIVIDUAL CARRIER AND TO PROVIDE CORRECT TERMINOLOGY AND REFERENCES; AND AMENDING SECTION 41-5212, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 41-2140, Idaho Code, be, and the same is hereby amended to read as follows:

41-2140. REQUIRED PROVISIONS. (1) Any disability insurance contract delivered or issued for delivery in this state which provides coverage for injury or sickness for newborn dependent children of the insured, shall provide such coverage for such newborn children, including adopted newborn children that are placed with the adoptive insured within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive insured more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not attained age eighteen (18) years as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive insured, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive insured signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with an insured continues in the same manner as it would with respect to a naturally born child of the insured until the first to occur of the following events:

(a) Date the child is removed permanently from that placement and the legal obligation terminates; or

(b) The date the insured rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) An insurer shall not restrict coverage under a disability insurance policy of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of the child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs which the participant or beneficiary is eligible for coverage under the plan.

(3) No policy of disability insurance which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the policy. If a fixed amount is specified in such policy for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the policy. Where the policy contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from nor-

mal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the policy. This section shall apply to all disability policies except individual noncancelable or guaranteed renewable policies, issued or delivered before January 1, 1977.

With respect to such individual noncancelable or guaranteed renewable policies issued or delivered before January 1, 1977, the insurer shall communicate the availability of coverage of involuntary complications of pregnancy when negotiating any changes in such policies.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All policies subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such policy which is in conflict with this section shall be of no force or effect.

(4) From and after January 1, 1998, no policy of disability insurance which provides medical expense maternity benefits, shall restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child in a manner that would be in conflict with the newborns' and mothers' health protection act of 1996.

SECTION 2. That Section 41-2210, Idaho Code, be, and the same is hereby amended to read as follows:

41-2210. REQUIRED PROVISION IN GROUP AND BLANKET POLICIES. (1) Any group disability insurance contract or blanket disability insurance contract, delivered or issued for delivery in this state which provides coverage for injury or sickness for newborn dependent children of subscribers or other members of the covered group, shall provide coverage for such newborn children, including adopted newborn children that are placed with the adoptive subscriber or other member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive subscriber or other member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not attained age eighteen (18) years as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive subscriber or other member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive subscriber or other member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to

legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a subscriber or other member of the covered group continues in the same manner as it would with respect to a naturally born child of the subscriber or other member of the covered group until the first to occur of the following events:

(a) Date the child is removed permanently from that placement and the legal obligation terminates; or

(b) The date the subscriber or other member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) An insurer shall not restrict coverage under a group disability insurance contract or a blanket disability insurance contract of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of a child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) No policy of disability insurance which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the policy. If a fixed amount is specified in such policy for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the policy. Where the policy contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the policy. This section shall apply to all disability policies except any group disability policy made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All policies subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such policy which is in conflict with this section shall be of no force or effect.

(4) From and after January 1, 1998, no policy of disability insurance which provides medical expense maternity benefits, shall restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child in a manner that would be in conflict with the newborns' and mothers' health protection act of

1996.

SECTION 3. That Section 41-2221, Idaho Code, be, and the same is hereby amended to read as follows:

41-2221. CREDITING OF PREEXISTING CONDITION WAITING PERIOD. (1) Health benefit plans covering large employers shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than~~:~~

~~(i)--A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;~~

~~(ii)--A~~ a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage~~; or~~

~~(iii) A pregnancy existing on the effective date of coverage.~~

(b) Genetic information shall not be considered as a condition described in subsection (1)(a) of this section in the absence of a diagnosis of the condition related to such information.

(c) A health benefit plan shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than ~~thirty~~ sixty-three (63~~0~~) days prior to the effective date of the new coverage. This paragraph does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan. ~~In the case of replacement coverage from the same carrier, a preexisting condition will be covered for the first twelve (12) months for the lesser of:~~

~~(i)--The benefits payable under the new policy; or~~

~~(ii)--The benefits which would have been payable under the prior policy.~~

(~~c~~d) A health benefit plan may exclude coverage for late enrollees for the greater of twelve (12) months or for a twelve (12) month preexisting condition exclusion; provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed twelve (12) months from the date the individual enrolls for coverage under the health benefit plan.

(2) As used in this section:

(a) "Health benefit plan" means any group hospital or medical policy or certificate, any group subscriber contract provided by a hospital or professional service corporation, or group health

maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits-only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(b) "Large employer" means any person, firm, corporation, partnership or association that is actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar ~~quarter~~ year, employed no less than fifty-one (5~~0~~1) eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one (1) employer.

(c) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a large employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty (30) days. However, an eligible employee or dependent shall not be considered a late enrollee if:

(i) The individual meets each of the following:

a. The individual was covered under qualifying previous coverage at the time of the initial enrollment;

b. The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage~~, death of a spouse or divorce~~; and

c. The individual requests enrollment within thirty (30) days after termination of the qualifying previous coverage.

(ii) The individual is employed by a large employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; ~~or~~

(iii) A court has ordered coverage be provided for a spouse or a minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order; or

(iv) The individual first becomes eligible.

(d) "Qualifying previous coverage" and "qualifying existing coverage" means benefits or coverage provided under:

(i) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefits risk pool, or any other similar publicly sponsored program; or

(ii) Any other group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a health maintenance organization, hospital or professional service

corporation, or a fraternal benefit society.

(e) If an individual seeks to enroll a dependent during the first sixty (60) days of eligibility, the coverage of the dependent shall become effective:

(i) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) In the case of a dependent's birth, as of the date of such birth; or

(iii) In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

SECTION 4. That Chapter 22, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-2223, Idaho Code, and to read as follows:

41-2223. RENEWABILITY OF COVERAGE. (1) A health benefit plan subject to the provisions of this chapter shall be renewable with respect to all eligible employees or dependents, at the option of the employer, except in any of the following cases:

(a) Nonpayment of the required premiums;

(b) Fraud or intentional misrepresentation of material fact by the employer;

(c) Noncompliance with the carrier's minimum participation requirements;

(d) Noncompliance with the carrier's employer contribution requirements;

(e) In the case of health benefit plans that are made available in the employer market only through one (1) or more associations, as defined in section 41-2202, Idaho Code, the membership of an employer in the association, on the basis of which the coverage is provided ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual;

(f) The employer no longer meets the requirements of section 41-2221(2)(b), Idaho Code;

(g) The carrier elects to nonrenew all of its health benefit plans delivered or issued for delivery to large employers in this state. In such a case the carrier shall:

(i) Provide advance notice of its decision under this paragraph to the director in each state in which it is licensed; and

(ii) Provide notice of the decision not to renew coverage to all affected employers and to the director at least one hundred eighty (180) days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the director under the provisions of this paragraph shall be provided at least three (3) working days prior to the notice to the affected employers; or

(h) The director finds that the continuation of the coverage would:

(i) Not be in the best interests of the policyholders or certificate holders; or

(ii) Impair the carrier's ability to meet its contractual obligations.

In such instance the director shall assist affected employers in finding replacement coverage.

(2) A carrier that elects not to renew a health benefit plan under the provisions of subsection (1)(g) of this section shall be prohibited from writing new business in the large employer market in this state for a period of five (5) years from the date of notice to the director.

(3) In the case of a carrier doing business in one (1) established geographic service area of the state, the provisions set forth in this section shall apply only to the carrier's operations in that service area.

SECTION 5. That Section 41-3932, Idaho Code, be, and the same is hereby amended to read as follows:

41-3932. COMPLICATIONS OF PREGNANCY. (1) Any health maintenance organization contract delivered or issued for delivery in this state, which provides coverage for injury or sickness for newborn dependent children of the subscribers or other members of the covered group, shall provide such coverage for such newborn children and infants, including adopted newborn children that are placed with the adoptive subscriber or other member of the covered group within sixty (60) days of the adopted child's date of birth, from and after the moment of birth. Coverage under the contract for an adopted newborn child placed with the adoptive subscriber or other member of the covered group more than sixty (60) days after the birth of the adopted child shall be from and after the date the child is so placed. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies. For the purposes of this section, "child" means an individual who has not reached eighteen (18) years as of the date of the adoption or placement for adoption. For the purposes of this section, "placed" shall mean physical placement in the care of the adoptive subscriber or other member of the covered group, or in those circumstances in which such physical placement is prevented due to the medical needs of the child requiring placement in a medical facility, it shall mean when the adoptive subscriber or other member of the covered group signs an agreement for adoption of such child and signs an agreement assuming financial responsibility for such child. Prior to legal finalization of adoption, the coverage required under the provisions of this subsection (1) as to a child placed for adoption with a subscriber or other member of the covered group continues in the same manner as it would with respect to a naturally born child of the subscriber or other member of the covered group until the first to occur of the following events:

(a) Date the child is removed permanently from that placement and the legal obligation terminates; or

(b) The date the subscriber or other member of the covered group rescinds, in writing, the agreement of adoption or agreement assuming financial responsibility.

(2) A health maintenance organization shall not restrict coverage under a health maintenance organization contract of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of the child at the time the child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) No health maintenance organization contract which provides maternity benefits for a person covered continuously from conception shall be issued, amended, delivered, or renewed in this state on or after January 1, 1977, if it contains any exclusion, reduction, or other limitations as to coverage, deductibles, or coinsurance provisions as to involuntary complications of pregnancy, unless such provisions apply generally to all benefits paid under the plan. If a fixed amount is specified in such plan for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy shall be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy shall be deemed an illness and entitled to benefits otherwise provided by the plan. Where the plan contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from normal delivery and cesarean section delivery; however, expenses for cesarean section delivery in excess of the deductible shall be treated as expenses for any other illness under the plan.

Where a plan which provides or arranges direct health care services for its members contains a maternity deductible, the maternity deductible shall apply only to expenses resulting from prenatal care and delivery. However, expenses resulting from any delivery in excess of the deductible amount shall be treated as expenses for any other illness under the plan. If the pregnancy is interrupted, the maternity deductible charged for prenatal care and delivery shall be based on the value of the medical services received, providing that it is never more than two-thirds (2/3) of the plan's maternity deductible.

This section shall apply to all health maintenance organization contracts except any group health maintenance organization contracts made subject to an applicable collective-bargaining agreement in effect before January 1, 1977.

For purposes of this section, involuntary complications of pregnancy shall include, but not be limited to, puerperal infection, eclampsia, cesarean section delivery, ectopic pregnancy, and toxemia.

All health maintenance organization contracts subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1977, shall be construed to be in compliance with this section, and any provision in any such plan which is in conflict with this section shall be of no force or effect.

(4) From and after January 1, 1998, no policy of disability insurance which provides medical expense maternity benefits shall restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child in a manner that would be in conflict with the newborns' and mothers' health protection act of 1996.

SECTION 6. That Chapter 39, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-3940, Idaho Code, and to read as follows:

41-3940. PREEXISTING CONDITIONS. A general managed care plan shall comply with the following provisions:

(1) A general managed care plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A general managed care plan shall not define a preexisting condition more restrictively than a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage.

(2) Genetic information shall not be considered as a condition described in subsection (1) of this section in the absence of a diagnosis of the condition related to such information.

(3) A managed care organization that does not use preexisting condition limitations in any of its general managed care plans may impose an affiliation period. "Affiliation period" means a period of time not to exceed sixty (60) days for new entrants and not to exceed ninety (90) days for late enrollees during which no premiums shall be collected and coverage issued shall not become effective. Such period shall begin on the enrollment date. This subsection does not preclude application of any waiting period applicable to all new enrollees under the general managed care plan, provided that any carrier-imposed waiting period is no longer than sixty (60) days and is used in lieu of a preexisting condition exclusion. An affiliation period under a plan shall run concurrently with any waiting period under the plan.

SECTION 7. That Section 41-4603, Idaho Code, be, and the same is hereby amended to read as follows:

41-4603. DEFINITIONS. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means:

(a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(b) In the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" means, for the purposes of this chapter, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

(3) "Director" means the director of the Idaho department of insurance.

(4) "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(a) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations or a combination thereof, for employees or

former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or

(b) Any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:

(i) Is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(ii) Has been maintained in good faith for purposes other than obtaining insurance; or

(c) An association or a trust or the trustee(s) of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the director that the association or associations have at the outset a minimum of one hundred (100) persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one (1) year; and have a constitution and ~~by-laws~~ bylaws which provide that:

(i) The association or associations hold regular meetings not less than annually to further purposes of the members;

(ii) Except for credit unions, the association or associations collect dues or solicit contributions from members; and

(iii) The members have voting privileges and representation on the governing board and committees.

Sixty (60) days after such filing the association or associations will be deemed to satisfy such organizational requirements, unless the director makes a finding that the association or associations do not satisfy those organizational requirements.

(d) A group other than as described in subsections (4)(a), (4)(b) and (4)(c), subject to a finding by the director that:

(i) The issuance of the group policy is not contrary to the best interest of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premiums charged.

(5) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital and medical service corporations, prepaid health plans, health maintenance organizations or any similar organization. Such term also includes a policy or rider which provides for payment of benefits based on cognitive impairment or the loss of functional capacity. Such term shall also include qualified long-term care insur-

ance contracts. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(6) "Policy" means, for the purposes of this chapter, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization or any similar organization.

(7) "Qualified long-term care insurance contract" means any individual or group insurance contract that meets the requirements of section 7702B of the internal revenue code, as amended, and:

(a) The only insurance protection provided under the contract is coverage of qualified long-term care services and the contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under title XVIII of the social security act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount;

(b) The contract is guaranteed renewable; and

(c) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums, and all policyholder dividends or similar amounts under such contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract and the contract contains the consumer protection provisions set forth in section 7702(g) of the internal revenue code, as amended.

(8) "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services. It includes maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract, and which are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

SECTION 8. That Section 41-4605, Idaho Code, be, and the same is hereby amended to read as follows:

41-4605. DISCLOSURE AND PERFORMANCE STANDARDS FOR LONG-TERM CARE INSURANCE. (1) The director may adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent

conditions and definitions of terms.

(2) No long-term care insurance policy may:

(a) Be cancelled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

(b) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(3) Each long-term care insurance policy shall cover all levels of care including, but not limited to, custodial, intermediate and skilled levels of care in a nursing home. Policies may provide coverage for nursing home only and/or home health care only and may also provide coverage for additional service including, but not limited to, personal care services, adult foster care, adult day care, in-home services and home-delivered meals.

(4) Preexisting condition:

(a) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in section 41-4603(4)(a), Idaho Code, shall use a definition of "preexisting condition" which is more restrictive than the following: Preexisting condition means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six (6) months preceding the effective date of coverage of an insured person.

(b) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in section 41-4603(4)(a), Idaho Code, may exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six (6) months following the effective date of coverage of an insured person.

(c) The director may extend the limitation periods set forth in paragraphs (a) and (b) of this subsection as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(d) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph (b) of this subsection expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph (b) of this subsection.

(5) Prior hospitalization institutionalization:

(a) No long-term care insurance policy may be delivered or issued for delivery in this state if such policy:

(i) Conditions eligibility for any benefits on a prior hospitalization requirement;

(ii) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(iii) Conditions eligibility for any benefits other than waiver of premium, post confinement, post acute care or recuperative benefits on a prior institutionalization requirement.

(b) (i) A long-term care insurance policy containing post confinement, post acute care or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" such limitations or conditions including any required number of days of confinement;

(ii) A long-term care policy or rider which conditions eligibility for noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.

(6) The director may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rule.

(7) Right to return -- free look:

(a) Individual long-term care insurance policyholders shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy <u>or certificate,</u> the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(b) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty (30) days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(8) <u>Outline of coverage:</u>

(a) An outline of coverage shall be delivered to an applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(i) The commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the

content of an outline of coverage.

(ii) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.

(iii) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

(b) The outline of coverage shall include:

(i) A description of the principal benefits and coverage provided in the policy;

(ii) A statement of the principal exclusions, reductions and limitations contained in the policy;

(iii) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;

(iv) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions;

(v) A description of the terms under which the policy or certificate may be returned and premiums refunded; and

(vi) A brief description of the relationship of cost of care and benefits.

(vii) If the policy or certificate is intended to be a qualified long-term care insurance contract, a statement that discloses to the policyholder or certificate holder that the policy is intended to be a qualified long-term care insurance contract.

(9) A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state shall include:

(a) A description of the principal benefits and coverage provided in the policy;

(b) A statement of the principal exclusions, reductions and limitations contained in the policy; and

(c) A statement that the group master policy determines governing contractual provisions.

(10) At the time of policy delivery, the policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, this summary shall also include:

(a) An explanation of how long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(b) An illustration of the amount of benefits, the length of a benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(c) Any exclusions, reductions and limitations on benefits of long-term care; and

(d) If applicable to the policy type, the summary shall also include:

(i) A disclosure of the effects of exercising other rights under the policy;

(ii) A disclosure of guarantees related to long-term care costs of insurance; and

(iii) Current and projected maximum lifetime benefits.

(11) Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. Such report shall include:

(a) Any long-term care benefits paid out during the month;

(b) An explanation of any changes in the policy, e.g., death benefits or cash values, due to long-term care benefits being paid out; and

(c) The amount of long-term care benefits existing or remaining.

(12) The following shall apply to any application for coverage under a long-term care insurance policy:

(a) All medical questions shall be completed and attested to by the applicant and answers thereto shall not be provided or suggested by any agent of the insurer;

(b) The application shall contain a notice prominently printed near the signature line stating in substance that all questions shall be answered truthfully; and

(c) A physician's statement of the mental and physical condition of the proposed insured shall accompany the application of any person over ~~seventy-five~~ eighty (~~75~~80) years of age.

(13) The issuer of a long-term care insurance policy shall report any cancellation, nonrenewal or termination of such policy, stating the reasons therefor, to the department of insurance.

(14) No policy may be advertised, marketed or offered as long-term care or nursing home insurance unless it complies with the provisions of this chapter.

SECTION 9. That Section 41-4606, Idaho Code, be, and the same is hereby amended to read as follows:

41-4606. ~~ADMINISTRATIVE---PROCEDURES~~ QUALIFIED LONG-TERM CARE INSURANCE. ~~Regulations adopted pursuant to this chapter--shall--be--in accordance with chapter 52, title 67, Idaho Code.~~ (1) The issuer of a qualified long-term care insurance contract shall deliver to the applicant, policyholder or certificate holder the contract or certificate no later than thirty (30) days after the date of approval.

(2) If an application for a qualified long-term care contract is denied, the issuer shall refund to the applicant any premium and any other fees submitted by the applicant within thirty (30) days of the denial.

(3) If a claim under a qualified long-term care insurance contract is denied, the issuer shall, within sixty (60) days of the date of a written request by the policyholder or certificate holder, or a representative thereof:

(a) Provide a written explanation of the reasons for the denial; and

(b) Make available all information directly related to such denial.

(4) Nonforfeiture benefits for qualified long-term care insurance contracts shall include at least a reduced paid-up insurance benefit, an extended term insurance benefit, the offer of a shortened benefit period, or other similar offerings approved by the secretary of the treasury, and shall be provided as specified in rules. The issuer of such a contract may refund premiums upon death of the insured or upon complete surrender or cancellation of the contract or policy, as long as the refund does not exceed the aggregate premiums paid for the contract or policy.

SECTION 10. That Chapter 46, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-4607, Idaho Code, and to read as follows:

41-4607. AUTHORITY TO PROMULGATE RULES. The director may adopt reasonable rules to establish minimum standards for marketing practices, premium rate stabilization, agent compensation, agent testing, penalties and reporting practices for long-term care insurance.

SECTION 11. That Chapter 46, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-4608, Idaho Code, and to read as follows:

41-4608. PENALTIES. In addition to any other penalties provided by the laws of this state, any insurer and any agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation, or up to ten thousand dollars ($10,000), whichever is greater.

SECTION 12. That Section 41-4703, Idaho Code, be, and the same is hereby amended to read as follows:

41-4703. DEFINITIONS. As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the director that a small employer carrier is in compliance with the provisions of section 41-4706, Idaho Code, based upon the person's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Agent" means an agent as defined in section 41-1021, Idaho Code, or a broker as defined in section 41-1024, Idaho Code.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to section 41-4712, Idaho Code.

(6) "Board" means the board of directors of the program established pursuant to section 41-4711, Idaho Code.

(7) "Carrier" means any entity that provides health insurance in this state. For the purposes of this chapter, carrier includes an insurance company, a hospital or professional service corporation, a fraternal benefit society, a health maintenance organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(8) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of this chapter.

(9) "Catastrophic health benefit plan" means a higher limit health benefit plan developed pursuant to section 41-4712, Idaho Code.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to section 41-4705, Idaho Code.

(1~~0~~1) "Committee" means the health benefit plan committee created pursuant to section 41-4712, Idaho Code.

(1~~1~~2) "Control" shall be defined in the same manner as in section 41-3801(2), Idaho Code.

(1~~2~~3) "Dependent" means a spouse, and unmarried child under the age of nineteen (19) years, and unmarried child who is a full-time student under the age of twenty-three (23) years and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(1~~3~~4) "Director" means the director of the department of insurance of the state of Idaho.

(1~~4~~5) "Eligible employee" means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours or, by agreement between the employer and the carrier, an employee who works between twenty (20) and thirty (30) hours per week. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary, seasonal or substitute basis. The term eligible employee may include public officers and public employees without regard to the number of hours worked when designated by a small employer.

(1~~5~~6) "Established geographic service area" means a geographic area, as approved by the director and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(1~~6~~7) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issues for a period of twelve (12) months or less.

(1~~7~~8) "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(1~~8~~9) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty (30) days. However, an eligible employee or dependent shall not be considered a late enrollee if:

(a) The individual meets each of the following:

(i) The individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage~~;-death-of-a-spouse-or-divorce~~; and

(iii) The individual requests enrollment within thirty (30) days after termination of the qualifying previous coverage.

(b) The individual is employed by an employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period~~;-or~~.

(c) A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order.

(d) The individual first becomes eligible.

(e) If an individual seeks to enroll a dependent during the first sixty (60) days of eligibility, the coverage of the dependent shall become effective:

(i) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) In the case of a dependent's birth, as of the date of such birth; or

(iii) In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adop-

tion.

(~~19~~20) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(20~~1~~) "Plan of operation" means the plan of operation of the program established pursuant to section 41-4711, Idaho Code.

(21~~2~~) "Premium" means all moneys paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(22~~3~~) "Program" means the Idaho small employer reinsurance program created in section 41-4711, Idaho Code.

(23~~4~~) "Qualifying previous coverage" and "qualifying existing coverage" means benefits or coverage provided under:

(a) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefit risk pool or any other similar publicly sponsored program; or

(b) Any other group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a health maintenance organization, hospital or professional service corporation, or a fraternal benefit society, that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

(24~~5~~) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(25~~6~~) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to section 41-4711, Idaho Code.

(26~~7~~) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

(27~~8~~) "Risk-assuming carrier" means a small employer carrier whose application is approved by the director pursuant to section 41-4710, Idaho Code.

(28~~9~~) "Small employer" means any person, firm, corporation, partnership or association that is actively engaged in business that, on at least fifty percent (50%) of its working days during the preceding calendar ~~quarter~~ year, employed an average of at least two (2) eligible employees on the first day of the plan year, but no more than ~~forty-nine~~ fifty (~~49~~50) eligible employees, the majority of whom were employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one (1) employer.

(~~29~~30) "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one (1) or more small

employers in this state.

(30~~1~~) "Standard health benefit plan" means a health benefit plan developed pursuant to section 41-4712, Idaho Code.

SECTION 13. That Section 41-4707, Idaho Code, be, and the same is hereby amended to read as follows:

41-4707. RENEWABILITY OF COVERAGE. (1) A health benefit plan subject to the provisions of this chapter shall be renewable with respect to all eligible employees or dependents, at the option of the small employer, except in any of the following cases:

(a) Nonpayment of the required premiums;

(b) Fraud or intentional misrepresentation of material fact by the small employer ~~or;--with--respect-to-coverage-of-individual insureds;-the-insureds-or-their-representatives~~;

(c) Noncompliance with the carrier's minimum participation requirements;

(d) Noncompliance with the carrier's employer contribution requirements;

(e) ~~Repeated-misuse-of-a-provider-network-provision~~ In the case of health benefit plans that are made available in the small employer market only through one (1) or more associations as defined in section 41-2202, Idaho Code, the membership of an employer in the association, on the basis of which the coverage is provided ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual;

(f) The small employer no longer meets the requirements of section 41-4703(28), Idaho Code;

(g) The small employer carrier elects to nonrenew all of its health benefit plans delivered or issued for delivery to small employers in this state. In such a case the carrier shall:

(i) Provide advance notice of its decision under this paragraph to the director in each state in which it is licensed; and

(ii) Provide notice of the decision not to renew coverage to all affected small employers and to the director at least one hundred eighty (180) days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the director under the provisions of this paragraph shall be provided at least three (3) working days prior to the notice to the affected small employers; or

(h) The director finds that the continuation of the coverage would:

(i) Not be in the best interests of the policyholders or certificate holders; or

(ii) Impair the carrier's ability to meet its contractual obligations.

In such instance the director shall assist affected small employers in finding replacement coverage.

(2) A small employer carrier that elects not to renew a health benefit plan under the provisions of subsection (1)(~~f~~g) of this section shall be prohibited from writing new business in the small

employer market in this state for a period of five (5) years from the date of notice to the director.

(3) In the case of a small employer carrier doing business in one (1) established geographic service area of the state, the rules set forth in this subsection shall apply only to the carrier's operations in that service area.

SECTION 14. That Section 41-4708, Idaho Code, be, and the same is hereby amended to read as follows:

41-4708. AVAILABILITY OF COVERAGE.

(1) (a) Every small employer carrier shall, as a condition of offering health benefit plans in this state to small employers, actively offer to small employers at least ~~two~~ three (~~2~~3) health benefit plans. One (1) health benefit plan offered by each small employer carrier shall be a basic health benefit plan, ~~and~~ one (1) plan shall be a standard health benefit plan, and one (1) plan shall be a catastrophic benefit plan.

(b) (i) A small employer carrier shall issue a basic, ~~health-benefit-plan-or-a~~ standard or catastrophic health benefit plan to any eligible small employer that applies for either such plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with the provisions of this chapter.

(ii) In the case of a small employer carrier that establishes more than one (1) class of business pursuant to the provisions of section 41-4705, Idaho Code, the small employer carrier shall maintain and issue to eligible small employers at least one (1) basic health benefit plan, ~~and~~ at least one (1) standard health benefit plan and at least one (1) catastrophic benefit plan in each class of business so established. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic, ~~or~~ standard or catastrophic health benefit plan;

(B) The criteria are not related to the health status or claim experience of the small employer;

(C) The criteria are applied consistently to all small employers applying for coverage in the class of business; and

(D) The small employer carrier provides for the acceptance of all eligible small employers into one (1) or more classes of business.

The provisions of this paragraph shall not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) A small employer is eligible under the provisions of paragraph (b) of this section if it employed at least two (2) or more eligible employees within this state on ~~at least fifty percent (50%) of its working days during the preceding calendar quarter~~

the first day of the plan year.

(2) (a) A small employer carrier shall file with the director, in a format and manner prescribed by the director, the basic, ~~health benefit plans and the~~ standard and catastrophic health benefit plans to be used by the carrier. A health benefit plan filed pursuant to the provisions of this paragraph may be used by a small employer carrier beginning thirty (30) days after it is filed unless the director disapproves its use.

(b) The director at any time may, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic, ~~or~~ standard or catastrophic health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

(3) Health benefit plans covering small employers shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than~~:~~

~~(i) A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;~~

~~(ii) A~~ a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage~~; or~~

~~(iii) A pregnancy existing on the effective date of coverage.~~

(b) Genetic information shall not be considered as a condition described in subsection (3)(a) of this section in the absence of a diagnosis of the condition related to such information.

(c) A health benefit plan shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than ~~thirty~~ sixty-three (63~~0~~) days prior to the effective date of the new coverage. The period of continuous coverage shall not include any waiting period for the effective date of the new coverage applied by the employer or the carrier. This paragraph does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan. ~~In the case of replacement coverage from the same carrier, a preexisting condition will be covered for the first twelve (12) months for the lesser of:~~

~~(i) The benefits payable under the new policy; or~~

~~(ii) The benefits which would have been payable under the prior policy.~~

(~~c~~d) A health benefit plan may exclude coverage for late

enrollees for the greater of twelve (12) months or for a twelve (12) month preexisting condition exclusion; provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed twelve (12) months from the date the individual enrolls for coverage under the health benefit plan.

(~~d~~e) (i) Except as provided in subsection (d)(iv) of this section, requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(ii) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(iii) In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met.

(iv) A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(~~e~~f) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group or to only part of the group, except in the case of late enrollees as provided in paragraph (c) of this section.

(ii) A small employer carrier shall not modify a basic, ~~or~~ standard or catastrophic health benefit plan with respect to a small employer or any eligible employee or dependent through riders, endorsements or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier shall not be required to offer coverage or accept applications pursuant to the provisions of subsection (1) of this section in the case of the following:

(i) To a small employer, where the small employer is not physically located in the carrier's established geographic service area;

(ii) To an employee, when the employee does not work or reside within the carrier's established geographic service area; or

(iii) Within an area where the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the director, that it will not have the capacity within its

established geographic service area to deliver service adequately to the members of such groups because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier that cannot offer coverage pursuant to the provisions of subsection (4)(a)(iii) of this section may not offer coverage in the applicable area to new cases of employer groups with more than ~~forty-nine~~ fifty (~~49~~50) eligible employees or to any small employer groups until the later of one hundred eighty (180) days following each such refusal or the date on which the carrier notifies the director that it has regained capacity to deliver services to small employer groups.

(5) A small employer carrier shall not be required to provide coverage to small employers pursuant to the provisions of subsection (1) of this section for any period of time for which the director determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) of this section would place the small employer carrier in a financially impaired condition.

(6) A small employer carrier shall not be required to comply with the provisions of this section until the director has approved or adopted the revised plan of operation as provided in section 41-4711, Idaho Code.

SECTION 15. That Section 41-4711, Idaho Code, be, and the same is hereby amended to read as follows:

41-4711. SMALL EMPLOYER AND INDIVIDUAL CARRIER REINSURANCE PROGRAM. (1) A reinsuring carrier shall be subject to the provisions of this section.

(2) There is hereby created an independent public body corporate and politic to be known as the Idaho small employer and individual health reinsurance program. The program will perform an essential governmental function in the exercise of powers conferred upon it in this act and any assessments imposed or collected pursuant to the operation of the program shall at all times be free from taxation of every kind.

(3) (a) The program shall operate subject to the supervision and control of the board. Subject to the provisions of subsection (3)(b) of this section, the board shall consist of eight (8) members appointed by the director and serving at the pleasure of the director, plus the director or his designated representative, who shall serve as an ex officio member of the board.

(b) (i) In selecting the members of the board, the director shall include representatives of small employers and small employer carriers, individual carriers and such other individuals determined to be qualified by the director. At least five (5) of the members of the board shall be representatives of reinsuring carriers and shall be selected from individuals nominated by small employer and individual carriers in this state pursuant to procedures and guidelines developed by the director.

(ii) In the event that the program becomes eligible for additional financing pursuant to the provisions of subsection (12)(c) of this section, the board shall be expanded to include two (2) additional members who shall be appointed by the director. In selecting the additional members of the

board, the director shall choose individuals who represent carriers subject to assessment for additional financing identified in subsection (12)(c) of this section. The expansion of the board under the provisions of this subsection shall continue for the period that the program continues to be eligible for additional financing under the provisions of subsection (12)(c) of this section.

(c) The initial board members shall be appointed as follows: two (2) of the members to serve a term of two (2) years; three (3) of the members to serve a term of four (4) years; and three (3) of the members to serve a term of six (6) years. Subsequent board members shall serve for a term of three (3) years.

(d) A vacancy in the board shall be filled by the director. A board member may be removed by the director for cause.

(4) Each small employer and individual carrier shall make a filing with the director containing the carrier's earned health insurance premium derived from health benefit plans delivered or issued for delivery to small employers and individuals in this state in the previous calendar year.

(5) The board shall submit to the director a plan of operation and thereafter any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the program. The director may, after notice and hearing, approve the plan of operation if the director determines it to be suitable to assure the fair, reasonable and equitable administration of the program, and to provide for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation shall become effective upon written approval by the director.

(6) If the board fails to submit a suitable plan of operation, the director shall, after notice and hearing, adopt and promulgate a temporary plan of operation. The director shall approve the plan of operation submitted by the board, or adopt a temporary plan of operation if the board fails to submit a suitable plan. The director shall amend or rescind any plan adopted under the provisions of this subsection at the time a plan of operation is submitted by the board and approved by the director.

(7) The plan of operation shall:

(a) Establish procedures for handling and accounting of program assets and moneys and for an annual fiscal reporting to the director;

(b) Establish procedures for selecting an administering carrier, which carrier shall be a properly licensed or authorized carrier in this state, and setting forth the powers and duties of the administering carrier;

(c) Establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) Establish procedures for collecting assessments from reinsuring carriers to fund claims and administrative expenses incurred or estimated to be incurred by the program; and

(e) Provide for any additional matters necessary for the implementation and administration of the program.

(8) The program shall have the general powers and authority

granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition thereto, the program shall have the specific authority to:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the director, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal actions necessary or proper to recover any assessments and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) Take any legal action necessary to avoid the payment of improper claims against the program;

(d) Define the health benefit plans, which plans shall allow coordination of benefits, for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this chapter;

(e) Establish rules, conditions and procedures for reinsuring risks under the program, including board discretion to operate separate small employer and individual reinsurance pools;

(f) Establish actuarial functions as appropriate for the operation of the program;

(g) Assess carriers in accordance with the provisions of subsection (12) of this section, and to make advance interim assessments of carriers as may be reasonable and necessary for organizational and interim operating expenses. Any interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year;

(h) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the program, policy and other contract design, and any other function within the authority of the program;

(i) Borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default shall be legal investments for carriers and may be carried as admitted assets.

(9) A reinsuring carrier may reinsure with the program as provided for in this subsection:

(a) With respect to a basic, ~~health benefit plan or a~~ standard or catastrophic health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic, ~~or~~ standard or catastrophic health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within sixty (60) days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring small employer carrier may reinsure an eligible employee or dependent within a period of sixty (60) days following the commencement of the coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may

be reinsured within sixty (60) days of the commencement of his coverage.

(d) A reinsuring individual carrier may reinsure any eligible individual or dependent within a period of sixty (60) days following commencement of the coverage with the individual. Newborn dependents of insureds are not eligible for individual reinsurance unless a parent is already reinsured.

(e) (i) The program shall not reimburse a reinsuring carrier with respect to the claims of a reinsured individual, employee or dependent until the carrier has incurred an initial level of claims for such individual, employee or dependent of five thousand dollars ($5,000) in a calendar year for benefits covered by the program. In addition, the reinsuring carrier shall be responsible for ten percent (10%) of the next fifty thousand dollars ($50,000) of benefit payments during a calendar year and the program shall reinsure the remainder.

(ii) The board annually may adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment shall not be less than the annual change in the medical component of the "Consumer Price Index for All Urban Consumers" of the department of labor, bureau of labor statistics, unless the board proposes and the director approves a lower adjustment factor.

(f) A reinsuring carrier may terminate reinsurance with the program for one (1) or more of the reinsured individuals, employees or dependents on any anniversary of the health benefit plan.

(g) A reinsuring carrier shall apply all managed care and claims handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(10) (a) The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology shall include a system for classification of small employers and individuals that reflects the types of case characteristics commonly used by small employer and individual carriers in the state. The methodology shall provide for the development of base reinsurance premium rates which shall be multiplied by the factors set forth in subsection (10)(b) of this section to determine the premium rates for the program. The base reinsurance premium rates shall be established by the board, subject to the approval of the director, and shall be set at levels which reasonably approximate gross premiums charged to small employers or individuals by small employer or individual carriers for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under the provisions of this chapter.

(b) Premiums for the program shall be as established by the board.

(c) The board periodically shall review the methodology established under the provisions of paragraph (10)(a) of this section, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology which shall be subject to the approval of the director.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(11) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued shall meet the requirements relating to premium rates set forth in section 41-4706, Idaho Code.

(12) (a) Prior to March 1 of each year, the board shall determine and report to the director the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(b) Any net loss for the year shall be recouped by assessments of carriers.

(c) (i) For the assessment of March 1, 1995, and prior to March 1 of each succeeding year, the board shall determine and file with the director an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(ii) The individual assessments shall be determined by multiplying net losses, if net earnings are negative, as defined by subsection (12)(a) of this section, by a fraction, the numerator of which shall be the carrier's total premiums earned in the preceding calendar year from all health benefit plans and policies or certificates of insurance for specific disease, and hospital confinement indemnity in this state as reported in the carrier's annual report pursuant to subsection (16) of this section, and the denominator of which shall be the total premiums earned in the preceding calendar year from all health benefit plans and policies or certificates of insurance for specific disease and hospital confinement indemnity in this state.

(d) If assessments exceed net losses of the program, the excess shall be held at interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, "future losses" includes reserves for incurred but not reported claims.

(e) Each reinsuring carrier's proportion of the assessment shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the reinsuring carriers with the board.

(f) The plan of operation shall provide for the imposition of an interest penalty for late payment of assessments.

(g) A reinsuring carrier may seek from the director a deferment from all or part of an assessment imposed by the board. The director may defer all or part of the assessment of a reinsuring car-

rier if the director determines that the payment of the assessment would place the reinsuring carrier in a financially impaired condition. If all or part of an assessment against a reinsuring carrier is deferred the amount deferred shall be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The reinsuring carrier receiving the deferment shall remain liable to the program for the amount deferred and shall be prohibited from reinsuring any individuals or groups with the program until such time as it pays the assessments.

(13) Neither the participation in the program as reinsuring carriers, the establishment of rates, forms or procedures, nor any other joint or collective action required under the provisions of this chapter shall be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers either jointly or separately.

(14) The board, as part of the plan of operation, shall develop standards setting forth the manner and levels of compensation to be paid to agents for the sale of basic, ~~and~~ standard <u>and catastrophic</u> health benefit plans. In establishing such standards, the board shall take into consideration the need to assure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to the small employer and individual, the levels of compensation currently used in the industry and the overall costs of coverage to small employers and individuals selecting these plans.

(15) The program shall be exempt from any and all taxes.

(16) Each carrier shall file with the director, in a form and manner to be prescribed by the director, an annual report. The report shall state the number of resident persons insured under the carrier's health benefit plan.

(17) If a reinsuring small employer carrier attempts to reinsure or reinsures an entire employer group, an employee, or a dependent of such employee that, immediately prior to the commencement of such coverage, it covered under a health benefit plan, the board shall assess all costs and losses incurred by the program for claims and administrative expenses relating to such group, employee or dependent of such employee only to the said reinsuring small employer carrier.

(18) Subsection (17) of this section shall apply to assessments made for the 1994 calendar year and each year thereafter.

SECTION 16. That Section 41-4712, Idaho Code, be, and the same is hereby amended to read as follows:

41-4712. HEALTH BENEFIT PLAN COMMITTEE. (1) The director shall appoint a health benefit plan committee consisting of nine (9) members, five (5) of whom shall represent consumer interests and four (4) of whom shall be members of the board created in section 41-4711, Idaho Code. Members of the committee serve at the pleasure of the director.

(2) The committee shall recommend to the board the form and level of coverages to be made available by small employer and individual carriers pursuant to sections 41-4708 and 41-5208, Idaho Code, with an

emphasis on making coverage available for preventive care. The plan designs for the small employer market shall not necessarily be the same as the plan designs for the individual market.

(3) The committee shall recommend to the board benefit levels, cost sharing levels, exclusions and limitations for the basic, ~~health benefit--plan--and-the~~ standard and catastrophic health benefit plans. The committee shall also design a basic, ~~health--benefit--plan--and--a~~ standard and catastrophic health benefit plan which each contain benefit and cost sharing levels that are consistent with the basic method of operation and the benefit plans of health maintenance organizations, including any restrictions imposed by federal law.

(a) The plans or changes recommended by the committee may include cost containment features such as:

(i) Utilization review of health care services, including review of medical necessity of hospital and physician services;

(ii) Case management;

(iii) Selective contracting with hospitals, physicians and other health care providers;

(iv) Reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; and

(v) Other managed care provisions.

(b) The committee shall submit the health benefit plans or changes described in paragraph (3)(a) of this section to the board for approval by not later than March 1 of each year. The board shall thereafter submit those plans or changes approved to the director for approval. The director shall promulgate the approved plans pursuant to the provisions of section 41-4715, Idaho Code.

(c) Small employer carriers desiring to issue a basic, ~~health benefit--plan--or--a~~ standard or catastrophic health benefit plan differing from the form and level of coverage developed by the committee and approved by the board and the director shall submit such plan to the committee for review to insure that such proposed ~~basic-or-standard~~ plan is commensurate with the benefit levels, cost-sharing levels, exclusions, and limitations for the plan developed and approved pursuant to the provisions of this section. The committee shall forward the proposed plan to the board and the director with a recommendation for approval or rejection.

SECTION 17. That Section 41-4714, Idaho Code, be, and the same is hereby amended to read as follows:

41-4714. WAIVER OF CERTAIN STATE LAWS. No law requiring the coverage of a health care service or benefit, or requiring the reimbursement, utilization or inclusion of a specific category of licensed health care practitioner, shall apply to a ~~basic--and/or--standard~~ health benefit plan delivered or issued for delivery to small employers and individuals in this state pursuant to the provisions of chapters 47 and 52, title 41, Idaho Code.

SECTION 18. That Section 41-4716, Idaho Code, be, and the same is hereby amended to read as follows:

41-4716. STANDARDS TO ASSURE FAIR MARKETING. (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic, ~~and~~ standard and catastrophic health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage to a small employer on the basis of the health status or claims experience of the small employer or its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase ~~either~~ a basic, health benefit plan, ~~or~~ a standard health benefit plan and a catastrophic health benefit plan.

(2) (a) Except as provided in subsection (2)(b) of this section, no small employer carrier or agent shall, directly or indirectly, engage in the following activities:

(i) Encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer;

(ii) Encouraging or directing small employers to seek coverage from another carrier because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(b) The provisions of subsection (2)(a) of this section shall not apply with respect to information provided by a small employer carrier or agent to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3) (a) Except as provided in subsection (2)(b) of this section, no small employer carrier shall, directly or indirectly, enter into any contract, agreement or arrangement with an agent that provides for or results in the compensation paid to an agent for the sale of a health benefit plan to be varied because of the health status, claims experience, industry, occupation or geographic location of the small employer.

(b) The provisions of subsection (a) of this section shall not apply with respect to a compensation arrangement that provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent, if any, for the sale of a basic, ~~or~~ standard or catastrophic health benefit plan.

(5) No small employer carrier may terminate, fail to renew or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation or geographic location of the small employers placed by the agent with the small employer carrier.

(6) No small employer carrier or agent may induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Denial by a small employer carrier of an application for cov-

erage from a small employer shall be in writing and shall state the reason or reasons for the denial.

(8) The director may establish regulations setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(9) (a) A violation of the provisions of this section by a small employer carrier or an agent shall be an unfair trade practice pursuant to the provisions of section 41-1302, Idaho Code.

(b) If a small employer carrier enters into a contract, agreement or other arrangement with a third-party administrator to provide administrative, marketing or other services related to the offering of health benefit plans to small employers in this state, the third-party administrator shall be subject to the provisions of this section as if it were a small employer carrier.

SECTION 19. That Section 41-5202, Idaho Code, be, and the same is hereby amended to read as follows:

41-5202. PURPOSE. The purpose and intent of this chapter is to promote the availability of health insurance coverage to persons not covered by employment based insurance regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of preexisting condition exclusions, to provide for the adoption of "basic," ~~and~~ "standard" and "catastrophic" health benefit plans to be offered to all individuals, to provide for the establishment of a reinsurance program, and to improve the overall fairness and efficiency of the individual health insurance market.

This chapter is not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

SECTION 20. That Section 41-5203, Idaho Code, be, and the same is hereby amended to read as follows:

41-5203. DEFINITIONS. As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the director that an individual carrier is in compliance with the provisions of section 41-5206, Idaho Code, based upon the person's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the individual carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Agent" means an agent as defined in section 41-1021, Idaho Code, or a broker as defined in section 41-1024, Idaho Code.

(4) "Base premium rate" means, as to a rating period, the lowest premium rate charged or that could have been charged under a rating system by the individual carrier to individuals with similar case characteristics for health benefit plans with the same or similar cov-

erage.

(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to section 41-4712, Idaho Code.

(6) "Board" means the board of directors of the program established pursuant to section 41-4711, Idaho Code.

(7) "Carrier" means any entity that provides health insurance in this state. For purposes of this chapter, carrier includes an insurance company, a hospital or professional service corporation, a fraternal benefit society, a health maintenance organization, any entity providing health insurance coverage or benefits to residents of this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(8) "Case characteristics" means demographic or other objective characteristics of an individual that are considered by the individual carrier in the determination of premium rates for the individual, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of this chapter.

(9) "Catastrophic health benefit plan" means a higher limit health benefit plan developed pursuant to section 41-4712, Idaho Code.

(10) "Committee" means the health benefit plan committee created pursuant to section 41-4712, Idaho Code.

(~~10~~11) "Control" shall be defined in the same manner as in section 41-3801(2), Idaho Code.

(~~11~~12) "Dependent" means a spouse, an unmarried child under the age of nineteen (19) years, an unmarried child who is a full-time student under the age of twenty-three (23) years and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(~~12~~13) "Director" means the director of the department of insurance of the state of Idaho.

(~~13~~14) "Eligible individual" means an Idaho resident individual or dependent of an Idaho resident ~~who does not receive health insurance benefits subject to the regulation of chapter 47, title 41, Idaho Code, and~~ who is under the age of sixty-five (65) years, is not eligible for coverage under a group health plan, part A or part B of title XVIII of the social security act (medicare), or a state plan under title XIX (medicaid) or any successor program, and who does not have other health insurance coverage. An "eligible individual" can be the dependent of an eligible employee ~~as defined in section 41-4703(14), Idaho Code~~, which eligible employee is receiving health insurance benefits subject to the regulation of ~~chapter 47,~~ title 41, Idaho Code, provided that no insurer shall be required to issue a basic, ~~or~~ standard or catastrophic health benefit plan to any individual who is covered under ~~any~~ other ~~arrangement that provides benefits equal to or better than the basic or standard plan~~ health insurance coverage.

(~~14~~15) "Established geographic service area" means a geographic area, as approved by the director and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(~~15~~16) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization sub-

scriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance, or nonrenewable short-term coverage issued for a period of twelve (12) months or less.

(16~~7~~) "Index rate" means, as to a rating period for individuals with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(17~~8~~) "New business premium rate" means, as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the individual carrier to individuals with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(18~~9~~) "Plan of operation" means the plan of operation of the program established pursuant to section 41-4711, Idaho Code.

(~~19~~20) "Premium" means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier, including any fees or other contributions associated with the health benefit plan.

(20~~1~~) "Program" means the Idaho reinsurance program created in section 41-4711, Idaho Code.

(21~~2~~) "Qualifying previous coverage" and "qualifying existing coverage" means benefits or coverage provided under:

(a) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefit risk pool, or any other similar publicly sponsored program; or

(b) Any group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a health maintenance organization, hospital or professional service corporation, or a fraternal benefit society, that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

(22~~3~~) "Rating period" means the calendar period for which premium rates established by a carrier are assumed to be in effect.

(23~~4~~) "Reinsuring carrier" means a carrier participating in the reinsurance program pursuant to section 41-4711, Idaho Code.

(24~~5~~) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

(25~~6~~) "Risk-assuming carrier" means a carrier whose application is approved by the director pursuant to section 41-5210, Idaho Code.

(26~~7~~) "Individual carrier" means a carrier that offers health benefit plans covering eligible individuals and their dependents.

(27~~8~~) "Standard health benefit plan" means a health benefit plan developed pursuant to section 41-4712, Idaho Code.

SECTION 21. That Section 41-5207, Idaho Code, be, and the same is hereby amended to read as follows:

41-5207. RENEWABILITY OF COVERAGE. (1) A health benefit plan subject to the provisions of this chapter shall be renewable with respect to the individual or dependents, at the option of the individual, except in any of the following cases:

(a) Nonpayment of the required premiums;

(b) Fraud or intentional misrepresentation of material fact by the individual insured or his representatives. An individual whose coverage is terminated for fraud or misrepresentation shall not be deemed to be an "eligible individual" for a period of twelve (12) months from the effective date of the termination of the individual's coverage and shall not be deemed to have "qualifying previous coverage" under chapter 22, 47 or 52, title 41, Idaho Code;

(c) ~~Repeated--misuse--of--a--provider---network---provision~~ The individual's residence or workplace changes to one which is outside the established geographic service area, but only for coverage under a restricted provider network within a managed care plan;

(d) ~~The-individual's-residence-changes-to-one--which--is--outside this--state~~ In the case of health benefit plans that are made available in the individual market only through one (1) or more associations, as defined in section 41-2202, Idaho Code, the membership of an individual in the association, on the basis of which the coverage is provided ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual;

(e) The individual carrier elects to nonrenew all of its health benefit plans delivered or issued for delivery to individuals in this state. In such a case the carrier shall:

(i) Provide advance notice of its decision under this paragraph to the director; and

(ii) Provide notice of the decision not to renew coverage to all affected individuals and to the director at least one hundred eighty (180) days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the director under the provisions of this paragraph shall be provided at least three (3) working days prior to the notice to the affected individuals; or

(f) The director finds that the continuation of the coverage would:

(i) Not be in the best interests of the policyholders or certificate holders; or

(ii) Impair the carrier's ability to meet its contractual obligations.

In such instance, the director shall assist affected individuals in finding replacement coverage.

(2) An individual carrier that elects not to renew a health benefit plan under the provisions of subsection (1)(~~d~~e) of this section shall be prohibited from writing new business in the individual market in this state for a period of five (5) years from the date of notice

to the director.

(3) In the case of an individual carrier doing business in one (1) established geographic service area of the state, the rules set forth in this subsection shall apply only to the carrier's operations in that service area.

SECTION 22. That Section 41-5208, Idaho Code, be, and the same is hereby amended to read as follows:

41-5208. AVAILABILITY OF COVERAGE. (1) (a) Every individual carrier shall, as a condition of offering health benefit plans in this state to individuals, actively offer to individuals at least ~~two~~ three (~~2~~3) health benefit plans as provided in this section and provide enrollment to all persons with qualifying previous coverage during all months of the year and to all persons without qualifying previous coverage on an open enrollment basis for a forty-five (45) day period commencing on January 1 and July 1 of each calendar year. One (1) health benefit plan offered by each individual carrier shall be a basic health benefit plan, ~~and~~ one (1) plan shall be a standard health benefit plan, and one (1) plan shall be a catastrophic health benefit plan.

(b) An individual carrier shall issue a basic, ~~health benefit plan or a~~ standard or catastrophic health benefit plan to any eligible individual that applies for ~~either~~ such plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with the provisions of this chapter. ~~The carrier may require certification of Idaho residency or dependency upon an Idaho resident.~~

(2) (a) An individual carrier shall file with the director, in a format and manner prescribed by the director, the basic, ~~health benefit plans and the~~ standard and catastrophic health benefit plans to be used by the carrier. A health benefit plan filed pursuant to the provisions of this paragraph may be used by an individual carrier beginning thirty (30) days after it is filed unless the director disapproves its use.

(b) The director at any time may, after providing notice and an opportunity for a hearing to the individual carrier, disapprove the continued use by an individual carrier of a basic, ~~or~~ standard, or catastrophic health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

(3) Health benefit plans covering individuals shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than:

(i) A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;

(ii) A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage; or

(iii) A pregnancy existing on the effective date of coverage.

(b) A health benefit plan shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage to the extent such previous coverage provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than ~~thirty~~ sixty-three (~~3~~60) days prior to the effective date of the new coverage. ~~In the case of replacement coverage from the same carrier, a preexisting condition will be covered for the first twelve (12) months for the lesser of:~~

~~(i) The benefits payable under the new policy; or~~

~~(ii) The benefits which would have been payable under the prior policy.~~

(c) An individual carrier shall not modify a basic, ~~or~~ standard, or catastrophic health benefit plan with respect to an individual or any dependent through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) An individual carrier shall not be required to offer coverage or accept applications pursuant to the provisions of subsection (1) of this section in the case of the following:

(i) To an individual, where the individual is not residing in the carrier's established geographic service area;

(ii) Within an area where the individual carrier reasonably anticipates, and demonstrates to the satisfaction of the director, that it will not have the capacity within its established geographic service area to deliver service adequately to individuals because of its obligations to existing groups or individuals.

(b) An individual carrier that cannot offer coverage pursuant to the provisions of subsection (4)(a)(ii) of this section may not offer coverage in the applicable area to new cases of employer groups with more than ~~forty-nine~~ fifty (~~49~~50) eligible employees or to any small employer groups or to any individuals until the later of one hundred eighty (180) days following each such refusal or the date on which the carrier notifies the director that it has regained capacity to deliver services to individuals and groups.

(5) An individual carrier shall not be required to provide coverage to individuals pursuant to the provisions of subsection (1) of this section for any period of time for which the director determines that requiring the acceptance of individuals in accordance with the provisions of subsection (1) of this section would place the individual carrier in a financially impaired condition.

(6) An individual carrier shall not be required to comply with the provisions of this section until the director has approved or adopted the revised plan of operation as provided in section 41-4711, Idaho Code.

SECTION 23. That Section 41-5212, Idaho Code, be, and the same is hereby amended to read as follows:

41-5212. STANDARDS TO ASSURE FAIR MARKETING. (1) Each individual carrier shall actively market health benefit plan coverage, including the basic, ~~and~~ standard and catastrophic health benefit plans, to eligible individuals in the state. If an individual carrier denies coverage to an individual on the basis of the health status or claims experience of the individual or dependents, the individual carrier shall offer the individual the opportunity to purchase ~~either~~ a basic, ~~health benefit plan or a~~ standard or catastrophic health benefit plan.

(2) (a) Except as provided in subsection (2)(b) of this section, no individual carrier or agent shall, directly or indirectly, engage in the following activities:

(i) Encouraging or directing individuals to refrain from filing an application for coverage with the individual carrier because of the health status, claims experience, industry, occupation or geographic location of the individual or dependents.

(ii) Encouraging or directing individuals to seek coverage from another carrier because of the health status, claims experience, industry, occupation or geographic location of the individual.

(b) The provisions of subsection (2)(a) of this section shall not apply with respect to information provided by an individual carrier or agent to an individual regarding the established geographic service area or a restricted network provision of an individual carrier.

(3) (a) Except as provided in subsection (2)(b) of this section, no individual carrier shall, directly or indirectly, enter into any contract, agreement or arrangement with an agent that provides for or results in the compensation paid to an agent for the sale of a health benefit plan to be carried because of the health status, claims experience, industry, occupation or geographic location of the individual.

(b) The provisions of paragraph (a) of this subsection shall not apply with respect to a compensation arrangement that provides compensation to an agent on the basis of percentage of premium, provided that the percentage shall not vary because of the health status, claims experience, industry, occupation or geographic area of the individual.

(4) An individual carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to an agent, if any, for the sale of a basic, ~~or~~ standard or catastrophic health benefit plan.

(5) No individual carrier may terminate, fail to renew or limit its contract or agreement of representation with an agent for any reason related to the health status, claims experience, occupation or geographic location of the individuals placed by the agent with the individual carrier.

(6) Denial by an individual carrier of an application for coverage from an individual shall be in writing and shall state the reason or reasons for the denial.

(7) The director may establish rules setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to individuals in this state.

(8) (a) A violation of the provisions of this section by an individual carrier or an agent shall be an unfair trade practice pursuant to the provisions of section 41-1302, Idaho Code.

(b) If an individual carrier enters into a contract, agreement or other arrangement with a third party administrator to provide administrative, marketing or other services related to the offering of health benefit plans to individuals in this state, the third party administrator shall be subject to the provisions of this section as if it were an individual carrier.

Approved March 24, 1997.

CHAPTER 322
(S.B. No. 1266)

AN ACT

APPROPRIATING MONEYS TO THE LIEUTENANT GOVERNOR FOR FISCAL YEAR 1998; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Lieutenant Governor the following amounts, to be expended according to designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

FOR:	
Personnel Costs	$85,400
Operating Expenditures	9,200
TOTAL	$94,600
FROM:	
General Fund	$94,600

SECTION 2. It is legislative intent that an amount, not to exceed $1,000 of the amounts appropriated in Section 1, may be used at the discretion of the Lieutenant Governor to assist in defraying expenses relating to or resulting from the discharge of the Lieutenant Governor's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Office of the Lieutenant Governor is authorized no more than two (2) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 323
(S.B. No. 1267)

AN ACT

APPROPRIATING MONEYS FOR THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED FOR FISCAL YEAR 1998; 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 standard classifications from the listed funds, for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$ 691,900	$101,200		$421,600	$1,214,700
Federal Grant Fund	931,600	428,700	$1,400	369,800	1,731,500
Randolph Sheppard Fund	33,100	7,000		66,300	106,400
Rehabilitation Revenue and Refunds Fund	41,800	32,500		12,400	86,700
Adaptive Aids and Appliances Fund		44,800			44,800
Miscellaneous Revenue Fund		16,600	2,500	8,800	27,900
TOTAL	$1,698,400	$630,800	$3,900	$878,900	$3,212,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission for the Blind and Visually Impaired is authorized no more than forty-one (41) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 324
(S.B. No. 1268)

AN ACT
APPROPRIATING MONEYS FOR THE STATE LIBRARY BOARD FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the State Library Board the following amounts from the listed funds, to be expended for the period July 1, 1997, through June 30, 1998:

FROM:	
General Fund	$2,167,600
Federal Grant Fund	992,600
Miscellaneous Revenue Fund	75,200
TOTAL	$3,235,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho State Library is authorized no more than forty-four and eighty-five hundredths (44.85) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. There is hereby reappropriated to the State Board of Education for the State Library Board the unexpended and unencumbered balance of any General Fund appropriation contained in Section 1, Chapter 279, Laws of 1996, to be used for nonrecurring expenditures for the period July 1, 1997, through June 30, 1998.

SECTION 4. The reappropriation granted in Section 3 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation in Section 3 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 3 of this act shall be in the proportion that the reappropriation for the State Library Board bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 24, 1997.

CHAPTER 325
(S.B. No. 1269)

AN ACT
APPROPRIATING MONEYS FOR THE MILITARY DIVISION FOR FISCAL YEAR 1998; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Military Division, the following amounts to be expended for the listed programs according to the standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. MILITARY MANAGEMENT:					
FROM:					
General Fund	$1,015,400	$ 676,200	$ 14,000		$ 1,705,600
Federal Grant Fund		3,676,500			3,676,500
Miscellaneous Revenue Fund	15,700	20,600			36,300
TOTAL	$1,031,100	$4,373,300	$ 14,000		$ 5,418,400
B. FEDERAL AND STATE CONTRACTS:					
FROM:					
General Fund	$ 346,800	$ 177,100	$ 2,500		$ 526,400
Federal Grant Fund	3,821,600	3,746,800	18,000		7,586,400
TOTAL	$4,168,400	$3,923,900	$ 20,500		$ 8,112,800
C. DISASTER SERVICES:					
FROM:					
General Fund	$ 436,200	$ 78,900	$ 21,800		$ 536,900
Federal Grant Fund	689,300	203,600	800	$700,000	1,593,700
Indirect Cost Recovery Fund	53,600	8,300			61,900
TOTAL	$1,179,100	$ 290,800	$ 22,600	$700,000	$ 2,192,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
D. HAZARDOUS MATERIALS:					
FROM:					
Hazardous Waste Training, Emergency and Monitoring Fund	$ 134,700	$ 128,200			$ 262,900
Federal Grant Fund	21,000	160,500		$ 74,600	256,100
TOTAL	$ 155,700	$ 288,700		$ 74,600	$ 519,000
GRAND TOTAL	$6,534,300	$8,876,700	$57,100	$774,600	$16,242,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Military Division is authorized no more than one hundred fifty-five and fifty-five hundredths (155.55) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 326
(S.B. No. 1270)

AN ACT

RELATING TO APPROPRIATIONS FOR THE DEPARTMENT OF JUVENILE CORRECTIONS; AMENDING THE APPROPRIATION MADE IN SECTION 1, CHAPTER 295, LAWS OF 1996; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 295, Laws of 1996, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Juvenile Corrections the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. Administration:					
FROM:					
General Fund	$ ~~538,600~~	$ ~~339,700~~	~~$169,500~~		$ ~~1,047,800~~
	530,500	496,500			1,027,000
Miscellaneous Revenue Fund	10,800				10,800
TOTAL	$ 541,300	$ 496,500			$ 1,037,800
B. FIELD SERVICES:					
FROM:					
General Fund	$ ~~465,000~~	$ 81,100		$ ~~2,700,000~~	$ ~~3,246,100~~
	455,600			2,632,500	3,169,200
C. INSTITUTIONS					
FROM:					
General Fund	~~$7,605,400~~	$ ~~903,000~~	~~$251,000~~	$ ~~4,694,400~~	~~$13,453,800~~
	7,382,700	286,400	44,700	9,036,400	16,750,200
Juvenile Corrections Fund				140,000	140,000
State Juvenile Corrections Center Fund		~~644,700~~		129,500	~~774,200~~
		1,144,700			1,274,200
Federal Grant Fund	77,100	182,000		1,689,900	1,949,000
Miscellaneous Revenue Fund	~~230,200~~			~~40,000~~	~~270,200~~
	470,200			140,000	610,200
TOTAL	~~$7,912,700~~	~~$1,729,700~~	~~$251,000~~	$ ~~6,693,800~~	~~$16,587,200~~
	7,930,000	1,613,100	44,700	11,135,800	20,723,600
D. JUVENILE JUSTICE COMMISSION:					
FROM:					
General Fund	$ ~~69,100~~	$ ~~10,600~~			$ ~~79,700~~
	66,900	10,300			77,200
Federal Grant Fund	56,300	125,700		$ 803,400	985,400
Miscellaneous Revenue Fund				150,000	150,000
TOTAL	$ ~~125,400~~	$ ~~136,300~~		$ 953,400	$ ~~1,215,100~~
	123,200	136,000			1,212,600
GRAND TOTAL	~~$9,041,700~~	~~$2,286,800~~	~~$420,500~~	~~$10,347,200~~	~~$22,096,200~~
	9,050,100	2,326,700	44,700	14,721,700	26,143,200

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

Approved March 24, 1997.

CHAPTER 327
(S.B. No. 1272)

AN ACT

APPROPRIATING MONEYS TO THE LEGISLATIVE COUNCIL FOR FISCAL YEAR 1998; APPROPRIATING ADDITIONAL MONEYS TO THE LEGISLATIVE COUNCIL FOR THE LEGISLATIVE SERVICES OFFICE FOR FISCAL YEAR 1997; AND DECLARING AN EMERGENCY.

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 for the designated programs from the listed funds for the period July 1, 1997, through June 30, 1998:

A. LEGISLATIVE SERVICES OFFICE:	
FROM:	
General Fund	$2,985,200
Miscellaneous Revenue Fund	42,300
Professional Services Fund	980,000
TOTAL	$4,007,500
B. OFFICE OF PERFORMANCE EVALUATIONS:	
FROM:	
General Fund	$ 428,700
GRAND TOTAL	$4,436,200

SECTION 2. In addition to the appropriation made in Section 1, Chapter 275, Laws of 1996, there is hereby appropriated for the Legislative Services Office Program the following amount to be expended for the designated program from the listed fund for the period July 1, 1996, through June 30, 1997:

LEGISLATIVE SERVICES OFFICE:	
FROM:	
General Fund	$ 39,600

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval.

Approved March 24, 1997.

CHAPTER 328
(S.B. No. 1273)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF ADMINISTRATION FOR THE PERSONNEL COMMISSION FOR FISCAL YEAR 1998; 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 Administration for the Personnel Commission the following amounts, to be expended according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Personnel Commission Fund	$1,648,500	$578,900	$38,900	$2,266,300
Seminars and Publications Fund		55,800		55,800
TOTAL	$1,648,500	$634,700	$38,900	$2,322,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Personnel Commission is authorized no more than thirty-seven (37) full-time equivalent positions at any point during the period July 1, 1997 through June 30, 1998, 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 24, 1997.

CHAPTER 329
(S.B. No. 1274)

AN ACT

EXPRESSING LEGISLATIVE INTENT; APPROPRIATING MONEYS TO THE DIVISION OF BUILDING SAFETY FOR FISCAL YEAR 1998; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. It is legislative intent that the expenditures for the Division of Building Safety in the Department of Self-Governing Agencies not exceed the following amount for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
Electrical Fund	$1,911,500	$ 610,300	$ 76,800	$2,598,600
Building Fund	673,100	145,300	64,100	882,500
Plumbing Fund	1,056,300	483,900	88,700	1,628,900
Manufactured Housing Fund	42,800	15,400		58,200
Federal Grant Fund	97,000	39,200		136,200
Miscellaneous Revenue Fund	650,000	208,100	139,000	997,100
TOTAL	$4,430,700	$1,502,200	$368,600	$6,301,500

SECTION 2. 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 standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ADMINISTRATION:				
FROM:				
Electrical Fund	$ 168,900	$ 24,600	$ 4,800	$ 198,300
Building Fund	69,000	10,100	1,800	80,900
Plumbing Fund	88,200	12,800	2,500	103,500
Miscellaneous Revenue Fund	57,600	8,400	3,500	69,500
TOTAL	$ 383,700	$ 55,900	$ 12,600	$ 452,200
B. BUILDING SAFETY:				
FROM:				
Electrical Fund	$1,742,600	$ 585,700	$ 72,000	$2,400,300
Building Fund	604,100	135,200	62,300	801,600
Plumbing Fund	968,100	471,100	86,200	1,525,400
Manufactured Housing Fund	42,800	15,400		58,200
Federal Grant Fund	97,000	39,200		136,200
Miscellaneous Revenue Fund	592,400	199,700	135,500	927,600
TOTAL	$4,047,000	$1,446,300	$356,000	$5,849,300
GRAND TOTAL	$4,430,700	$1,502,200	$368,600	$6,301,500

SECTION 3. 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 one (101) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, for the programs specified in Section 2 of this act,

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

Approved March 24, 1997.

CHAPTER 330
(S.B. No. 1275)

AN ACT
APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 1998; 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 standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. COMPENSATION:					
FROM:					
Industrial Administration Fund	$1,715,800	$ 726,700	$ 58,400	$ 997,100	$3,498,000
Federal Grant Fund	2,700	2,200			4,900
Miscellaneous Revenue Fund		20,000			20,000
TOTAL	$1,718,500	$ 748,900	$ 58,400	$ 997,100	$3,522,900
B. REHABILITATION:					
FROM:					
Industrial Administration Fund	$2,318,300	$ 521,100	$ 65,600		$2,905,000
C. CRIME VICTIMS:					
FROM:					
Crime Victims Compensation Fund	$ 235,600	$ 70,800	$ 7,500	$1,426,600	$1,740,500
Federal Grant Fund				150,000	150,000
TOTAL	$ 235,600	$ 70,800	$ 7,500	$1,576,600	$1,890,500
D. ADJUDICATION:					
FROM:					
Industrial Administration Fund	$ 940,100	$ 332,000	$ 18,000		$1,290,100
GRAND TOTAL	$5,212,500	$1,672,800	$149,500	$2,573,700	$9,608,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Industrial Commission is authorized no more than one hundred thirty-one and five-tenths (131.5) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 331
(S.B. No. 1277)

AN ACT
APPROPRIATING MONEYS FOR THE IDAHO WOMEN'S COMMISSION FOR FISCAL YEAR 1998; 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 standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$25,500	$11,600	$37,100
Miscellaneous Revenue Fund		6,500	6,500
TOTAL	$25,500	$18,100	$43,600

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, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 332
(S.B. No. 1278)

AN ACT
APPROPRIATING MONEYS FOR SPECIAL PROGRAMS FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED GENERAL FUND BALANCES FOR THE DES-

IGNATED PROGRAMS; SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION; AND EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES IN THE FOREST UTILIZATION RESEARCH PROGRAM.

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

SECTION 1. There is hereb appropriated to the Board of Regents of the University of Idaho and the State Board of Education for Special Programs the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. FOREST UTILIZATION RESEARCH PROGRAM:					
FROM:					
General Fund	$ 429,400	$ 43,200			$ 472,600
B. IDAHO GEOLOGICAL SURVEY PROGRAM:					
FROM:					
General Fund	$ 583,200	$ 42,700	$2,200		$ 628,100
C. SCHOLARSHIPS AND GRANTS PROGRAM:					
FROM:					
General Fund				$2,128,200	$2,128,200
Scholarship Fund		$ 400		6,100	6,500
Federal Fund				186,000	186,000
TOTAL		$ 400		$2,320,300	$2,320,700
D. IDAHO MUSEUM OF NATURAL HISTORY:					
FROM:					
General Fund	$ 412,500	$ 28,600			$ 441,100
E. IDAHO SMALL BUSINESS DEVELOPMENT CENTERS:					
FROM:					
General Fund				$ 240,500	$ 240,500
F. IDAHO COUNCIL ON ECONOMIC EDUCATION:					
FROM:					
General Fund				$ 52,600	$ 52,600
GRAND TOTAL	$1,425,100	$114,900	$2,200	$2,613,400	$4,155,600

SECTION 2. In accordance with Section 67-3519, Idaho Code. the agency is authorized no more than twenty-five and eighty hunc.edths (25.80) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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. There is hereby reappropriated to the Board of Regents of the University of Idaho and to the State Board of Education for the

Forest Utilization Research Program, Idaho Geological Survey Program, Scholarships and Grants Program, Idaho Museum of Natural History, Idaho Small Business Development Centers, and Idaho Council on Economic Education, the unexpended and unencumbered balance of any General Fund appropriation made to each respective program under Section 1, Chapter 389, Laws of 1996, for each respective program to be used for nonrecurring expenditures for the period July 1, 1997, through June 30, 1998.

SECTION 4. The reappropriation granted in Section 3 of this act shall be subject to the following conditions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation in Section 3 is declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is greater than zero but less than the total reappropriation authority granted to all state agencies, the amounts reappropriated in Section 3 shall be in the proportion that the reappropriation for each respective program bears to the total General Fund reappropriation authority granted to all state agencies.

SECTION 5. Of the amounts appropriated for the Forest Utilization Research Program in Section 1 of this act, $10,000, in combination with any federal or private industry resources which may become available, is to be used to conduct a series of water quality workshops around the state to assist resource managers, members of water advisory groups and concerned citizens to better understand the Clean Water Act and its effect on the management of Idaho's forest and rangeland resources.

Approved March 24, 1997.

CHAPTER 333
(S.B. No. 1279)

AN ACT

APPROPRIATING MONEYS FOR THE HEALTH EDUCATION PROGRAMS FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR THE SEVERAL DESIGNATED PROGRAMS; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Board of Regents of the University of Idaho and the State Board of Education the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. WOI VETERINARY EDUCATION PROGRAM:					
FROM:					
General Fund	$ 368,800	$881,200	$12,900		$1,262,900
B. WAMI MEDICAL EDUCATION PROGRAM:					
FROM:					
General Fund	$ 542,500	$ 59,800	$13,300	$1,916,800	$2,532,400
Unrestricted Current Fund	29,000			88,700	117,700
TOTAL	$ 571,500	$ 59,800	$13,300	$2,005,500	$2,650,100
C. IDAHO DENTAL EDUCATION PROGRAM:					
FROM:					
General Fund	$ 140,700	$ 12,400		$ 375,700	$ 528,800
Unrestricted Current Fund	61,600				61,600
TOTAL	$ 202,300	$ 12,400		$ 375,700	$ 590,400
D. WICHE AND UNIVERSITY OF UTAH MEDICAL EDUCATION PROGRAM:					
FROM:					
General Fund				$ 720,900	$ 720,900
E. FAMILY PRACTICE RESIDENCY PROGRAM:					
FROM:					
General Fund	$ 322,100	$ 27,900	$ 1,500	$ 351,500	$ 703,000
GRAND TOTAL	$1,464,700	$981,300	$27,700	$3,453,600	$5,927,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the agency is authorized no more than nineteen and fifty-nine hundredths (19.59) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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. There is hereby reappropriated to the Board of Regents of the University of Idaho and to the State Board of Education for the WOI Veterinary Education Program, WAMI Medical Education Program, Idaho Dental Education Program, WICHE and University of Utah Medical Education Program, and Family Practice Residency Program the unexpended and unencumbered balance of any appropriation made to each respective program under Section 1, Chapter 317, Laws of 1996, for each respective program to be used for nonrecurring expenditures for the period July 1, 1997, through June 30, 1998.

SECTION 4. The reappropriation granted in Section 3 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation for the General Fund in Section 3 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amounts reappropriated in Section 3 of this act shall be in the proportion that the reappropriation for each respective program bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 24, 1997.

CHAPTER 334
(S.B. No. 1280)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; EXPRESSING LEGISLATIVE INTENT AS TO PAYMENTS FOR HOUSING STATE PRISONERS; EXEMPTING THE DIVISION OF PRISONS FROM THE PROVISIONS OF SECTION 67-3511(2), IDAHO CODE; EXPRESSING LEGISLATIVE INTENT THAT THE DEPARTMENT OF CORRECTION EXPAND THE RETAINED JURISDICTION PROGRAM; AND EXPRESSING LEGISLATIVE INTENT THAT THE DEPARTMENT OF CORRECTION REQUEST PROPOSALS FOR A PRIVATELY CONSTRUCTED AND OPERATED PRISON.

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 designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	$ 2,121,700	$1,698,100	$ 225,000	$5,700,800	$ 9,745,600
Parolee Supervision Fund	48,400	14,300			62,700
Federal Grant Fund		69,000		346,800	415,800
Miscellaneous Revenue Fund	800	7,000			7,800
TOTAL	$ 2,170,900	$ 1,788,400	$ 225,000	$6,047,600	$10,231,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
B. PRISONS DIVISION:					
(1) INSTITUTIONAL SUPPORT:					
FROM:					
General Fund	$ 1,633,600	$ 6,837,500	$ 13,900	$ 78,000	$ 8,563,000
Federal Grant Fund	635,000	377,900	4,000		1,016,900
Inmate Labor Fund	71,900	3,200			75,100
Miscellaneous Revenue Fund	84,400	178,000	5,000		267,400
TOTAL	$ 2,424,900	$ 7,396,600	$ 22,900	$ 78,000	$ 9,922,400
(2) IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$11,321,100	$ 2,024,000	$ 859,600		$14,204,700
Penitentiary Endowment Fund		1,387,600			1,387,600
Miscellaneous Revenue Fund	201,200	19,500	62,000		282,700
TOTAL	$11,522,300	$ 3,431,100	$ 921,600		$15,875,000
(3) IDAHO CORRECTIONAL INSTITUTION - OROFINO:					
FROM:					
General Fund	$ 3,748,700	$ 1,212,400	$ 73,600	$ 49,700	$ 5,084,400
Inmate Labor Fund	251,500	238,500	12,000		502,000
Miscellaneous Revenue Fund	75,200	5,400			80,600
TOTAL	$ 4,075,400	$ 1,456,300	$ 85,600	$ 49,700	$ 5,667,000
(4) NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:					
FROM:					
General Fund	$ 1,970,300	$ 875,200	$ 167,400	$ 145,000	$ 3,157,900
Inmate Labor Fund	59,400	94,200	4,000		157,600
Miscellaneous Revenue Fund	34,200	4,900			39,100
TOTAL	$ 2,063,900	$ 974,300	$ 171,400	$ 145,000	$ 3,354,600
(5) SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$ 3,312,400	$ 1,118,100	$ 71,800		$ 4,502,300
Inmate Labor Fund	642,300	390,100	82,000		1,114,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	38,400				38,400
TOTAL	$ 3,993,100	$ 1,508,200	$ 153,800		$ 5,655,100
(6) IDAHO MAXIMUM SECURITY INSTITUTION - BOISE:					
FROM:					
General Fund	$ 6,059,200	$ 1,723,300	$ 221,300		$ 8,003,800
Miscellaneous Revenue Fund	34,200	2,100			36,300
TOTAL	$ 6,093,400	$ 1,725,400	$ 221,300		$ 8,040,100
(7) ST. ANTHONY WORK CAMP:					
FROM:					
General Fund	$ 1,151,800	$ 199,600	$ 10,200		$ 1,361,600
Inmate Labor Fund	302,600	452,500	9,900		765,000
TOTAL	$ 1,454,400	$ 652,100	$ 20,100		$ 2,126,600
(8) POCATELLO WOMENS CORRECTIONAL CENTER:					
FROM:					
General Fund	$ 2,464,600	$ 1,090,600	$ 29,200		$ 3,584,400
Inmate Labor Fund	31,600	9,200			40,800
Miscellaneous Revenue Fund	73,900	8,300			82,200
TOTAL	$ 2,570,100	$ 1,108,100	$ 29,200		$ 3,707,400
C. FIELD AND COMMUNITY SERVICES DIVISION:					
FROM:					
General Fund	$ 8,325,100	$ 1,248,600	$ 396,900		$ 9,970,600
Parolee Supervision Fund	1,197,800	190,100	26,100		1,414,000
Federal Grant Fund		136,300	3,800		140,100
Inmate Labor Fund		447,700	8,300		456,000
Miscellaneous Revenue Fund	13,600	36,800	1,300		51,700
TOTAL	$ 9,536,500	$ 2,059,500	$ 436,400		$12,032,400
D. COMMISSION FOR PARDONS AND PAROLE:					
FROM:					
General Fund	$ 659,900	$ 176,100	$ 20,000		$ 856,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
GRAND TOTAL	$46,564,800	$22,276,100	$2,307,300	$6,320,300	$77,468,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Correction is authorized no more than one thousand three hundred twelve and twenty-seven hundredths (1,312.27) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 Department of Correction shall pay all bills for housing state prisoners in county jails and other facilities from its operating budget in the event funds appropriated to the department for this purpose are expended prior to the time the legislature can act on a supplemental appropriation request.

SECTION 4. To provide flexibility in dealing with increasing prison populations and the accompanying conditions created, the Department of Correction's Prisons Division is hereby exempted from the provisions of Section 67-3511(2), Idaho Code, for all moneys appropriated to it for the period July 1, 1997, through June 30, 1998. Transfers of moneys between programs in the Prisons Division are still subject to the approval of the Division of Financial Management.

SECTION 5. It is legislative intent that the Department of Correction expand the retained jurisdiction program by adding capacity in existing, new or private facilities and that the Department report back on its progress in planning or achieving such expansion to the Joint Finance-Appropriations Committee prior to the beginning of the 1998 Legislative Session. These plans should have components of military-style discipline, education, and behavior modification programming similar to the existing retained jurisdiction program in the Department.

SECTION 6. It is legislative intent that the Department of Correction request proposals for a 1,250 bed privately constructed and operated prison, with infrastructure to support 3,000 beds, within the legal authority granted by Section 20-241A, Idaho Code, as added by House Bill 137, As Amended, enacted by the First Regular Session, Fifty-fourth Idaho Legislature, and that a contract be awarded only if the successful bid satisfies all aspects of the request for proposal and the per diem is less than the cost-per-day for comparable Department of Correction facilities as confirmed by the Legislative Services Office.

Approved March 24, 1997.

CHAPTER 335
(S.B. No. 1282)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 1998; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED FUND BALANCES; 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 Lands the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
A. SUPPORT SERVICES:						
FROM:						
General Fund	$ 1,036,800	$ 736,100	$ 48,800			$ 1,821,700
Department of Lands Fund	244,300	132,600	100,400			477,300
Land Improvement Fund	106,700	3,900	38,000			148,600
Federal Grant Fund	51,400	195,900				247,300
TOTAL	$ 1,439,200	$1,068,500	$ 187,200			$ 2,694,900
B. FOREST RESOURCES MANAGEMENT:						
FROM:						
General Fund	$ 2,844,300	$ 346,400	$ 112,200			$ 3,302,900
Department of Lands Fund	1,468,400	892,100	14,000			2,374,500
Land Improvement Fund	1,873,300	2,328,600	2,358,000			6,559,900
Community Forestry Fund				$ 76,500		76,500
Federal Grant Fund	444,600	229,900	6,000	202,000		882,500
TOTAL	$ 6,630,600	$3,797,000	$2,490,200	$278,500		$13,196,300
C. LAND, RANGE AND MINERAL RESOURCE MANAGEMENT:						
FROM:						
General Fund	$ 1,724,600	$ 258,600	$ 70,300			$ 2,053,500
Department of Lands Fund		128,400				128,400
Land Improvement Fund	159,100	255,400				414,500
Land and Building Rental Fund	1,000	60,300				61,300
TOTAL	$ 1,884,700	$ 702,700	$ 70,300			$ 2,657,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	FOR LUMP SUM	TOTAL
D. FOREST AND RANGE FIRE PROTECTION:						
FROM:						
General Fund					$2,364,400	$ 2,364,400
Department of Lands Fund					3,342,600	3,342,600
Fire Suppression Fund					109,600	109,600
Federal Grant Fund					285,300	285,300
TOTAL					$6,101,900	$ 6,101,900
E. SCALING PRACTICES:						
FROM:						
Department of Lands Fund	$ 250,600	$ 34,900	$ 41,500			$ 327,000
GRAND TOTAL	$10,205,100	$5,603,100	$2,789,200	$278,500	$6,101,900	$24,977,800

SECTION 2. There is hereby reappropriated to the Department of Lands the unexpended and unencumbered balance of any funds previously appropriated for the Triumph Mine Remediation Project to be used for the same purpose for the period July 1, 1997, through June 30, 1998.

The reappropriation is limited to $359,200 in General Funds, $500,000 in Hazardous Waste Training, Emergency and Monitoring Funds, and $499,500 in spending authority for money collected from other potentially responsible parties.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Department of Lands is authorized no more than two hundred thirty-nine and eighty-six hundredths (239.86) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 336
(S.B. No. 1283)

AN ACT

APPROPRIATING ADDITIONAL FUNDS TO THE INDEPENDENT LIVING COUNCIL FOR FISCAL YEAR 1997; EXPRESSING LEGISLATIVE INTENT; APPROPRIATING

MONEYS FOR THE DIVISION OF VOCATIONAL REHABILITATION FOR FISCAL YEAR 1998; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to any other appropriations for fiscal year 1997, there is hereby appropriated to the State Board of Education for the Division of Vocational Rehabilitation the following amount, to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1996, through June 30, 1997:

INDEPENDENT LIVING COUNCIL:

FROM:	
General Fund	$16,000
FOR:	
Trustee and Benefit Payments	$16,000

SECTION 2. It is legislative intent that the appropriation for the Division of Vocational Rehabilitation not exceed the following amount for the period July 1, 1997, through June 30, 1998:

FROM:	
General Fund	$ 3,194,800
Federal Grants Fund	10,091,400
Rehabilitation Revenue and Refunds Fund	400,000
Miscellaneous Revenue Fund	255,800
Business and Industry Services Fund	8,200
TOTAL	$13,950,200

SECTION 3. 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 standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

A. RENAL DISEASE:	
FROM:	
General Fund	$ 459,500
FOR:	
Trustee and Benefit Payments	$ 459,500
B. VOCATIONAL REHABILITATION:	
FROM:	
General Fund	$ 2,659,600
Federal Grants Fund	9,908,500
Rehabilitation Revenue and Refunds Fund	400,000
Miscellaneous Revenue Fund	245,000
Business and Industry Services Fund	8,200
TOTAL	$13,221,300
FOR:	
Personnel Costs	$ 5,523,400
Operating Expenditures	894,600
Capital Outlay	125,300
Trustee and Benefit Payments	6,678,000
TOTAL	$13,221,300

C. EPILEPSY SERVICES:	
FROM:	
General Fund	$ 60,000
FOR:	
Trustee and Benefit Payments	$ 60,000
D. INDEPENDENT LIVING COUNCIL:	
FROM:	
General Fund	$ 15,700
Federal Grants Fund	182,900
Miscellaneous Revenue Fund	10,800
TOTAL	$ 209,400
FOR:	
Lump Sum	$ 209,400
GRAND TOTAL	$13,950,200

SECTION 4. In accordance with Section 67-3519, Idaho Code, the Division of Vocational Rehabilitation is authorized no more than one hundred forty and five-tenths (140.5) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, for the programs specified in Section 2 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after its passage and approval.

Approved March 24, 1997.

CHAPTER 337
(S.B. No. 1284)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 1998; 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 standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	$ 365,500	$ 259,600	$ 80,100	$ 7,500	$ 712,700
Agriculture in the Classroom Fund		20,100			20,100
Administration and Accounting Services Fund	361,200	67,200			428,400
Facilities Maintenance Fund	44,000	102,000	6,500		152,500
TOTAL	$ 770,700	$ 448,900	$ 86,600	$ 7,500	$ 1,313,700
B. ANIMAL INDUSTRIES:					
FROM:					
General Fund	$ 661,200	$ 60,300	$ 11,700		$ 733,200
Agricultural Fees - Livestock Disease Control Fund	416,000	209,600	27,300		652,900
Agricultural Fees - Dairy Inspection Fund	575,000	115,200	16,500		706,700
Agricultural Fees - Egg Inspection Fund	69,000	23,900	13,000		105,900
Agricultural Fees - Commercial Fisheries Fund	6,000	4,100			10,100
Seminars and Publications Fund		112,200			112,200
TOTAL	$ 1,727,200	$ 525,300	$ 68,500		$ 2,321,000
C. AGRICULTURAL TECHNOLOGY:					
FROM:					
General Fund	$ 314,900	$ 544,400			$ 859,300
Agricultural Fees - Commercial Feed and Fertilizer Fund	151,000	50,400	$ 24,200		225,600
Agricultural Fees - Pesticides Fund	814,300	366,900	79,500		1,260,700
Federal Grant Fund	361,000	159,600			520,600
TOTAL	$ 1,641,200	$1,121,300	$103,700		$ 2,866,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
D. PLANT INDUSTRIES:					
FROM:					
General Fund	$ 339,200	$ 107,300		$115,000	$ 561,500
Agricultural Inspection Fund	862,000	187,300	$ 32,700		1,082,000
Agricultural Fees - Commercial Feed and Fertilizer Fund	178,700	58,900	23,600		261,200
Agricultural Fees - Honey Advertising Fund	300	5,800			6,100
Federal Grant Fund	34,600	5,200			39,800
TOTAL	$ 1,414,800	$ 364,500	$ 56,300	$115,000	$ 1,950,600
E. AGRICULTURAL INSPECTIONS:					
FROM:					
General Fund	$ 735,400	$ 198,000	$ 54,900		$ 988,300
Agricultural Inspection Fund	154,300	52,900		$ 3,600	210,800
Agricultural Fees - Organic Food Products Fund	40,200	19,700			59,900
Agricultural Fees - Fresh Fruit and Vegetable Inspection Fund	8,053,400	803,600		444,700	9,301,700
TOTAL	$ 8,983,300	$1,074,200	$ 54,900	$448,300	$10,560,700
F. AGRICULTURAL MARKETING AND DEVELOPMENT:					
FROM:					
General Fund	$ 226,500	$ 120,500	$ 3,500		$ 350,500
Agricultural Inspection Fund	31,000	100			31,100
Agricultural Loans Fund	9,100	15,000		$ 5,100	29,200
Federal Grant Fund				40,000	40,000
Seminars and Publications Fund		225,300			225,300
USDA Publications Fund		61,100			61,100
TOTAL	$ 266,600	$ 422,000	$ 3,500	$ 45,100	$ 737,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
G. ANIMAL DAMAGE CONTROL:					
FROM:					
General Fund				$105,500	$ 105,500
Animal Damage Control Fund				100,000	100,000
Agricultural Fees - Sheep Industry Regulation Fund		$ 200		100,000	100,200
TOTAL		$ 200		$305,500	$ 305,700
H. SHEEP COMMISSION:					
FROM:					
General Fund	$ 32,200	$ 5,300			$ 37,500
Agricultural Fees - Sheep Industry Regulation Fund	53,600	28,200			81,800
TOTAL	$ 85,800	$ 33,500			$ 119,300
I. SOIL CONSERVATION COMMISSION:					
FROM:					
General Fund	$ 1,045,300	$ 96,100	$ 40,000	$ 512,300	$ 1,693,700
Resource Conservation and Rangeland Development Fund	28,900	92,000		291,400	412,300
Federal Grant Fund	110,400	144,500			254,900
TOTAL	$ 1,184,600	$ 332,600	$ 40,000	$ 803,700	$ 2,360,900
GRAND TOTAL	$16,074,200	$4,322,500	$413,500	$1,725,100	$22,535,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Agriculture is authorized no more than one hundred ninety-three and thirty-one hundredths (193.31) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 338
(S.B. No. 1285)

AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER FOR FISCAL YEAR 1998; LIMITING CERTAIN BILLING RATES AND EXEMPTING CERTAIN PROGRAMS FROM BILLING RATE INCREASES; REQUIRING CERTAIN PURCHASES BE SUBJECT TO CERTAIN CONDITIONS; EXPRESSING LEGISLATIVE INTENT REGARDING THE STATEWIDE SYSTEMS OF THE STATE CONTROLLER; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; SETTING CONDITIONS FOR REAPPROPRIATIONS; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; APPROPRIATING ADDITIONAL FUNDS FOR FISCAL YEAR 1997; LIMITING CERTAIN BILLING RATES AND EXEMPTING CERTAIN PROGRAMS FROM BILLING RATE INCREASES; AND DECLARING AN EMERGENCY FOR SECTIONS 9 AND 10 OF THIS ACT.

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 according to the standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ACCOUNTING AND PAYROLL:					
FROM:					
General Fund	$1,270,800	$ 504,300	$ 22,000		$ 1,797,100
Budget Reserve Fund		357,700			357,700
Statewide Accounting Fund	578,000	$1,419,100	83,000		2,080,100
Employee Information System Fund	329,600	1,299,900	24,000		1,653,500
TOTAL	$2,178,400	$3,581,000	$ 129,000		$ 5,888,400
B. COMPUTER CENTER:					
FROM:					
Data Processing Services Fund	$2,441,700	$2,604,500	$1,545,000		$ 6,591,200
C. BOARD OF EXAMINERS:					
FROM:					
General Fund				$7,300	$ 7,300
GRAND TOTAL	$4,620,100	$6,185,500	$1,674,000	$7,300	$12,486,900

SECTION 2. It is legislative intent that this appropriation of moneys not result in billings to agencies exceeding 31¢ per transaction for Statewide Accounting billing purposes, and not exceeding $3.11 per employee per pay period for Statewide Payroll billing purposes. Rates are subject to final approval by the Board of Examiners according to Section 67-3524, Idaho Code, and are to be set for the period July 1, 1997, through June 30, 1998, by June 1, 1997. Programs funded with General Fund moneys that are subject to billing rates for Statewide Accounting or Statewide Payroll purposes are not to be billed for increased rates for the period July 1, 1997, through June 30, 1998. These costs have been incorporated into the Budget Reserve Fund enhancement that is directed to the State Controller's Office.

SECTION 3. Any purchases or obligations involving information technology items for the period July 1, 1997, through June 30, 1998, are to be submitted to and coordinated by the Information Resource Technology Management Council.

SECTION 4. It is legislative intent that the State Controller's Office statewide systems conform to Year 2000 requirements through the use of funds within the limitations of appropriations.

SECTION 5. It is legislative intent that an amount not to exceed $1,000 of the amounts appropriated, may be used at the discretion of the State Controller to assist in defraying expenses relating to or resulting from the discharge of the State Controller's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 6. There is hereby reappropriated to the State Controller, the unexpended and unencumbered balance of any appropriation made to the State Controller for the period July 1, 1996, through June 30, 1997, to be used for nonrecurring expenditures only for the period July 1, 1997, through June 30, 1998.

SECTION 7. The reappropriation granted in Section 6 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 1997, is zero, the reappropriation of General Funds in Section 6 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, 1997, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount of General Funds reappropriated in Section 6 of this act shall be in the proportion that the reappropriation for the State Controller bears to the total General Fund reappropriation authority granted to all state agencies.

SECTION 8. In accordance with Section 67-3519, Idaho Code, the State Controller is authorized no more than ninety-eight and eighty-five hundredths (98.85) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, for the programs specified in Section 1 of this act, unless specifically autho-

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

SECTION 9. In addition to the appropriation made in Section 1, Chapter 320, Laws of 1996, there is hereby appropriated to the State Controller the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
A. STATEWIDE ACCOUNTING AND PAYROLL:			
FROM:			
General Fund		$149,300	$149,300
Statewide Accounting Fund		157,900	157,900
Employee Information System Fund		73,200	73,200
TOTAL		$380,400	$380,400
B. COMPUTER CENTER:			
FROM:			
Data Processing Services Fund	$340,000		$340,000
GRAND TOTAL	$340,000	$380,400	$720,400

SECTION 10. It is legislative intent that Statewide Accounting and Payroll billing rates not exceed an increase of 14¢ per transaction for Statewide Accounting billing purposes and not exceed an increase of $1.49 per employee per pay period for Statewide Payroll billing purposes for the period July 1, 1996, through June 30, 1997. Programs funded with General Fund moneys that are subject to billing rates for Statewide Accounting or Statewide Payroll billing purposes are not to be billed for increased rates for the period July 1, 1996, through June 30, 1997. These costs have been incorporated into the General Fund supplemental that is directed to the State Controller's Office.

SECTION 11. An emergency existing therefor, which emergency is hereby declared to exist, Sections 9 and 10 of this act shall be in full force and effect on and after its passage and approval.

Approved March 24, 1997.

CHAPTER 339
(S.B. No. 1195, As Amended)

AN ACT

RELATING TO LICENSED PROFESSIONAL COUNSELORS REGISTRATION; AMENDING CHAPTER 34, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-3405A, IDAHO CODE, TO PROVIDE QUALIFICATIONS FOR LICENSURE AS A

LICENSED PASTORAL COUNSELOR, TO PROVIDE FOR CONTINUING EDUCATION, TO DEFINE TERMS, TO PROVIDE FOR ISSUANCE OF SEPARATE AND DISTINCT LICENSES TO LICENSED PASTORAL COUNSELORS AND TO PROVIDE APPLICATION OF THE CHAPTER TO LICENSED PASTORAL COUNSELORS.

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

SECTION 1. That Chapter 34, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-3405A, Idaho Code, and to read as follows:

54-3405A. QUALIFICATIONS FOR LICENSURE FOR LICENSED PASTORAL COUNSELORS. Licensure as a "licensed pastoral counselor" shall be restricted to persons who have successfully completed the following requirements who have applied for licensed pastoral counselors (L.Pas.C.) and:

(1) Holds a master of divinity (M.Div.) degree or doctoral degree with a major in pastoral counseling from an accredited university or religious institution with a requirement of sixty (60) semester credit hours of counseling related courses in a minimum of eight (8) of the following eleven (11) areas with the areas of study being specified by the American association of pastoral counselors (AAPC):

(a) Theories of personality and personality development;
(b) Theories of counseling and psychotherapy;
(c) Marriage and family dynamics and counseling;
(d) Group dynamics and counseling;
(e) Personality, culture and ethics;
(f) Psychology of religious experience;
(g) Pastoral assessment and treatment;
(h) Psychopathology;
(i) Theories of pastoral care;
(j) Research methods;
(k) Orientation to the helping professions.

(2) Completion of a practicum of supervised counseling experience of four hundred (400) contact hours, supervised at a ratio of one (1) hour of supervision for each ten (10) contact hours.

(3) Graduate studies shall have been at a university or institution which has been accredited by one (1) of the following: The middle states association of colleges and secondary schools, the New England state association of colleges and secondary schools, the north central association of colleges and secondary schools, the northwest association of colleges and secondary schools, the southern association of colleges and secondary schools or the western colleges association. The pastoral counselor program may also be accredited by the association of theological schools (ATS).

(4) Completion of two thousand (2,000) contact hours of postgraduate supervised counseling experience, with an approved supervisor. Approved supervisors include an American association of pastoral counselors approved supervisor, a licensed pastoral counselor, a licensed psychiatrist, a licensed psychologist, or a licensed professional counselor. The ratio of supervision to contact hours shall be one (1) to twenty (20).

(5) Successful completion of the national counselor examination as required by the board.

(6) Each licensed pastoral counselor must obtain twenty (20) contact hours of continuing education in an area that is approved by the board per year.

(7) Each licensed pastoral counselor shall adhere to the code of ethics of the American counseling association.

(8) The board shall have the option of employing a consultant to assist in the review of applications and in disciplinary actions. The cost of the consultation shall be included in the fee for the pastoral counselor license.

(9) The board may issue licenses to those persons meeting the qualifications for licensure as a licensed pastoral counselor (L.Pas.C) and the licensed pastoral counselor license shall be a separate and distinct license from the licensed professional counselor license.

(10) For the purposes of this chapter, fees and disciplinary actions, the terms "licensed pastoral counselor" and "licensed professional counselor" shall have the same meaning. The board may promulgate rules to implement the provisions of this section in compliance with chapter 52, title 67, Idaho Code.

Law Without Signature.

CHAPTER 340
(S.B. No. 1052)

AN ACT

RELATING TO CREATION OF A DIRECTORY OF NEW HIRES; AMENDING TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 72, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A STATEMENT OF PURPOSE, TO DEFINE TERMS, TO SPECIFY EMPLOYER REPORTING REQUIREMENTS PURSUANT TO THIS CHAPTER, TO AUTHORIZE THE USE OF NEW HIRE INFORMATION AS PROVIDED BY THIS CHAPTER, TO PROVIDE FOR THE PAYMENTS OF COSTS INCURRED AND TO AUTHORIZE THE PROMULGATION OF RULES; AND AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE THAT NEW HIRE INFORMATION COLLECTED PURSUANT TO CHAPTER 16, TITLE 72, IDAHO CODE, SHALL BE EXEMPT FROM DISCLOSURE.

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

SECTION 1. That Title 72, 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 72, Idaho Code, and to read as follows:

CHAPTER 16
STATE DIRECTORY OF NEW HIRES

72-1601. SHORT TITLE. This chapter shall be known and may be cited as the "Directory of New Hires Act."

72-1602. PURPOSE. This chapter establishes an automated state directory of new hires to be administered by the department of labor for the purpose of securing for this state the maximum benefits of the act of congress, approved August 22, 1996, known as the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996." The state directory of new hires provides a means for employers to assist in the state's efforts to prevent fraud in the welfare, worker's compensation, and unemployment insurance programs, to locate individuals to establish paternity, to locate absent parents who owe child support, and to collect support from those parents by reporting information concerning newly hired and rehired employees directly to a centralized state database.

72-1603. DEFINITIONS. As used in this chapter:

(1) "Date of hire" or "date of rehire" means the actual commencement of employment of an employee for wages or other remuneration.

(2) "Department" means the Idaho department of labor.

(3) "Director" means the director of the Idaho department of labor.

(4) "Employee" means an individual who is an employee within the meaning of 26 U.S.C. 3401. "Employee" does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting information with respect to the employee pursuant to this chapter could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(5) "Employer" has the meaning given such term in 26 U.S.C. 3401(d) and includes labor organizations and governmental entities, except for any department, agency or instrumentality of the United States. The term "employer" does not include a multistate employer who has notified the United States secretary of health and human services in writing that it will transmit new hire reports magnetically or electronically to a state other than Idaho.

(6) "Labor organization" shall have the meaning given such term in 29 U.S.C. 152(5), and includes any entity (also known as a "hiring hall") which is used by the organization and an employer to carry out requirements described in 29 U.S.C. 158(f)(3) or an agreement between the organization and the employer.

(7) "Rehire" means to re-employ an individual who was laid off, separated, furloughed, granted leave without pay or terminated from employment at least twelve (12) months prior to re-employment.

72-1604. EMPLOYER REPORTING REQUIREMENTS. (1) Effective October 1, 1997, an employer doing business in the state of Idaho shall report to the department the hiring or rehiring of an employee who works in the state. The report shall contain:

(a) The employee's name, address and social security number;

(b) The employer's name, address and the identifying number assigned to the employer under 26 U.S.C. 6109; and

(c) The employer's Idaho unemployment insurance account number, if any, and the employee's date of hire or rehire.

(d) Multistate employers that have notified the secretary of health and human services that they will transmit all new hire

reports to Idaho shall indicate in the reports whether each employee will be included in the employer's Idaho quarterly wage report for unemployment insurance purposes.

(2) An employer may report by submitting a copy of the employee's United States internal revenue service form W-4 (employee's withholding allowance certificate) with the information required in subsections (1)(c) and (d) of this section (if applicable) noted thereon, or by any other means authorized by the director. An employer may submit the report by mail, telefax, or any other means the director authorizes. If an employer submits a report by mail, the report shall be deemed submitted on the postmarked date. A report transmitted by any other means shall be deemed submitted on the date the department receives it.

(3) An employer shall submit its report not later than twenty (20) calendar days after the date of hire or rehire. Employers transmitting reports electronically shall submit two (2) transmissions each month, if necessary, not less than twelve (12) days nor more that sixteen (16) days apart.

(4) An employer is authorized and required by this chapter to disclose the information described in subsection (1) of this section and is not liable to the employee for the disclosure or subsequent use of the information pursuant to this chapter.

(5) Entry of employer information shall be made into a database maintained by the state directory of hires within five (5) business days of receipt from employers.

72-1605. USE OF NEW HIRE INFORMATION. (1) The information collected pursuant to this chapter shall be used only for the following purposes:

(a) The department of health and welfare shall use the information to assist in its administration of any public assistance program and for child support enforcement purposes.

(b) The department of labor shall transmit the information to the national directory of new hires and may use the information to administer programs under the employment security law.

(c) The state insurance fund and the industrial commission may use the information to administer the worker's compensation program.

(2) Agencies that obtain information collected pursuant to this chapter shall maintain the confidentiality of the information received, except as provided in this chapter. If any employee or agent of the state, in violation of the provisions of this chapter, discloses information collected pursuant to this chapter, he or she shall be guilty of a misdemeanor.

72-1606. COSTS. By written agreement, the department of health and welfare shall agree to pay the department of labor all costs incurred by the department of labor under this chapter that are attributable to the department of health and welfare, including the cost of establishing and maintaining the state directory of new hires. In the absence of such an agreement, the department of labor shall have no obligations or duties under this chapter except in its capacity as an employer that is required to report new hires. An agency

that obtains information pursuant to subsection (1)(c) of section 72-1605, Idaho Code, shall reimburse the department for any costs it incurs to provide the information.

72-1607. RULES. The director may promulgate rules to administer this chapter, pursuant to chapter 52, title 67, Idaho Code.

SECTION 2. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(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.

(3) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(4) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(5) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(6) Records relating to the appraisal of real property, timber, or mineral rights prior to its acquisition, sale or lease by a public agency.

(7) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(8) 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.

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a

library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(11) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

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

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

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

(e) Vital statistics records;

(f) Except as provided in this subsection, all information provided to a law enforcement agency for sex offender registration pursuant to the provisions of section 18-8306, Idaho Code:

(i) Such information shall be available upon request to a law enforcement agency; and

(ii) The information provided pursuant to the provisions of subsections (1) and (3) of section 18-8306, Idaho Code, shall be provided to any person upon written request. Such written request shall include the name, date of birth and social security number of the person for whom the information is requested.

(12) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(13) 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.

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

(15) 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.

(16) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(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.

(17) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(18) 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.

(19) 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.

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

(21) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(22) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(23) 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 men-

tally 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.

(24) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

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

(26) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(27) Records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile. If the juvenile is fourteen (14) years or older and is adjudicated guilty of an offense which would be a felony if committed by an adult, the name, offense of which the juvenile was adjudicated and disposition of the court shall be subject to disclosure. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(28) 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.

(29) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(30) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive

the provisions of confidentiality provided by this subsection.

(31) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(32) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(33) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(34) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(35) Information, records, including names and addresses of victims, or investigations of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(36) 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.

(37) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(38) The worker's compensation records of the Idaho industrial

commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(39) 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.

(40) 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.

(41) Records of laboratory test results provided by or retained by the department of agriculture's 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.

(42) 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.

(43) Records of the sheriff or department of law enforcement received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(44) 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.

(45) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(46) 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.

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

Law Without Signature.

CHAPTER 341
(S.B. No. 1145)

AN ACT

RELATING TO THE STATE'S RIGHT TO FARM ACT; AMENDING SECTION 22-4502, IDAHO CODE, TO DEFINE THE TERM NONAGRICULTURAL ACTIVITIES; AND AMENDING SECTION 22-4504, IDAHO CODE, TO PROVIDE THAT THE COUNTY PLANNING AND ZONING AUTHORITY MAY ADOPT A NUISANCE WAIVER PROCEDURE TO BE RECORDED WITH THE COUNTY RECORDER OR APPROPRIATE COUNTY RECORDING AUTHORITY PURSUANT TO RESIDENTIAL DIVISIONS OF PROPERTY.

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

SECTION 1. That Section 22-4502, Idaho Code, be, and the same is hereby amended to read as follows:

22-4502. DEFINITIONS. As used in this chapter:

(1) "Agricultural operation" includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities.

(2) "Nonagricultural activities," for the purposes of this chapter, means residential, commercial or industrial property development and use.

(3) "Improper or negligent operation" means that the agricultural

operation is not undertaken in conformity with federal, state and local laws and regulations, and adversely affects the public health and safety.

SECTION 2. That Section 22-4504, Idaho Code, be, and the same is hereby amended to read as follows:

22-4504. LOCAL ORDINANCES. No city, county, taxing district or other political subdivision of this state shall adopt any ordinance or resolution that declares any agricultural operation operated in accordance with generally recognized agricultural practices to be a nuisance nor shall any zoning ordinance that forces the closure of any such agricultural operation be adopted. Zoning and nuisance ordinances shall not apply to agricultural operations that were established outside the corporate limits of a municipality and then were incorporated into the municipality by annexation. The county planning and zoning authority may adopt a nuisance waiver procedure to be recorded with the county recorder or appropriate county recording authority pursuant to residential divisions of property.

Approved March 24, 1997.

CHAPTER 342
(S.B. No. 1287)

AN ACT

APPROPRIATING MONEYS TO THE SHEEP AND GOAT DISEASE INDEMNITY FUND; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated $20,000 from the General Fund to be deposited into the Sheep and Goat Disease Indemnity Fund.

SECTION 2. In addition to the appropriation made in Section 1, Chapter 294, Laws of 1996, there is hereby appropriated to the Department of Agriculture the following amount to be expended for the Sheep Commission Program according to the designated standard classification from the listed fund for the period from the effective date of this act through June 30, 1998:

FOR:	
Operating Expenditures	$20,000
FROM:	
Sheep and Goat Disease Indemnity Fund	$20,000

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

Approved March 24, 1997.

CHAPTER 343
(H.B. No. 7, As Amended)

AN ACT

RELATING TO GAMBLING; AMENDING SECTION 23-928, IDAHO CODE, TO CLARIFY THAT GAMBLING IS PROHIBITED IN ALL ESTABLISHMENTS LICENSED TO SELL ALCOHOLIC BEVERAGES OF ANY KIND AND TO PROVIDE AN EXEMPTION.

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

SECTION 1. That Section 23-928, Idaho Code, be, and the same is hereby amended to read as follows:

23-928. SALE AWAY FROM LICENSED PREMISES PROHIBITED -- GAMBLING PROHIBITED. (1) It shall be unlawful for any licensee to sell, give away, dispense, vend, or deliver any liquor in any fashion or by means or device, except upon the licensed premises.

(2) It shall be unlawful for any licensee granted a license under the authority of title 23, Idaho Code, to permit, conduct, play, carry on, open or cause to be opened any gaming in or upon the licensed premises or in or upon any premises directly connected by a door, hallway, or other means of access from the licensed premises~~;--provided;--however;-that-a-city-or-village-may-authorize-any-form-of-gaming-upon-the-premises;-or-premises-adjacent-thereto;-permitted-by--and licensed-under-the-laws-of-the-state-of-Idaho~~. Any licensee authorized under the authority of this title and who is also authorized by other Idaho law to conduct the lawful activities of lottery, bingo, raffles, and pari-mutuel betting on the licensed premises shall be exempt from the provisions of this subsection as long as the lawful activities are conducted in conformity with statute and rules promulgated pursuant thereto.

Approved March 24, 1997.

CHAPTER 344
(H.B. No. 17)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-1812, IDAHO CODE, TO REMOVE A LIMITATION THAT GROUP INSURANCE POLICIES EFFECTUATED AND DELIVERED OUTSIDE THIS STATE BUT COVERING STATE RESIDENTS ARE FILED FOR INFORMATIONAL PURPOSES ONLY AND TO REQUIRE FILING SUCH GROUP CERTIFICATES WITH THE DIRECTOR WITHOUT REQUIRING HIS REQUEST.

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

SECTION 1. That Section 41-1812, Idaho Code, be, and the same is hereby amended to read as follows:

41-1812. FILING, USE AND DISAPPROVAL OF FORMS. (1) No basic

insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or endorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with the director. This provision shall not apply to surety bonds, or to specially rated inland marine risks, nor to policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed~~, for the director's information only,~~ with the director ~~at his request~~. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be submitted with a certification, in such form as may be determined by the director, by an officer of the insurer that each policy, form, endorsement, or rider in use complies with Idaho law. The director shall have the power to examine such filings to determine whether the policies, forms, endorsements, and riders, as filed, comply with the certification of the insurer and with Idaho law relating to the content of such documents. Upon a determination that any document filed in accordance with this section does not comply with Idaho law, the director shall, in accordance with the Idaho administrative procedure act, prohibit the use of such policy, form, endorsement, rider or other document.

(3) The director may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

Approved March 24, 1997.

CHAPTER 345
(H.B. No. 19)

AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTIONS 6-1203, 6-1204, 6-1205, 6-1206, 36-2110 AND 36-2119, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS REGARDING REFERENCES TO REGULATIONS.

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

SECTION 1. That Section 6-1203, Idaho Code, be, and the same is hereby amended to read as follows:

6-1203. DUTIES OF AN OUTFITTER. All outfitters offering professional services in this state shall provide facilities, equipment, and services as advertised or as agreed upon between the outfitter and the participant. All services, facilities, and equipment provided by outfitters in this state shall conform to safety and other requirements set forth in chapter 21, title 36, Idaho Code, and by the rules ~~and regulations~~ promulgated by the Idaho outfitters and guides board created by chapter 21, title 36, Idaho Code.

SECTION 2. That Section 6-1204, Idaho Code, be, and the same is hereby amended to read as follows:

6-1204. DUTIES OF A GUIDE. Any guide providing personal services for an outfitter in this state shall conform to the standard of care expected of members of his profession and he shall comply with all duties and requirements placed on him by chapter 21, title 36, Idaho Code, and by the rules ~~and regulations~~ promulgated by the Idaho outfitters and guides board created by chapter 21, title 36, Idaho Code.

SECTION 3. That Section 6-1205, Idaho Code, be, and the same is hereby amended to read as follows:

6-1205. DUTIES OF PARTICIPANTS. It is recognized that some recreational activities conducted by outfitters and guides are hazardous to participants regardless of all feasible safety measures which can be taken. Participants shall have a duty to act as would a reasonably prudent man when engaging in recreational activities offered by licensed outfitters and guides in this state. Participants shall have a duty not to:

(a) Do any act which shall interfere with the running or operation of an outfitter's or guide's activities, when such activities conform to the rules ~~and regulations~~ of the Idaho outfitters and guides board and to the requirements of chapter 21, title 36, Idaho Code;

(b) Use any outfitter's or guide's equipment or facilities or services if the participant does not have the ability to use such facilities or equipment or services safely without instructions until the participant has requested and received sufficient instruction to permit safe usage;

(c) Engage in any harmful conduct, or willfully or negligently engage in any type of conduct which contributes to or causes injury to any person;

(d) Embark on any self-initiated activity without first informing the outfitter or guide of his intentions and receiving permission from the outfitter or guide to engage in such self-initiated activity.

SECTION 4. That Section 6-1206, Idaho Code, be, and the same is hereby amended to read as follows:

6-1206. LIABILITY OF OUTFITTERS AND GUIDES. (a) No licensed out-

fitter or guide acting in the course of his employment shall be liable to a participant for damages or injuries to such participant unless such damage or injury was directly or proximately caused by failure of the outfitter or guide to comply with the duties placed on him by chapter 21, title 36, Idaho Code, or by the rules ~~and regulations~~ of the Idaho outfitters and guides board, or by the duties placed on such outfitter or guide by the provisions of this chapter.

(b) The limitations on liability created by this chapter shall apply only to outfitters or guides appropriately licensed under the provisions of chapter 21, title 36, Idaho Code, and only when the outfitter or guide is acting within the course of his employment. In the event that there is damage or injury to a participant by the action of an outfitter or guide, and there is no exemption for liability for such outfitter or guide under the provisions of this act, the rules of negligence and comparative negligence existing in the laws of the state of Idaho shall apply.

SECTION 5. That Section 36-2110, Idaho Code, be, and the same is hereby amended to read as follows:

36-2110. OPERATIONS OF LICENSEES -- ADJUSTMENT OF AREA -- RULES ~~AND--REGULATIONS~~. (a) Possession of a valid license issued by the board shall be a prerequisite to acting as an outfitter or guide.

1. No more than one (1) person may operate as an outfitter or guide under one (1) license.
2. The operating area as set forth on the outfitter's license including any attachment thereto shall be the limit of such operations for each licensee, subject to subsection (b) below.

(b) The board may adjust the territorial scope of operations of any licensed outfitter, for reasons of game harvest, where territorial conflict exists between the big game operations of outfitters, or for the safety of persons utilizing the services of outfitters.

(c) The board shall adopt rules ~~and regulations~~ to carry out the provisions of this section.

SECTION 6. That Section 36-2119, Idaho Code, be, and the same is hereby amended to read as follows:

36-2119. BOARD ORDERS AND ~~REGULATIONS~~ RULES. (a) All rules~~, regulations~~ and orders adopted pursuant to the provisions of this chapter shall be made in accordance with chapter 52, title 67, Idaho Code.

(b) All rules~~, regulations~~ and orders made as herein provided shall have full force and effect as law and any person violating any such rule~~, regulation,~~ or order of the board, adopted and published as herein set forth, shall be guilty of a misdemeanor.

Approved March 24, 1997.

CHAPTER 346
(H.B. No. 20)

AN ACT

RELATING TO OUTFITTERS AND GUIDES; AMENDING SECTION 36-2114, IDAHO CODE, TO PROVIDE FOR NOTICE UPON FILING OF A CITATION OR FORMAL COMPLAINT.

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

SECTION 1. That Section 36-2114, Idaho Code, be, and the same is hereby amended to read as follows:

36-2114. REVOCATION OR SUSPENSION OF LICENSE -- REVIEW OF DENIAL OF LICENSE -- PROCEDURE. (a) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon information and recommendation of any person. All accusations must be made in writing and signed by a person familiar therewith and submitted to the board. Thereupon, the board, acting as a board, or through its executive director, shall make a preliminary investigation of all facts in connection with such charge. The board in its discretion may either decide to take no further action and the results of such investigation shall be subject to disclosure according to chapter 3, title 9, Idaho Code, or the board may decide to initiate proceedings to suspend or revoke the license of the outfitter or guide against whom a complaint has been filed, in which case the board shall set a time and place for hearing as provided in chapter 52, title 67, Idaho Code. Notice of such hearing shall be given to the licensee against whom ~~accusations have~~ a citation or formal complaint has been filed not later than one hundred eighty (180) days after the filing of such ~~accusations~~ citation or formal complaint. If, after full, fair and impartial hearing, the majority of the board shall find the accused has committed the violations alleged, the board may suspend the license for a period not to exceed one (1) year, or the board may order the license revoked. The board shall forthwith suspend or revoke such license in accordance with and pursuant to its order under the procedure established in chapter 52, title 67, Idaho Code.

(b) Any applicant aggrieved by a denial of his application in whole or in part for an outfitter's or guide's license by the board shall have twenty-one (21) days from the day of receiving such notice of denial in which to submit a written request for a hearing before the board to review such action. Upon receipt of such request, the board shall hold a hearing as provided in chapter 52, title 67, Idaho Code.

Approved March 24, 1997.

CHAPTER 347
(H.B. No. 51)

AN ACT
RELATING TO PENALTIES FOR FISH AND GAME VIOLATIONS; AMENDING SECTION 36-1401, IDAHO CODE, TO REVISE PENALTIES FOR SPECIFIED FISH AND GAME VIOLATIONS.

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

SECTION 1. That Section 36-1401, Idaho Code, be, and the same is hereby amended to read as follows:

36-1401. VIOLATIONS. (a) Infractions. Any person who pleads guilty to or is found guilty of a violation of the following provisions of the fish and game code or the following rules promulgated pursuant thereto is guilty of an infraction:

1. Statutes

(A) Take, transport, use or have in possession bait fish as set forth in section 36-902(d), Idaho Code.

(B) Chumming as set forth in section 36-902(e), Idaho Code.

(C) Nonresident child under the age of fourteen (14) years fishing without a valid license and not accompanied by a valid license holder as set forth in section 36-401(a)2., Idaho Code.

(D) Use or cut a hole larger than ten (10) inches in the ice for ice fishing as set forth in section 36-1509(a), Idaho Code.

(E) Store fish without required tags/permits/statements as set forth in section 36-503, Idaho Code.

(F) Own, possess or harbor any dog found running loose and which is tracking, pursuing, harassing or attacking a big game animal as set forth in section 36-1101(b)6.(B), Idaho Code.

(G) Hunt migratory waterfowl without having in possession a signed federal migratory bird hunting stamp as set forth in section 36-1102(b)2., Idaho Code.

(H) Hunt migratory waterfowl without having in possession a signed Idaho migratory waterfowl stamp as set forth in section 36-414(2), Idaho Code.

(I) Hunt upland game birds without having in possession an upland game permit as set forth in section 36-409(h), Idaho Code.

(J) Trap in or on, destroy or damage any muskrat house as provided in section 36-1103(c), Idaho Code.

(K) Hunt migratory game birds with a shotgun capable of holding more than three (3) shells as provided and incorporated in section 36-1102(b), Idaho Code.

2. Rules

(A) Fish from a raft or boat with motor attached in waters where motors are prohibited.

(B) Fish with hooks larger than allowed in that water.

(C) Fish with barbed hooks in waters where prohibited.
(D) Exceed any established bag limit for fish by one (1) fish, except bag limits for anadromous fish, ~~bag--limits,--by two--(2)--fish~~ landlocked chinook salmon, kamloops rainbow trout, lake trout, or bull trout.
(E) Fish with more than the approved number of lines or hooks.
(F) Fail to leave head and/or tail on fish while fish are in possession or being transported.
(G) Snag or hook fish other than in the head and fail to release, excluding anadromous fish.
(H) Fail to attend fishing line and keep it under surveillance at all times.
(I) Fail to comply with mandatory check and report requirements.
(J) Fail to leave evidence of sex or species attached as required on game birds.
(K) Hunt or take migratory game birds ~~while-in-possession-of shot--other--than--steel--shot-in-a-steel-shot-zone~~ or upland game birds with shot exceeding the allowable size.
(L) Fail to release, report or turn in nontarget trapped animals.
(M) Fail to complete required report on trapped furbearer.
(N) Fail to present required furbearer animal parts for inspection.
(O) Fail to attach identification tags to traps.
(P) ~~Trap-with-illegal-bait-or-bait-set-illegally~~ Possess not more than one (1) undersized bass.
(Q) Park or camp in a restricted area, except length of stay violations.
(R) Fail to leave evidence of sex attached as required on game animals.

(b) Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

(c) Felonies. Any person who pleads guilty to, is found guilty or is convicted of a violation of the following offenses shall be guilty of a felony:

1. Knowingly and intentionally selling or offering for sale or exchange, or purchasing or offering to purchase or exchange, any wildlife, or parts thereof, which has been unlawfully killed, taken or possessed.
2. Releasing into the wild, without a permit from the director, any of the following wildlife, whether native or exotic: ungulates, bears, wolves, large felines, swine, or peccaries.
3. Unlawfully killing, possessing or wasting of any combination of numbers or species of wildlife which has a single or combined reimbursable damage assessment of more than one thousand dollars ($1,000), as provided in section 36-1404, Idaho Code.
4. Conviction within five (5) years of three (3) or more violations of the provisions of this title, penalties for which include

either or both a mandatory license revocation or a reimbursable damage assessment.

Approved March 24, 1997.

CHAPTER 348
(H.B. No. 54)

AN ACT
RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1361, IDAHO CODE, TO GOVERN DEATH BENEFITS UNDER CERTAIN CONDITIONS WHEN PAID TO A SURVIVING SPOUSE.

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 shall equal the excess, if any, of the member's accumulated contributions at the time the benefit becomes payable over the aggregate of all retirement allowance payments ever made to the deceased member upon the death of the member, the contingent annuitant, and the optional death benefit recipient, if any. The death benefit of a 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 deceased member, the member's named contingent annuitant, and the optional death benefit recipient, if any.

(2) 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; otherwise, it 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 beneficiary may waive any death benefit otherwise payable and have it paid to the member's surviving spouse.

(3) Upon the death of a member who has at least five (5) years of credited service and is: (a) active; (b) inactive; or (c) a disability retired member; his beneficiary may ~~elect, in lieu of~~ waive any death benefit otherwise payable~~,~~ and have it paid to the member's surviving spouse, whereupon the surviving spouse may elect either an allowance ~~to be paid to the member's surviving spouse~~ 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 (1) 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 vested retirement, calculated as if he had separated from service immediately before his death.

Approved March 24, 1997.

CHAPTER 349
(H.B. No. 64)

AN ACT

RELATING TO SHOOTING PRESERVE LICENSES; AMENDING SECTION 36-2203, IDAHO CODE, TO RESTRICT A SHOOTING PRESERVE LICENSEE TO ONLY ONE LICENSE.

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

SECTION 1. That Section 36-2203, Idaho Code, be, and the same is hereby amended to read as follows:

36-2203. STANDARDS. (a) Each shooting preserve shall contain a minimum of one hundred sixty (160) acres in any tract of land (including water area, if any) and shall be restricted to not more than one thousand six hundred (1,600) acres (including water area, if any). Tracts included in the preserve do not need to be contiguous. A licensee shall be granted only one (1) shooting preserve license. Multiple licenses shall not be used to circumvent the maximum acreage restriction.

(b) The tract or tracts of land concerned must be owned or leased by the licensee; must be adaptable to use as a game breeding and/or controlled shooting area; must be of such nature that the game birds propagated and/or released thereon are not likely to become diseased and a menace to other wildlife; and the operation of a shooting preserve must be of such a nature as to not likely work a fraud upon persons paying a fee to hunt thereon.

(c) No license shall be granted for any shooting preserve, any portion of which is within one (1) mile of any state or federal park, wilderness area, refuge or wildlife management area operated by the state or federal government unless the commission finds that:

1. The state or federal park, wilderness area, refuge or wildlife management area is less than one hundred sixty (160) acres in size;
2. The state or federal park, wilderness area, refuge or wildlife management area is open to public hunting; and
3. Licensing the proposed shooting preserve will not affect the management of the state or federal park, wilderness area, refuge or wildlife management area.

Approved March 24, 1997.

CHAPTER 350
(H.B. No. 93, As Amended in the Senate)

AN ACT

RELATING TO EXEMPTIONS FROM SALES TAX; AMENDING SECTION 63-3622O, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM SALES AND USE TAXES FOR THE STATE OF IDAHO, ITS AGENCIES AND POLITICAL SUBDIVISIONS AND TO PROVIDE APPLICATION TO CERTAIN CONTRACTORS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 63-3622O, Idaho Code, be, and the same is hereby amended to read as follows:

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

(~~1~~a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest-protective associations and canal companies which are nonprofit organizations; and

(~~2~~b) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and

(~~3~~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 storage, preparation or service of food, but not including licensed motor vehicles or trailers; and

(~~4~~d) Sales of clothes to, donations of clothes to, and purchases of clothes by nonsale clothiers; and

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

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

(~~1~~a) "Educational institution" shall mean nonprofit colleges, universities, primary and secondary schools, the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educational function of an institution or collective group of institutions.

(~~2~~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.

(~~3~~c) "Health-related entities" shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, The Arc, Idaho Heart Association, Idaho Ronald McDonald House, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, Easter

Seals, and Idaho Special Olympics, together with said entities' local or regional chapters or divisions.

(~~4~~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.

(~~5~~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.

(~~6~~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.

(~~7~~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.

(~~8~~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) "Political subdivision" means:

(i) A governmental organization which:

1. Embraces a certain territory,

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

3. Has been delegated functions of government, and

4. Has the statutory power to levy taxes; or

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

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

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

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

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

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

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

(ix) An agency of the state of Idaho is an office or organization created by the constitution or statutes of this state and constituting a component part of the executive, judicial or legislative branch of the government of this state.

(3) The exemption granted by subsection (1)(e) 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.

(~~2~~4) The exemption granted by subsection (1)(e) of this section does not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract.

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

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

Approved March 24, 1997.

CHAPTER 351
(H.B. No. 114, As Amended, As Amended in the Senate)

AN ACT

RELATING TO HORSE RACING; AMENDING SECTION 54-2508, IDAHO CODE, TO PROVIDE A REQUIREMENT THAT TO RECEIVE A LICENSE TO CONDUCT LIVE RACE MEETS, A LICENSEE SHALL HAVE OBTAINED AN AGREEMENT WITH A HORSEMEN'S GROUP; AMENDING SECTION 54-2512, IDAHO CODE, TO PROVIDE A REQUIREMENT THAT TO RECEIVE A LICENSE TO SIMULCAST THE LICENSEE SHALL HAVE OBTAINED AN AGREEMENT WITH A HORSEMEN'S GROUP AND TO PROVIDE APPLICATION TO LIVE HORSE RACE LICENSEES WHO HAVE RECEIVED THEIR INITIAL LIVE HORSE RACE LICENSE AFTER APRIL 1, 1997; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 54-2508, Idaho Code, be, and the same is hereby amended to read as follows:

54-2508. LICENSE -- APPLICATION THEREFOR -- TYPE AND NUMBER OF RACES -- FEE PER DAY -- REFUND -- CANCELLATION -- HEARING. It shall be unlawful for any person to hold any race meet in this state without having first obtained and having in force and effect a license issued by the commission as in this act provided. Every person making application for a license to hold a race meet, under the provisions of this act, shall file an application with the commission which shall set forth the time, place and number of days such will continue, an agreement with a horsemen's group as the term "horsemen's group" is defined in section 54-2502, Idaho Code, and such other information as the commission may require. The agreement shall be reached voluntarily or pursuant to binding arbitration in conformance with chapter 9, title 7, Idaho Code, and shall address, but not be limited to, number of live race days and percentage of the live race and simulcast handle

that is dedicated to the live horse race purse structure. Race days agreed upon shall be submitted to the Idaho racing commission for its approval.

No person who has been convicted of any crime involving moral turpitude shall be issued a license of any kind, nor shall any license be issued to any person who has violated the terms or provisions of this act, or any of the rules of the commission, or who has failed to pay any of the fees, taxes or moneys required under the provisions of this act.

All applications to hold race meets shall be submitted to the commission which shall act upon such applications within thirty (30) days. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue.

The license issued shall specify the kind and character of the race meets to be held, the number of days the race meet shall continue and the number of races per day, which, in the event of live races, shall not be less than six (6). The licensee shall pay in advance of the scheduled race meet to the state treasurer a fee of not less than twenty-five dollars ($25.00) for each day of racing, which fees shall be placed in the public school income fund of the state of Idaho. Provided, that if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee held may be refunded the licensee, if the commission deems the reason for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this act, pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this act, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice in writing shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

SECTION 2. That Section 54-2512, Idaho Code, be, and the same is hereby amended to read as follows:

54-2512. PARI-MUTUEL BETTING -- OTHER BETTING ILLEGAL. (1) Any licensee conducting a race meet under this act may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct and supervise the use of the pari-mutuel system by patrons on the result of the races conducted by such licensee at such race meet and, upon written application by a licensee and approval by the commission, on the result of simulcast and/or televised races. The commission shall issue no more than one (1) license to simulcast per live race meet licensee and there shall be no more simulcasting sites in the state than there are licensed live race meet sites.

(2) (a) Licenses authorizing simulcast and/or televised races will be regulated by the commission, in addition to its other responsibilities, for the purpose of enhancing, promoting, and protecting the live race industry in the state of Idaho. No license authorizing simulcasting and/or televised races shall be

issued to or renewed for persons that are not also licensed to conduct live race meets in the state of Idaho. Persons applying for a simulcast and/or televised race license shall have annually conducted live race meets in the state of Idaho during the preceding two (2) calendar years, and have an agreement reached voluntarily or pursuant to binding arbitration in conformance with chapter 9, title 7, Idaho Code, with a horsemen's group as the term "horsemen's group" is defined in section 54-2502, Idaho Code. The agreement shall address, but not be limited to, number of live race days and percentage of the live race and simulcast handle that is dedicated to the live horse race purse structure. Race days agreed upon shall be submitted to the Idaho racing commission for its approval.

(b) In addition to the restrictions recited in paragraph (a) of this subsection, live horse race licensees that have had an average daily live race handle of more than sixty thousand dollars ($60,000) during the last calendar year in operation shall not have a license authorizing simulcasting and/or televised races issued or renewed if the licensee has not run in the calendar year immediately preceding the year for which the application for a license is being made for at least ninety percent (90%) of the number of live races that were conducted by that licensee in 1989.

(c) The commission may issue a license authorizing simulcast and/or televised races to a live horse race licensee only after that licensee has conducted at that facility a minimum of forty (40) live horse races in each of the two (2) calendar years preceding the application for such license. The requirements of this paragraph are only applicable to live horse race licensees who have received their initial live horse race license after April 1, 1997.

(3) Such pari-mutuel system conducted at such race meet shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto and to the rules of the commission, be held or construed to be unlawful, other statutes of this state to the contrary notwithstanding.

(4) The participation by a licensee in an interstate combined wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located.

(5) Pari-mutuel taxes or commissions may not be imposed on any amounts wagered in an interstate combined wagering pool other than amounts wagered within this jurisdiction.

(6) It shall be unlawful to conduct pool selling, book making, or to circulate handbooks, or to bet or wager on a race of any licensed race meet, other than by the pari-mutuel system; and it shall further be unlawful knowingly to permit any minor to use the pari-mutuel system.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after April 1, 1997.

Approved March 24, 1997.

CHAPTER 352
(H.B. No. 122)

AN ACT

RELATING TO CITY ORDINANCES FOR INITIATIVE AND REFERENDUM; AMENDING SECTION 50-501, IDAHO CODE, TO SPECIFY THE PETITION SIGNATURE REQUIREMENTS FOR CITY ORDINANCES FOR INITIATIVE AND REFERENDUM.

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

SECTION 1. That Section 50-501, Idaho Code, be, and the same is hereby amended to read as follows:

50-501. INITIATIVE AND REFERENDUM. The city council of each city shall provide by ordinance for direct legislation by the people through the initiative and referendum. Minimum requirements of the ordinance adopted shall be as follows: (1) petitioners for initiative or referendum shall be equal to twenty percent (20%) of the total number of ~~voters registered to vote~~ electors who cast votes at the last general election in the city; (2) petitions for referendum shall be filed not less than sixty (60) days following the final adoption of the ordinance to be subject to referendum; (3) a special election for initiative or referendum shall be provided as prescribed in section 34-106, Idaho Code; (4) requirements for signature, verification of valid petitions, printing of petition, and time limits, except as expressly modified herein, shall be as nearly as practicable as provided in sections 34-1701 through 34-1705, Idaho Code. This section does not apply to bond elections.

Approved March 24, 1997.

CHAPTER 353
(H.B. No. 123)

AN ACT

RELATING TO THE DISTRIBUTION OF RACING PROCEEDS; AMENDING SECTION 54-2513, IDAHO CODE, TO PROVIDE FOR THE DISTRIBUTION OF MONEYS IN EXCESS OF FOUR HUNDRED THOUSAND DOLLARS AT THE END OF THE FISCAL YEAR THAT IS IN THE RACING COMMISSION FREE FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 54-2513, Idaho Code, be, and the same is hereby amended to read as follows:

54-2513. HORSE RACING -- DISTRIBUTIONS OF DEPOSITS -- BREAKAGE. (A) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one hundred thousand dollars ($100,000) shall distribute all sums depos-

ited in any pool as follows:

(1) Eighty-two per cent (82%) of any win, place or show pool to the winner thereof, and eighteen per cent (18%) to the licensee;

(2) Seventy-seven and one-quarter per cent (77.25%) of all two (2) horse exotic wagers including, but not limited to, daily doubles and quinellas to the winner thereof, three-quarters of one per cent (.75%) to the racing commission for deposit in the racing commission account, and twenty-two per cent (22%) to the licensee;

(3) Seventy-five and one-quarter per cent (75.25%) of all three (3) or more horse exotic wagers including, but not limited to, trifecta and twin-trifecta to the winner thereof, three-quarters of one per cent (.75%) to the racing commission for deposit in the racing commission account, and twenty-four per cent (24%) to the licensee.

(B) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one hundred thousand dollars ($100,000) shall retain the sums deposited in any pool as required in subsection (A) of this section, for distribution and payment based upon gross daily receipts as follows:

(1) One and one-quarter per cent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account, which is hereby created in the dedicated fund.

(2) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, which is hereby created in the dedicated fund, for further distribution to certain Idaho horse race tracks, defined as follows:

a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have an average daily handle of less than sixty thousand dollars ($60,000);

b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during the year of distribution.

All moneys in the track distribution account are hereby appropriated to the commission for payment as required by this section. Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, which is hereby created in the dedicated fund, for payment by the commission in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund.

All moneys in the breed distribution account are hereby appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) From the balance of gross daily receipts remaining with the licensee after the distributions required in subsection (B)(1), (2), and (3) of this section from horse races, the following amounts shall be paid or retained:

a. From the first $20,000 of gross daily receipts, the licensee shall retain the entire amount;

b. From the next $10,000 of gross daily receipts (gross daily receipts between $20,000 and $30,000), the public school income fund and the equine education account shall each receive one-eighth of one per cent (.125%), and the licensee shall retain the balance;

c. From the next $10,000 of gross daily receipts (gross daily receipts between $30,000 and $40,000), the public school income fund and the equine education account shall each receive sixty-two and one-half hundredths per cent (.625%), and the licensee shall retain the balance;

d. From all amounts of over $40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive one and one-eighth per cent (1.125%), and the licensee shall retain the balance.

The public schools' and the equine education account's share shall be paid by the licensee to the racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(C) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle of one hundred thousand dollars ($100,000) or less shall distribute all sums deposited in any pool as follows:

(1) Seventy-seven per cent (77%) of any win, place or show pool to the winner thereof, and twenty-three per cent (23%) to the licensee;

(2) Seventy-six and one-quarter per cent (76.25%) of all other pools to the winner thereof, three-quarters of one per cent (.75%) to the racing commission for deposit in the racing account, and twenty-three per cent (23%) to the licensee.

(D) Each licensee conducting the pari-mutuel system for live and simulcast horse races shall retain twenty-three per cent (23%) of all sums deposited in any pool, for distribution and payment based upon gross daily receipts as follows:

(1) One and one-quarter per cent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account.

(2) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, for further distribution to certain Idaho horse race tracks, defined as follows:

a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have an average daily handle of less than sixty thousand dollars ($60,000);

b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during

the year of distribution.

All moneys in the track distribution account are hereby appropriated to the commission for payment as required by this section. Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, for payment by the commission in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund. All moneys in the breed distribution account are hereby appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) Twenty and three-quarters per cent (20.75%) of gross daily receipts from horse races shall be paid or retained as follows:

a. From the first $20,000 of gross daily receipts, the licensee shall retain twenty and three-quarters per cent (20.75%);

b. From the next $10,000 of gross daily receipts (gross daily receipts between $20,000 and $30,000), the public school income fund and the equine education account shall each receive one-eighth of one per cent (.125%), and the licensee shall retain twenty and one-half per cent (20.50%);

c. From the next $10,000 of gross daily receipts (gross daily receipts between $30,000 and $40,000), the public school income fund and the equine education account shall each receive sixty-two and one-half hundredths per cent (.625%), and the licensee shall retain nineteen and one-half per cent (19.50%);

d. From all amounts of over $40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive one and one-eighth per cent (1.125%), and the licensee shall retain eighteen and one-half per cent (18.50%).

The public schools' share and the equine education account's share shall be paid by the licensee to the racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(E) Each licensee may retain the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as breakage, and the total amount of unclaimed tickets at the termination of the time allowed by rule of the commission.

(F) If the fiscal year-end balance in the racing commission free fund exceeds $400,000, the excess shall be distributed as follows:

(1) Sixty per cent (60%) shall be paid for owner-breeder awards:

a. Fifty per cent (50%) of this amount shall be deposited in the Idaho horse breeders' and owners' award account and shall be distributed by the racing commission annually, but not later than December 15 of each year, to the breeders of Idaho bred winners based on the number of live races by each breed for the current calendar year; and

b. Fifty per cent (50%) of all moneys deposited in the Idaho horse breeders' and owners' award account shall be distributed by the racing commission annually, but not later than December 15 of each year, in equal amounts to owners of Idaho bred horse race winners.

(2) Forty per cent (40%) shall be paid to all Idaho licensed horse racetracks for the purpose of purse enhancement. Purse enhancement funds shall be disbursed based on the number of live race dates held the preceding calendar year.

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 24, 1997.

CHAPTER 354
(H.B. No. 142)

AN ACT

RELATING TO REGULATION OF INSURANCE; AMENDING SECTION 41-340, IDAHO CODE, TO REMOVE THE AGGREGATE BASIS FOR RETALIATION OF EXCESS FEES AND OBLIGATIONS CHARGED BY OTHER STATES AND REPLACE IT WITH A PER ITEM BASIS, TO CLARIFY APPLICATION, AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-340, Idaho Code, be, and the same is hereby amended to read as follows:

41-340. RETALIATORY PROVISION. (1) The purpose of this section is to aid in the protection of insurers formed under the laws of Idaho and transacting insurance in other states or countries against discriminatory or onerous requirements under the laws of such states or countries or the administration thereof.

(2) When by or pursuant to the laws of any other state or foreign country or province any taxes~~, licenses and other fees,~~ in the aggregate, ~~and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions~~ are or would be imposed upon Idaho insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes~~, licenses and other fees,~~ in the aggregate, ~~or which are in excess of the fines, penalties, deposit~~

~~requirements--or--other--obligations,--prohibitions,--or--restrictions~~ directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes~~,~~ ~~licenses-and-other-fees,~~ in the aggregate, ~~or--fines,--penalties--or deposit--requirements-or-other-material--obligations,-prohibitions,-or restrictions-of-whatever-kind~~ shall be imposed by the director upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Idaho. Any tax~~,--license--or-other-fee-or-other-obligation~~ imposed by any city, county, or other political subdivision or agency of such other state or country on Idaho insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

(3) When pursuant to the laws of a state, foreign country or province any obligation is or would be imposed upon Idaho insurers or their agents or representatives, in excess of obligations imposed upon similar insurers or their agents or representatives of another state or country, so long as the laws of the state or country imposing the obligation continue in force or are applied, the same obligation may be imposed by the director upon insurers or their agents or representatives of such other states or countries doing business or seeking to do business in Idaho. Any obligation imposed by any city, county, or other political subdivision or agency of another state or country on Idaho insurers or their agents or representatives shall be deemed to be imposed by the other state or country within the meaning of this section. For purposes of this section, the term "obligation" shall mean any license, fee, fine, penalty, deposit requirement or other obligation, prohibition or restriction.

(4) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance ~~other-than-property-insurance~~; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the director in determining the propriety and extent of retaliatory action under this section.

(~~4~~5) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, or a province thereof, shall be that state designated by the insurer in writing filed with the director at time of admission to this state or within six (6) months after the effective date of this code, whichever date is the later, and may be any one (1) of the following states:

(a) That in which the insurer was first authorized to transact insurance;

(b) That in which is located the insurer's principal place of business in the United States;

(c) That in which is held the largest deposit of trusteed assets of the insurer for the protection of its ~~policy-holders~~ policyholders in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of

business in the United States.

(56) The domicile of an insurer formed under the laws of Canada or a province thereof shall be as provided in section 41-108(1), Idaho Code.

Approved March 24, 1997.

CHAPTER 355
(H.B. No. 144)

AN ACT

RELATING TO MOTOR VEHICLE BUMPER HEIGHT REQUIREMENTS; AMENDING SECTION 49-123, IDAHO CODE, TO DEFINE "MULTIPURPOSE PASSENGER VEHICLE" AND "PASSENGER CAR"; AND AMENDING CHAPTER 9, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-966, IDAHO CODE, TO ESTABLISH REQUIREMENTS FOR MOTOR VEHICLE BUMPER HEIGHTS.

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

SECTION 1. That Section 49-123, Idaho Code, be, and the same is hereby amended to read as follows:

49-123. DEFINITIONS -- V.

(1) "Variable load suspension axle" means an axle or axles designed to support a part of the vehicle and load and which can be regulated to vary the amount of load supported by such an axle or axles and which can be deployed or lifted by the operator of the vehicle. See also section 49-117, Idaho Code.

(a) "Fully raised" means that the variable load suspension axle is in an elevated position preventing the tires on such axle from having any contact with the roadway.

(b) "Fully deployed" means that the variable load suspension axle is supporting a portion of the weight of the loaded vehicle as controlled by the preset pressure regulator valve.

(2) "Vehicle" means:

(a) General. Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(b) Authorized emergency vehicle. Vehicles operated by any fire department or law enforcement agency of the state of Idaho or any political subdivision of the state, ambulances, vehicles belonging to personnel of voluntary fire departments while in performance of official duties only, vehicles belonging to, or operated by EMS personnel certified or otherwise recognized by the EMS bureau of the Idaho department of health and welfare while in the performance of emergency medical services, sheriff's search and rescue vehicles which are under the immediate supervision of the county sheriff, wreckers which are engaged in motor vehicle recovery operations and are blocking part or all of one or more lanes of traffic, other emergency vehicles designated by the director of the department of law enforcement or vehicles authorized by the

Idaho transportation board and used in the enforcement of laws specified in section 40-510, Idaho Code, pertaining to vehicles of ten thousand (10,000) pounds or greater.

(c) Commercial vehicle or commercial motor vehicle. For the purposes of chapter 3 of this title, (driver licenses), a motor vehicle or combination of motor vehicles designed or used to transport passengers or property if the motor vehicle:

1. Has a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds inclusive of a towed unit with a manufacturer's gross vehicle weight rating (GVWR) of more than ten thousand (10,000) pounds; or

2. Has a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds; or

3. Is designed to transport sixteen (16) or more people, including the driver; or

4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the hazardous material transportation act and which require the motor vehicle to be placarded under the hazardous materials regulations (49 CFR part 172, subpart F).

For the purposes of chapter 4 of this title (motor vehicle registration), a vehicle or combination of vehicles of a type used or maintained for the transportation of persons for hire, compensation or profit, or the transportation of property for the owner of the vehicle, or for hire, compensation, or profit, and shall include fixed load specially constructed vehicles exceeding the limits imposed by chapter 10, title 49, Idaho Code, and including drilling rigs, construction, drilling and wrecker cranes, log jammers, log loaders, and similar vehicles which are normally operated in an overweight or oversize condition or both, but shall not include those vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code, or exempted by section 49-426, Idaho Code. A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen (15) persons, including the driver, shall not be a "commercial vehicle" under the provisions of this title relating to equipment requirements, rules of the road, or registration.

(d) Farm vehicle. A vehicle or combination of vehicles owned by a farmer or rancher, which are operated over public highways, and used exclusively to transport unprocessed agricultural, dairy or livestock products raised, owned and grown by the owner of the vehicle to market or place of storage; and shall include the transportation by the farmer or rancher of any equipment, supplies or products purchased by that farmer or rancher for his own use, and used in the farming or ranching operation or used by a farmer partly in transporting agricultural products or livestock from the farm of another farmer that were originally grown or raised on the farm, or when used partly in transporting agricultural supplies, equipment, materials or livestock to the farm of another farmer for use or consumption on the farm but not transported for hire, and shall not include vehicles of husbandry or vehicles registered pursuant to sections 49-402 and 49-402A, Idaho Code.

(e) Foreign vehicle. Every vehicle of a type required to be registered under the provisions of this title brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(f) Glider kit vehicle. Every large truck manufactured from a kit manufactured by a manufacturer of large trucks which consists of a frame, cab complete with wiring, instruments, fenders and hood and front axles and wheels. The "glider kit" is made into a complete assembly by the addition of the engine, transmission, rear axles, wheels and tires.

(g) Motor vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.

(h) Multipurpose passenger vehicle (MPV). For the purposes of section 49-966, Idaho Code, a motor vehicle designed to carry ten (10) or fewer persons which is constructed either on a truck chassis or with special features for occasional off-road operation.

(i) Noncommercial vehicle. For the purposes of chapter 4 of this title, (motor vehicle registration), a noncommercial vehicle shall not include those vehicles required to be registered under sections 49-402 and 49-402A, Idaho Code, and means all other vehicles or combinations of vehicles which are not commercial vehicles or farm vehicles, but shall include motor homes. A noncommercial vehicle shall include those vehicles having a combined gross weight not in excess of sixty thousand (60,000) pounds and not held out for hire, used for purposes related to private use and not used in the furtherance of a business or occupation for compensation or profit or for transporting goods for other than the owner.

(j) Passenger car. For the purposes of section 49-966, Idaho Code, a motor vehicle, except a multipurpose passenger vehicle, motorcycle or trailer, designed to carry ten (10) or fewer persons.

(~~i~~k) Reconstructed or repaired vehicle. Every vehicle that has been rebuilt or repaired using like make and model parts and visually appears as a vehicle that was originally constructed under a distinctive manufacturer. This includes a salvage vehicle which is damaged to the extent that a "reconstructed vehicle" or "repaired vehicle" brand is required, and other vehicles which have been reconstructed by the use of a kit designed to be used to construct an exact replica of a vehicle which was previously constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles. A glider kit vehicle is not a reconstructed vehicle.

(~~j~~l) Salvage vehicle. Any vehicle for which a salvage certificate, salvage bill of sale or other documentation showing evidence that the vehicle has been declared salvage or which has been damaged to the extent that the owner, or an insurer, or other person acting on behalf of the owner, determines that the cost of parts and labor minus the salvage value makes it uneconomical to repair or rebuild. When an insurance company has paid money or has made

other monetary settlement as compensation for a total loss of any motor vehicle, such motor vehicle shall be considered to be a salvage vehicle.

(~~k~~m) Specially constructed vehicle. Every vehicle of a type required to be registered not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction and cannot be visually identified as a vehicle produced by a particular manufacturer. This includes:

1. A vehicle that has been structurally modified so that it does not have the same appearance as a similar vehicle from the same manufacturer; or
2. A vehicle that has been constructed entirely from homemade parts and materials not obtained from other vehicles; or
3. A vehicle that has been constructed by using major component parts from one or more manufactured vehicles and cannot be identified as a specific make or model; or
4. A vehicle constructed by the use of a custom kit that cannot be visually identified as a specific make or model.

(~~l~~n) Total loss vehicle. Every vehicle that is deemed to be uneconomical to repair due to scrapping, dismantling or destruction. A total loss shall occur when an insurance company or any other person pays or makes other monetary settlement to the owner when it is deemed to be uneconomical to repair the damaged vehicle. The compensation for total loss as defined herein shall not include payments by an insurer or other person for medical care, bodily injury, vehicle rental or for anything other than the amount paid for the actual damage to the vehicle.

(3) "Vehicle identification number." (See "Identifying number", section 49-110, Idaho Code)

(4) "Vehicle salesman" means any person who, for a salary, commission or compensation of any kind, is employed either directly or indirectly, or regularly or occasionally by any dealer to sell, purchase or exchange, or to negotiate for the sale, purchase or exchange of vehicles. (See also "full-time salesman", section 49-107, Idaho Code, and "part-time salesman", section 49-117, Idaho Code)

(5) "Veteran." (See section 65-509, Idaho Code)

(6) "Violation" means a conviction of a misdemeanor charge involving a moving traffic violation, or an admission or judicial determination of the commission of an infraction involving a moving traffic infraction, except bicycle infractions.

SECTION 2. That Chapter 9, 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 49-966, Idaho Code, and to read as follows:

49-966. MOTOR VEHICLE BUMPER HEIGHT REQUIREMENTS. (1) With the exception of motor vehicles registered pursuant to section 49-406, 49-406A, 49-407 or 49-408, Idaho Code, or motor vehicles where the original or predominant body configuration of the motor vehicle, provided by a recognized manufacturer, did not include a front or rear bumper or bumpers for vehicles meeting the original specifications of

a recognized manufacturer, a motor vehicle shall be equipped with a bumper on both the front and rear of the vehicle.

(2) Bumpers, unless specifically exempt in subsection (1) of this section, shall be at least four and one-half (4 1/2) inches in vertical height centered on the vehicle's centerline by bolting or welding to the vehicle frame as originally installed by the vehicle manufacturer. Bumpers shall be horizontal load bearing and attach to the vehicle to effectively transfer energy when impacted and shall extend in width to the originally manufactured tread width for the vehicle.

(3) The maximum bumper heights for a vehicle shall be determined by vehicle class and the vehicle's gross vehicle weight rating (GVWR). Maximum bumper height is the vertical distance between the ground and the highest point on the bottom of the bumper and shall be measured when the vehicle is laden on a level surface with the vehicle's tires inflated to the manufacturer's recommended pressure. For vehicles exempted from the bumper requirements for reasons stated in subsection (1) of this section, a maximum frame elevation measurement shall be made to the bottom of the frame rail. Maximum heights are as follows:

Vehicle Class	Maximum Height	
	Front	Rear
Passenger Cars	22 inches	22 inches
Trucks and MPVs		
4,500 or less lbs. GVWR	24 inches	26 inches
4,501 to 7,500 lbs. GVWR	27 inches	29 inches
7,501 to 10,000 lbs. GVWR	28 inches	30 inches
Four-wheel drive or dual wheel with a 10,000 or less lbs. GVWR	30 inches	31 inches

(4) Vehicles which do not meet the requirements of this section on July 1, 1997, must be brought into compliance by July 1, 1998.

Approved March 24, 1997.

CHAPTER 356
(H.B. No. 159)

AN ACT

RELATING TO REGISTRATION OF ELECTORS; AMENDING SECTION 34-404, IDAHO CODE, TO PROVIDE WHEN THE REGISTRATION OF A QUALIFIED PERSON OCCURS; AND AMENDING SECTION 34-408A, IDAHO CODE, TO REVISE THE PROCEDURES FOR ELECTION DAY REGISTRATION.

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

SECTION 1. That Section 34-404, Idaho Code, be, and the same is hereby amended to read as follows:

34-404. REGISTRATION OF ELECTORS. All electors must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and complete registration card is received in the office of the county

clerk or is received at the polls pursuant to section 34-408A, Idaho Code.

SECTION 2. That Section 34-408A, Idaho Code, be, and the same is hereby amended to read as follows:

34-408A. ELECTION DAY REGISTRATION. An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing a registration card, making an oath in the form prescribed by the secretary of state and providing proof of residence. An individual may prove residence for purposes of registering by:

(1) Showing a driver's license or Idaho identification card issued through the department of transportation; or

(2) Showing any document ~~approved by the secretary of state as proper identification~~ which contains a valid address in the precinct together with a picture identification card; or

(3) Showing a current valid student identification card from a post-secondary educational institution in Idaho accompanied with a current student fee statement that contains the student's valid address in the precinct together with a picture identification card.~~;~~ or

~~(4) Having a voter who is registered to vote in the precinct sign an oath in the presence of the election judge vouching that the voter personally knows that the individual is a resident of the precinct. A registered voter shall not vouch for more than one (1) individual on election day. A voter who has registered on election day may not sign a proof of residence oath vouching for any other individual on that election day.~~

Election day registration provided in this section shall apply to all elections conducted under title 34, Idaho Code, and to school district and municipal elections. ~~In those political subdivisions that do not vote by precinct a voter who is registered in the political subdivision may vouch for an election day registrant as provided in subsection (4) of this section.~~

An individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in section 34-1006, Idaho Code.

Approved March 24, 1997.

CHAPTER 357
(H.B. No. 162, As Amended)

AN ACT

RELATING TO DRIVER'S LICENSES; AMENDING SECTION 49-306, IDAHO CODE, TO INCREASE THE FEE FOR A CLASS D SKILLS TEST, TO PROVIDE FOR DEPOSIT OF THE FEE AND TO CLARIFY THAT EXAMINATION FOR A CLASS A, B OR C DRIVER'S LICENSE MAY BE CONDUCTED BY A PRIVATE CONTRACTOR; AMENDING SECTION 49-313, IDAHO CODE, TO PROVIDE THAT AUTHORIZED AGENTS OF THE DEPARTMENT MAY CONDUCT EXAMINATIONS FOR DRIVER'S LICENSES

AND PERMITS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-314, IDAHO CODE, TO PROVIDE THAT AUTHORIZED AGENTS SHALL BE CERTIFIED BY THE IDAHO TRANSPORTATION DEPARTMENT TO ADMINISTER THE SKILLS TEST FOR CLASS D DRIVER'S LICENSES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE OR INSTRUCTION PERMIT. (1) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. Officers and employees of the department and sheriffs and their deputies are authorized to administer the oaths without charge. Every application for a permit or driver's license shall be accompanied by the following fee, none of which is refundable:

(a) Class A, B, C license with endorsements $24.50
(b) Class D license $20.50
(c) Class A, B, C instruction permit $15.50
(d) Class D instruction permit $11.50
(e) Duplicate driver's license or permit issued under section 49-318, Idaho Code $11.50
(f) Driver's license extension issued under section 49-319, Idaho Code ..... $ 6.50
(g) License classification change (upgrade) $15.50
(h) Endorsement addition $11.50
(i) Class A, B, C skills tests $35.00
(j) Class D skills test ..... $~~3~~15.00
(k) Motorcycle endorsement skills test ..... $ 5.00
(l) Knowledge test ..... $ 3.00
(m) Seasonal driver's license $23.50
(n) One time motorcycle "M" endorsement $11.50
(o) Motorcycle endorsement instruction permit $11.50

(2) Every application shall state the full name, date of birth, place of birth, sex, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and for a class A, B, or C driver's license or seasonal driver's license the applicant's social security number as verified by the applicant's social security card. A driver's license or instruction permit issued on and after January 1, 1993, shall not contain an applicant's social security number. Applications on file shall be exempt from disclosure except for inquiries from agencies or institutions authorized to obtain such information by federal law or regulation, from peace officers or from jury commissioners. Every application shall also state whether the applicant has previously been licensed as a driver, and if so, when and by what state or country, and whether a driver's license or privileges have ever been suspended, revoked, denied, disqualified, cancelled or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, denial, disqualification, cancellation or refusal

and the applicant's oath that all information is correct as signified by the applicant's signature. The applicant may be required to submit proof of identity and date of birth as set forth in a certified copy of his birth certificate and other satisfactory evidence to satisfy the issuing officer or the department. If an applicant for a driver's training instruction permit cannot provide a certified copy of his birth certificate at the time of application, the department may issue a temporary driver's training instruction permit in accordance with the provisions of section 49-305, Idaho Code.

(3) Whenever an application is received from a person previously licensed in another jurisdiction, the department shall request a copy of the driver's record from the other jurisdiction and shall contact the national driver register. When received, the driver's record from the previous jurisdiction shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(4) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(5) The department shall contact and notify the commercial driver license information system of the proposed application for a class A, B or C driver's license to insure identification of the person and to obtain clearance to issue the license.

(6) When the fees required under this section are collected by a county officer, they shall be paid over to the county treasurer not less often than monthly, who shall immediately:

(a) Deposit an amount equal to five dollars ($5.00) from each driver's license or instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal driver's license and additional endorsement in the current expense fund; and

(b) Deposit two dollars and fifty cents ($2.50) from each motorcycle endorsement and motorcycle endorsement instruction permit fee in the current expense fund; and

(c) Deposit an amount equal to three dollars ($3.00) from each fee for a knowledge test ~~or class D skills test~~ in the current expense fund; and

(d) Deposit an amount equal to five dollars ($5.00) from each fee for a motorcycle endorsement skills test in the current expense fund; provided however, if a contractor administers the skills test he shall be entitled to the five dollar ($5.00) fee; ~~and~~

(e) Remit the remainder to the state treasurer; and

(f) Deposit eleven dollars and fifty cents ($11.50) from each fee for a class D skills test into the county current expense fund, unless the test is administered by a department-approved contractor, in which case the contractor shall be entitled to eleven dollars and fifty cents ($11.50) of each fee.

(7) When the fees required under this section are collected by a state officer or agency, they shall be paid over to the state treasurer.

(8) The state treasurer shall distribute the moneys received from fees imposed by the provisions of this section, whether collected by a county officer or by a state officer or agency as follows:

(a) Two dollars ($2.00) of each fee for a driver's license or seasonal driver's license shall be deposited in the emergency medical services account II created in section 39-146A, Idaho Code; and

(b) Sixteen dollars and fifty cents ($16.50) of each fee for a seasonal or class A, B, or C driver's license shall be deposited in the state highway account; and

(c) Ten dollars and fifty cents ($10.50) of each fee for a class A, B, or C instruction permit or driver's license classification change shall be deposited in the state highway account; and

(d) Six dollars and fifty cents ($6.50) of each fee for a duplicate seasonal or class A, B, or C driver's license, class A, B, or C driver's license extension, or additional endorsement shall be deposited in the state highway account; and

(e) Four dollars ($4.00) of each fee for a motorcycle endorsement and motorcycle endorsement instruction permit shall be deposited in the state highway account; and

(f) Five dollars and thirty cents ($5.30) of each fee for a class D driver's license shall be deposited in the driver training account; and

(g) Seven dollars and twenty cents ($7.20) of each fee for a class D driver's license shall be deposited in the highway distribution account; and

(h) Two dollars and sixty cents ($2.60) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the driver training account; and

(i) Three dollars and ninety cents ($3.90) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the highway distribution account; and

(j) Five dollars ($5.00) of each fee for a class A, B, or C skills test shall be deposited in the state highway account; and

(k) One dollar ($1.00) ~~for~~ of each fee for a class A, B, C or D driver's license shall be deposited in the motorcycle safety program fund established in section 33-4804, Idaho Code.

(l) Three dollars and fifty cents ($3.50) of each fee for a class D skills test shall be deposited into the state highway account.

(9) The contractor administering ~~the~~ a class A, B, or C skills test shall be entitled to thirty dollars ($30.00) of the skills test fee. A contractor administering ~~the~~ a class A, B, or C skills test may collect an additional fee for the use of the contractor's vehicle for the skills test.

(10) The department may issue seasonal class B or C driver's licenses that:

(a) Will only be valid for driving commercial vehicles that normally require class B or C commercial driver's licenses;

(b) Will be valid for seasonal periods that begin on the date of issuance and that are not to exceed one hundred eighty (180) days in a twelve (12) month period;

(c) May only be obtained twice in a driver's lifetime;

(d) Are valid only within a one hundred fifty (150) mile radius of the place of business or farm being serviced; and

(e) Will be valid only in conjunction with valid Idaho class D driver's licenses.

(11) The department may issue seasonal class B or C driver's licenses to drivers who:

(a) Have not violated the single license provisions of 49 CFR part 383;

(b) Have not had any license suspensions, revocations or cancellations;

(c) Have not had any convictions in any vehicle for any offense listed in section 49-335(1) or 49-335(2), Idaho Code, or any one (1) serious traffic offense;

(d) Have at least one (1) year of driving experience with a class D or equivalent license in any type motor vehicle; and

(e) Are at least sixteen (16) years old.

SECTION 2. That Section 49-313, Idaho Code, be, and the same is hereby amended to read as follows:

49-313. EXAMINATION OF APPLICANTS. (1) The sheriff, his ~~or~~ deputy or authorized agents of the department shall examine every applicant for an instruction permit, seasonal driver's license, or a driver's license or a motorcycle endorsement, except as otherwise provided by law. It shall include a test of the applicant's eyesight and hearing, his ability to read and understand highway signs regulating, warning, and directing traffic. A skills test shall be required for an applicant who has not been previously licensed for the class of license requested, or who holds a license issued by another country. A skills test may be required at the discretion of the examiner or department for a class A, B, C or D driver's license or a motorcycle endorsement. In addition, the applicant's knowledge of traffic laws of this state and when a motorcycle endorsement ~~applicant's knowledge~~ is applied for, the applicant's knowledge of safe motorcycle operating practices and traffic laws specifically relating to motorcycle operation shall be tested by a written examination, except as provided in section 49-319, Idaho Code. At the discretion of the examiner, the prescribed written examination may be conducted orally.

(2) The knowledge and skill examinations for applicants for driver's licenses in class A, B or C shall be conducted in compliance with 49 CFR part 383.

(3) The skill test for a class A, B, C or D driver's license or for any endorsement other than a motorcycle endorsement shall be given by the department or its authorized agents. The skills examiner for a motorcycle endorsement shall be certified by the department of education.

(4) Any person who has successfully completed an approved driver training course and who applies for a driver's license more than three (3) months after completion of the driver training course shall be required to retake the skill test in addition to any other tests required upon application for a driver's license.

(5) The department shall not issue a tank, double/triple trailer, or hazardous material endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge test. The department shall not issue a passenger endorsement

unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge and skills test.

(6) Any person failing to pass a knowledge or skill test for a class A, B, C or D driver's license, or a knowledge test for a seasonal driver's license, or any endorsement may not retake the test within three (3) business days of the failure.

(7) Any person retaking a knowledge or skill test for a driver's license shall pay the appropriate testing fee as specified in section 49-306, Idaho Code.

(8) A skill examination for a class A, B or C driver's license may be waived for an applicant who certifies within the preceding two (2) years:

(a) He has not violated the single license provisions of 49 CFR part 383;

(b) He has not had any license suspension, revocation or cancellation;

(c) He has not had any conviction for any type of motor vehicle for any of the disqualification offenses contained in 49 CFR part 383.51;

(d) He has not had any violation of state or local laws relating to motor vehicle traffic control, arising in connection with any traffic accident, and has no record of an accident in which he was at fault; and

(e) He is regularly employed in a job requiring operation of a commercial motor vehicle; and

(f) He has previously taken and passed a skills test given by a state classified licensing and testing system and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(g) He has operated, for at least two (2) years immediately preceding application for a commercial driver's license, a vehicle representative of the commercial motor vehicle he operates or expects to operate.

(9) The motorcycle skills test for a motorcycle endorsement shall be waived by the department:

(a) On and after September 1, 1998, if the applicant presents satisfactory evidence of successful completion of a recognized motorcycle rider training course approved by the department of education;

(b) On and after September 1, 1998, if the applicant presents evidence of a motorcycle endorsement on his current license by a state or province which requires a motorcycle skills test equivalent to that required by Idaho law as determined by the department of education;

(c) Until September 1, 1998.

(10) At the discretion of the department, an alternate skills test for the motorcycle endorsement may be administered when the endorsement is for operation of a three-wheeled motorcycle only.

(11) The department or its authorized agents may refuse to give an applicant a skills test if there are reasonable grounds to believe that the safety of the applicant, public, or the examiner would be jeopardized by doing so. Reasonable grounds would include, but not be limited to, the applicant's inability to pass the eye test, written

tests, or a statement by a licensed physician stating the applicant is not physically able to drive a motor vehicle.

(12) The department or its authorized agents may deny issuance or renewal of a driver's license or endorsement to any applicant who does not meet the licensing requirements for the class of driver's license or endorsement being renewed or issued.

(13) Skill examinations for seasonal driver's licenses shall be waived.

SECTION 3. That Section 49-314, Idaho Code, be, and the same is hereby amended to read as follows:

49-314. LOCAL EXAMINERS APPOINTED BY DEPARTMENT. (1) The department shall appoint the sheriff in each county and may appoint any deputy sheriff, chief of police, or other officials or private citizens whom the department deems qualified as examiners, who shall be agents of the department and shall perform duties prescribed in this title.

(2) The department shall appoint at least one (1) employee in the department who shall be skilled and highly qualified in the method of giving driver's license examinations, who shall have authority, and it shall be this person's duty to instruct the examiners appointed by the department in the method of giving driver's license examinations and acquaint them with the use of equipment and forms needed in examining applicants for licensure.

(3) Agents of the department appointed to administer skill tests for class A, B or C driver's licenses must be certified according to 49 CFR part 383.

(4) Agents of the department appointed to administer the skills test for a motorcycle endorsement shall be certified by the department of education.

(5) Agents of the department to administer skills tests for class D drivers license shall be certified by the department.

SECTION 4. This act shall be in full force and effect on and after January 1, 1998.

Approved March 24, 1997.

CHAPTER 358
(H.B. No. 164, As Amended in the Senate)

AN ACT

RELATING TO PROPERTY EXEMPT FROM TAXATION; AMENDING SECTION 63-602G, IDAHO CODE, TO PROVIDE THAT FOR PURPOSES OF THE HOMEOWNER'S TAX EXEMPTION RESIDENTIAL IMPROVEMENTS QUALIFYING FOR THE EXEMPTION MAY CONSIST OF PART OF A MULTIDWELLING OR MULTIPURPOSE BUILDING EXCEPT FOR PORTIONS USED EXCLUSIVELY FOR ANYTHING OTHER THAN THE PRIMARY DWELLING OF THE OWNER, AND TO PROVIDE THAT THE PRESENCE OF AN OFFICE USED FOR MULTIPLE PURPOSES INCLUDING BUSINESS AND PERSONAL USE SHALL NOT PREVENT THE OWNER FROM CLAIMING THE EXEMPTION.

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

SECTION 1. That Section 63-602G, Idaho Code, be, and the same is hereby amended to read as follows:

63-602G. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS. (1) During the tax year 1983 and each year thereafter, the first fifty thousand dollars ($50,000) of the market value for assessment purposes of residential improvements, or fifty percent (50%) of the market value for assessment purposes of residential improvements, whichever is the lesser, shall be exempt from property taxation.

(2) The exemption allowed by this section may be granted only if:

(a) The residential improvements are owner-occupied and used as the primary dwelling place of the owner as of January 1. The residential improvements may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in an owner-occupied residential property, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

(ii) That the residential improvements are his primary dwelling place; and

(iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other residential improvements in the county.

(d) For the purpose of this section, the definition of owner shall be the same definition set forth in section 63-701(8), Idaho Code.

When an "owner" is any person who as grantor created a revocable trust and named himself or herself as beneficiary of that trust, he or she may provide proof of the revocable trust with an affidavit stating: (i) the name of the grantor; (ii) a statement that the grantor is the beneficiary of the trust; (iii) the trust is revocable during the grantor's lifetime; and (iv) the grantor is the owner-occupier of the residential property and uses the property as the primary dwelling place of the owner as of January 1.

The affidavit shall include the attaching of the copies of those portions of the trust which set forth the grantor, the grantor as beneficiary, the revocable character of the trust and the signature page of the trust.

(e) Any owner may request in writing the return of all copies of any revocable trust created by the owner that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit set forth in paragraph (d) of this subsection in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(9), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(7), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner still occupies the same residential improvements for which he made application.

(c) The residential improvements described in subsection (3)(b) of this section are owner-occupied and used as the primary dwelling place of the owner as of January 1.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) The legislature declares that this exemption is necessary and just.

(6) Residential improvements having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to the owner's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the 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, 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 24, 1997.

CHAPTER 359
(H.B. No. 166)

AN ACT

RELATING TO CAMPAIGN CONTRIBUTIONS; AMENDING CHAPTER 14, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-1417, IDAHO CODE, TO PROVIDE FOR REPORTING OF CAMPAIGN CONTRIBUTIONS IN ELECTIONS FOR COMMISSIONER OF A SINGLE COUNTY-WIDE HIGHWAY DISTRICT.

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

SECTION 1. That Chapter 14, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-1417, Idaho Code, and to read as follows:

40-1417. APPLICATION OF CAMPAIGN REPORTING LAW TO COUNTY-WIDE HIGHWAY DISTRICT ELECTIONS. The provisions of sections 67-6601 through 67-6616, Idaho Code, and sections 67-6623 through 67-6628, Idaho Code, insofar as they relate to the reporting of campaign contributions and expenditures are hereby made applicable to all elections for county-wide highway district commissioners, except that the clerk of the board of highway district commissioners shall stand in place of the secretary of state.

Approved March 24, 1997.

CHAPTER 360
(H.B. No. 167)

AN ACT

RELATING TO ELECTIONEERING AT POLLS; AMENDING SECTION 18-2318, IDAHO CODE, TO PROHIBIT ELECTIONEERING, SOLICITATION OF SIGNATURES, CIRCULATION OF HANDBILLS AND OTHER ACTS WITHIN ONE HUNDRED FEET OF A POLLING PLACE ON PRIVATE PROPERTY AND WITHIN THREE HUNDRED FEET OF A POLLING PLACE ON PUBLIC PROPERTY.

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

SECTION 1. That Section 18-2318, Idaho Code, be, and the same is hereby amended to read as follows:

18-2318. ELECTIONEERING AT POLLS. (1) On the day of any primary, general or special election, no person may, within a polling place, or any building in which an election is being held, or on private property within one hundred (100) feet thereof, or on public property within three hundred (300) feet thereof:

(a) Do any electioneering;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.

(3) Any election officer, sheriff, constable or other peace officer is hereby authorized, and it is hereby made the duty of such officer, to arrest any person violating the provisions of subsections (1) and (2) of this section, and such offender shall be punished by a fine

of not less than twenty-five dollars ($25.00) nor exceeding one hundred dollars ($100).

Approved March 24, 1997.

CHAPTER 361
(H.B. No. 200)

AN ACT

RELATING TO WELL DRILLERS AND CONSTRUCTION OF WELLS; AMENDING SECTION 42-238, IDAHO CODE, TO PROVIDE FOR THE PERMITTING OF OPERATORS OF WELL DRILLING EQUIPMENT, TO PROVIDE THAT ONLY LICENSED DRILLERS ARE AUTHORIZED TO ABANDON WELLS, TO PROVIDE FOR A TWO-YEAR WELL DRILLER LICENSE, TO REVISE THE FEE AND THE RENEWAL SCHEDULE FOR THE OPERATOR'S PERMIT AND DRILLER'S LICENSE, TO PROVIDE FOR QUALIFICATIONS OF DRILLERS AND OPERATORS, TO ESTABLISH A REQUIREMENT FOR CONTINUING EDUCATION FOR DRILLERS AND OPERATORS AND TO MAKE TECHNICAL AND ORGANIZATIONAL CHANGES; AMENDING SECTION 42-238b, IDAHO CODE, TO PROVIDE THAT THE ENFORCEMENT PROCEDURES ARE APPLICABLE TO ALL VIOLATIONS IDENTIFIED UNDER SECTION 42-238, IDAHO CODE.

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

SECTION 1. That Section 42-238, Idaho Code, be, and the same is hereby amended to read as follows:

42-238. WELL DRILLERS' LICENSES AND OPERATOR PERMITS. (1) ~~Powers and duties.~~ The director of the department of water resources is hereby vested with the duties relating to the licensing of well drillers and operators of well drilling equipment as provided for in this act so as to protect the ground water resources against waste and contamination. Qualifications for well drillers and operators of well drilling equipment shall be adopted by rule of the water resource board. ~~The water resource board is authorized to adopt a code of standards of well construction necessary to protect the ground water resources as set forth in this act, to be enforced by the director. The director of the department of water resources is also charged with the responsibility of collecting and filing for public use the well drillers' reports that are required in this act.~~

(2) ~~Licensing of well drillers.~~ It shall be unlawful for any person ~~after July 1, 1967~~ to drill a well in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, without first ~~obtaining a driller's license as provided herein~~ complying with the provisions of this chapter. It shall be unlawful for any person to abandon a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the director of the department of water resources. Authorization is required from the director prior to the abandonment and the person abandoning the well shall submit to the director a report describing the abandonment.

(3) For the purpose of this act, a "person" shall be defined as

any individual who drills ~~a-water~~ or abandons any well for himself or another in this state; it shall also be defined as any firm, copartnership, corporation or association which drills or abandons, or contracts to drill ~~a-water~~ or abandon any well for hire or otherwise in this state ~~except-that-employees-of-said-firm,-copartnership,-corporation-or-association-authorized-to-operate-drilling--equipment--as--the contractor's-agent,-shall-not-be-required-to-obtain-an-individual-well drilling-license-provided-that-the-names-and-addresses-of-such-employees--are--recorded--with--the--director--of--the--department--of-water resources.~~

(4) ~~The~~ A driller's license shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a ~~twenty-five~~ two hundred dollar ($25~~.~~00) ~~licensing~~ application fee. ~~To--determine--the--applicant's-qualifications,-the director-may-require-detailed-information-on-the-driller's-past--experience,--and/or-references,-and/or-an-oral-examination,-and/or-a-written-examination.~~

(5) The director shall require that an applicant for a driller's license successfully pass a written or oral examination, and be required to submit references and other detailed information describing past drilling experience to allow the director to determine if the applicant is qualified to drill wells in the state.

(6) The water resource board shall adopt rules for licensing and renewal of licenses of well drillers in compliance with chapter 52, title 67, Idaho Code.~~,-and~~ The board is authorized to adopted rules on professional responsibility and continuing education requirements, not to exceed twenty (20) hours during each licensing period. Notwithstanding other provisions of this chapter, the director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. The rules may also allow for the director to issue a license with limitations on the type, size or depth of wells the applicant is authorized to construct. A copy of the proposed rules for licensing of well drillers shall be furnished to each well driller holding a current license at the time such proposed rules are promulgated or modified. The rules shall provide for the consideration of such factors as the applicant's:

(~~1~~a) ~~k~~Knowledge of Idaho water laws and the rules of the water resource board in connection with the drilling of wells~~,--(2) knowledge-of~~ including proper well construction standards and procedures; ~~and-the-water-well-construction-standards-adopted-by-the water-resource-board-as-provided-in-this-act,~~

(~~3~~b) ~~k~~Knowledge of the various types of drilling tools and their use~~,~~;

(~~4~~c) ~~g~~General knowledge of underground geology and ground water hydrology and their relation to well construction~~,~~;

(~~5~~d) ~~o~~Ownership or access to equipment capable of adequately constructing a well~~,~~;

(~~6~~e) ~~k~~Knowledge of types of well casing and their use~~,~~;

(~~7~~f) ~~k~~Knowledge of special well drilling problems and their solution, ~~and~~ including additional requirements for licensing for drillers who construct wells in areas of drilling concern or for

the production of low temperature geothermal resources as defined in section 42-233, Idaho Code, and for the production of geothermal resources as provided in chapter 40, title 42, Idaho Code;

(8g) p~~P~~revious drilling experience~~.~~; and ~~In addition, the water resource board shall adopt rules setting forth additional requirements for licensing well drillers who shall drill wells for the production of low temperature geothermal resources as defined in section 42-233, Idaho Code, or for the production of geothermal resources as provided in chapter 40, title 42, Idaho Code. A copy of the proposed rules for licensing of well drillers shall be furnished to each well driller holding a current license at the time such proposed rules are promulgated.~~

(h) History of compliance with well drilling laws and rules.

(7) If it is determined that the applicant for a driller's license is not qualified, the director shall deny the application ~~and refund the licensing fee~~. If it is determined that the applicant is qualified, a license shall be issued upon the filing with the director of a surety bond or cash bond in the penal sum of not less than five thousand dollars ($5,000), or more than twenty thousand dollars ($20,000) as determined by the director based on the applicant's history of compliance with well drilling laws and rules, the size and depth of the wells the applicant proposes to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, and other relevant factors the director determines are in the public interest. The surety or cash bond shall be conditioned upon the proper compliance with the provisions of this chapter, chapter 40, title 42, Idaho Code, and rules promulgated pursuant thereto. Such bond shall be made payable to the director.

(8) Employees of drilling firms, copartnerships, corporations or associations are authorized to operate drilling equipment for the driller after obtaining an operator's permit from the director. Such employees shall be designated as operators.

(a) A driller is responsible for adequate supervision of the operators during the construction of each well. A driller shall be responsible for the work of the operators employed by the driller.

(b) An operator shall only operate drilling equipment for the driller listed on the operator's permit.

(c) An operator's permit shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a twenty-five dollar ($25.00) application fee.

(d) The applicant for an operator's permit shall successfully complete a written or oral examination.

(e) The water resource board shall adopt rules for the issuance, revocation and renewal of an operator's permit in accordance with chapter 52, title 67, Idaho Code. The board is also authorized to adopt rules on professional responsibility and continuing education requirements not to exceed twenty (20) hours during each permitting period. The rules shall consider such factors as:

(i) Knowledge of Idaho water laws and the rules of the water resource board in connection with the drilling of wells;

(ii) Demonstrated previous compliance with well drilling

laws and rules including well construction standards; and (iii) General understanding of well drilling equipment, well construction techniques, basic geology and map reading.

(9) ~~A~~ Driller's licenses and operator's permits issued under this section shall expire on ~~June 30 of each~~ March 31 in the second year after issuance or upon revocation of the license by the director as provided for in this act. The driller's license can be renewed effective ~~July 1 of each~~ April 1 of every other year upon written application on forms provided by the director and the filing of a ~~ten dollar ($10.00)~~ one hundred dollar ($100) renewal fee plus a fifteen dollar ($15.00) renewal fee for each operator employed by the licensed driller. Drillers renewing licenses in 1997 shall be assessed a licensing fee prorated monthly based upon the annual fee schedule. Thereafter, driller licenses and operator permits will be renewed upon expiration for a two (2) year period. Documents demonstrating compliance with the continuing education requirements of the rules shall be submitted to the director along with other license and permit renewal documents. The renewal request must be accompanied by a new bond or evidence that the previous bond is still in effect. The renewal may then be granted by the director if he determines that the driller or operator has complied with the rules promulgated pursuant to this act. The fees collected for the licensing of well drillers and permitting of operators are nonrefundable and shall be deposited in ~~a special~~ the water administration fund with the state treasurer with other fees collected by the director.

(10) The licensed driller and permitted operators shall have a card on hand, provided by the director to indicate ~~his present license~~ that the driller or operator is presently licensed or permitted at all times when he is operating the drilling equipment. The director may also require other identification to be posted on the drilling equipment as he deems helpful in the administration of this act.

(~~3~~11) Well driller's report. In order to enable a comprehensive survey of the extent and occurrence of the state's ground water resource, every well driller is hereby required to keep ~~a~~ available for inspection at the well site a daily well log and pertinent data concerning each well, and its construction or abandonment, that is ~~drilled by him~~ constructed or abandoned under the driller's direction in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, and complete a report on forms furnished by the director. These reports shall be properly prepared and signed by the driller and deposited with the director within thirty (30) days following the completion of the well. When the driller signs the report, the driller shall attest that all information on the report is accurate to the best of the driller's knowledge and that the driller has met all minimum well construction standards, low temperature geothermal resource well construction standards, ~~and~~ geothermal resource well construction standards and area of drilling concern standards as adopted by the water resource board. The reports shall become a permanent record in the office of the director for hydrologic and geologic analysis and research, and shall be available for public use. The report shall include such data as the director deems necessary to provide the information that will be valuable for future reference and study.

(~~4~~12) Well construction standards. The water resource board shall

adopt minimum standards for ~~water~~ new well construction, modification and abandonment of existing wells, low temperature geothermal resource well construction and geothermal well construction in this state under the provisions of chapter 52, title 67, Idaho Code. Such standards shall require each well to be so constructed as to protect the ground water of the state from waste and contamination and may include additional requirements for wells drilled in "areas of drilling concern" as designated in accordance with subsection (~~7~~15) of this section. Every licensed well driller will be furnished a copy of the adopted standards by the director ~~of the department of water resources~~, and will be required to construct or abandon each well ~~drilled after July 1, 1987,~~ in compliance with the adopted standards.

(~~5~~13) Penalties for violation. Drilling of a well without first obtaining a license as required in this section ~~42-238(2), Idaho Code,~~ shall be a criminal misdemeanor, and the employees of the department of water resources are hereby empowered to issue Idaho uniform citations, as provided by the rules of the court for magistrates division of the district court ~~and district court~~, to any person who drills a well without first obtaining the required license. Failure of the driller to comply with the provisions of section 42-238(~~3~~11), Idaho Code, will allow the director to proceed to collect the necessary data on the well or wells in any manner available to him, and the cost of this data collection may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

(a) Failure of the driller to comply with the provisions of section 42-238(~~3~~11), Idaho Code, is also cause for the director to revoke an active license, or refuse to renew a license, until such time as the well driller's report or reports are properly completed and on file in the office of the director. If it is found that a driller has intentionally submitted inaccurate or false information in the signed well driller's report as provided in subsection (~~3~~11) of this section, or has failed to file a report within the time frame required, the driller shall be liable for a civil penalty not in excess of ten thousand dollars ($10,000) which shall be paid into the water administration account. In addition, this shall be cause for the director to suspend an active license for a period not in excess of one (1) year or to not renew a license.

(b) Failure of the driller to comply with the provisions of section 42-238(~~4~~12), Idaho Code, will allow the director to proceed to repair, ~~or~~ reconstruct or ~~plug~~ abandon a well so that it complies with the adopted minimum standards of well construction and abandonment, and the costs of this work may be charged against the driller's bond in the amount of the expenses incurred up to the total amount of the bond.

(c) Failure of the driller to comply with the provisions of section 42-238(~~4~~12), Idaho Code, is also cause for the director to revoke an active license or refuse to renew a license until such time as the well driller has repaired or reconstructed the well or wells so that they meet the adopted minimum standards. The director may also require that the well driller present evidence to show that he and his equipment are now capable of constructing a well in a proper manner, before the license is renewed.

(~~6~~14) Appeals. Refusal to issue, refusal to renew, or revocation of a well driller's license or operator's permit by the director shall be cause for the well driller to seek a public hearing before the water resource board. No formal petition shall be required from the affected driller or operator, but a simple statement, in writing, requesting a hearing shall be sufficient. The board shall notify the driller or operator, and the director, of the date set for the hearing, which shall be at least fifteen (15) days after the notice is sent by certified mail to the well driller or operator at his address of record with the department. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and rules of practice and procedure adopted by the water resource board. Any party to the hearing may seek judicial review of any final order of the water resource board pursuant to chapter 52, title 67, Idaho Code.

(~~7~~15) Drilling in a designated "area of drilling concern". The director of the department of water resources may designate as he determines necessary, "areas of drilling concern" on an aquifer by aquifer basis within which drillers must comply with the additional requirements of this section. The director shall designate "areas of drilling concern" to protect public health and to prevent waste or contamination of ground or surface water because of factors such as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters. It is unlawful for any person not meeting the requirements of this subsection to drill a well for any purpose in a designated "area of drilling concern". Any person drilling a new well or deepening or modifying an existing well for any purpose in an "area of drilling concern" as designated by the director as herein provided shall comply with the following additional requirements:

(a) Additional bonding requirements, as determined by the director, to insure that the well is constructed or abandoned in compliance with the adopted standards for well construction.

(b) Additional experience and knowledge in drilling wells encountering warm water or pressurized aquifers as required by rules adopted by the water resource board.

(c) Document that specialized equipment needed to drill wells in "areas of drilling concern," as determined by the director, is or will be available to the driller.

(d) Provide a notice of intent to drill, deepen or modify a well, submit plans and specifications for the well and a description of the drilling methods that will be used, as required by the director, and receive the written approval of the director before commencing to drill, deepen, or modify any well in a designated "area of drilling concern".

Prior to designating an "area of drilling concern," the director shall conduct a public hearing in or near the area to determine the public interest concerning the designation. Notice of the hearing shall be published in two (2) consecutive weekly issues of a newspaper of general circulation in the area prior to the date set for hearing.

In the event an area has been designated as an "area of drilling concern" and the director of the department of water resources desires to remove such designation or modify the boundaries thereof, he shall likewise conduct a public hearing following similar publication of notice prior to taking such action.

SECTION 2. That Section 42-238b, Idaho Code, be, and the same is hereby amended to read as follows:

42-238b. ENFORCEMENT PROCEDURE. (1) When the director of the department of water resources determines that a driller or well owner has not acquired or complied with the permit required by section 42-235, Idaho Code, or a driller has not complied with ~~the standards of subsections (2), (3), (4), (5) and (7) of~~ section 42-238, Idaho Code, the director may commence an administrative enforcement action by issuing the driller or well owner a written notice of violation. The notice of violation shall identify and specify the alleged violation, shall specify each provision of section 42-235, Idaho Code, or ~~subsection (2), (3), (4), (5) or (7) of~~ section 42-238, Idaho Code, that have been violated and shall state the remedy or civil penalty the director seeks for redress of the violation.

(2) The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed. If a recipient of a notice of violation contacts the department within fifteen (15) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the receipt of the notice unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in subsection (4) of this section.

(3) The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying the damage caused by the violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty. The consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, specific performance of the consent order and such other relief as authorized by law. If the parties cannot reach agreement of a consent order within sixty (60) days after the receipt of the notice of violation, or if the recipient does not request a compliance conference, the director may commence and prosecute a civil enforcement action in district court in accordance with subsection (4) of this section.

(4) The director may initiate a civil enforcement action through the attorney general as provided in subsection (6) of this section. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of section 42-235 or 42-238, Idaho Code, or any rule promulgated pursuant thereto. Such action may be brought to compel compliance with any provision of section 42-235 or 42-238, Idaho Code, or any rule promulgated pursuant thereto. The director shall not be required to prosecute an administrative action before initiating a civil enforcement action.

(5) Any driller or well owner determined in a civil enforcement action to have violated any provision of section 42-235 or 42-238, Idaho Code, or any rule promulgated pursuant thereto, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one hundred dollars ($100) per day of a continuing violation, whichever is greater. A method of recovery of the penalty shall be a civil enforcement action in and for the county where the violations occurred. All civil penalties collected under this section shall be paid into the water administration account. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection. In addition to any civil penalties, any driller or well owner who has been determined to have violated the provisions of section 42-235 or 42-238, Idaho Code, or the rules promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the provisions of section 42-235 or 42-238, Idaho Code, or in enforcing or terminating any nuisance or source of environmental degradation caused by the violation. No action taken pursuant to this section shall relieve any driller or well owner from any civil action and damages that may exist for injury or damage resulting from any violation of section 42-235 or 42-238, Idaho Code, or the rules promulgated pursuant thereto.

(6) Upon request of the director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions pursuant to this chapter.

(7) Any driller, well owner or well pump installer causing a well to be altered or modified so as to not meet the construction standards provided for in section 42-238, Idaho Code, shall be deemed to have violated the provisions of this chapter and shall be subject to the notice of violation procedure and civil penalties as provided in this section.

Approved March 24, 1997.

CHAPTER 362
(H.B. No. 205)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-1407, IDAHO CODE, TO PROVIDE THAT WRITE-IN CANDIDATES FOR NONPARTISAN ELECTIVE OFFICE MUST DECLARE THEIR INTENT NOT LESS THAN TWENTY-FIVE DAYS PRIOR TO THE ELECTION AND TO PROVIDE APPLICATION.

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

SECTION 1. That Section 34-1407, Idaho Code, be, and the same is hereby amended to read as follows:

34-1407. WRITE-IN CANDIDATES. No write-in candidate for any nonpartisan elective office shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of the office. The declaration of intent shall be filed with the election official not less than ~~eleven~~ twenty-five (~~11~~25) days before the date of the election.

If the statutes governing elections within a specific political subdivision provide that no election shall be held in the event that no more than one (1) candidate has filed for an office, that statute shall be interpreted in such a manner as to allow for filing a declaration of intent for a write-in candidate until ~~eleven~~ twenty-five (~~11~~25) days preceding the election. However, if no candidate has filed within that time, no election shall be held for that political subdivision. The provisions of this section shall not apply to candidates in the primary or general election covered by the provisions of section 34-702A, Idaho Code.

Approved March 24, 1997.

CHAPTER 363
(H.B. No. 213)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1316A, IDAHO CODE, TO PROVIDE THAT SERVICES PERFORMED BY PARTICIPANTS IN THE AMERICORPS PROGRAM ARE EXEMPT EMPLOYMENT; AND DECLARING AN EMERGENCY.

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

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

72-1316A. EXEMPT EMPLOYMENT. The term "exempt employment" means:

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

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

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

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

(c) (1) Service performed by an individual in the employ of his spouse or child;

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

(3) Service performed by an individual under the age of twenty-two (22) who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience, except that this subparagraph shall not apply to service performed in a program established at the request of an employer or group of employers.

(d) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act except that, to the extent that the Congress of the United States shall permit states to require any instrumentality of the United States to make payments into a fund under a state unemployment compensation or insurance law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other covered employers, persons, individuals, and services; provided, that if this state shall not be certified for any year by the secretary of labor under section 3304 of the Federal Internal Revenue Code of 1954, the payments required of such instrumentality with respect to such year shall be refunded by the director from the employment security fund in the same manner and within the same period as is provided in section 72-1357, Idaho Code, with respect to contributions erroneously collected.

(e) Service performed in the employ of a governmental entity in the exercise of duties:

(1) As an elected official;

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

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

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

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

(f) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(g) Service performed:

(1) In the employ of (i) a church or convention or association of churches, or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches; or

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

(3) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) As part of an unemployment work relief program or as part of an unemployment work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.

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

(i) Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending courses in a nurses' training school chartered or approved pursuant to the state law, and service performed as an intern in the employ of a hospital by an individual who has completed a course in a medical school chartered or approved pursuant to state law.

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

(k) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

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

(m) Service covered by an election duly approved by the agency charged with the administration of any other state or federal employment compensation or unemployment insurance law, in accordance with an arrangement pursuant to section 72-1344, Idaho Code, during the effective period of such election.

(n) Service performed in the employ of a school or college by a student who is enrolled and regularly attending classes at such school

or college.

(o) Service performed in the employ of a hospital by a patient during the time that he is a patient of such hospital.

(p) Services performed by a member of an AmeriCorps program.

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 24, 1997.

CHAPTER 364
(H.B. No. 217, As Amended)

AN ACT

RELATING TO THE CLASSIFIED PERSONNEL SYSTEM; AMENDING SECTION 67-5315, IDAHO CODE, TO PROVIDE FOR DEVELOPMENT OF PROBLEM SOLVING AND DUE PROCESS PROCEDURES FOR EMPLOYEES OF STATE AGENCIES; AND AMENDING SECTION 67-5316, IDAHO CODE, TO PROVIDE FOR APPEALS OF EMPLOYEE PROBLEM SOLVING DECISIONS AND ACTIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-5315, Idaho Code, be, and the same is hereby amended to read as follows:

67-5315. ESTABLISHMENT AND ADOPTION OF EMPLOYEE ~~GRIEVANCE~~ PROBLEM SOLVING AND DUE PROCESS PROCEDURES. (1) Each participating department shall, on or before ~~January 1, 1988~~ July 1, 1997, establish and adopt an employee ~~grievance~~ problem solving procedure within such department, which shall be reduced to writing and shall be in full compliance with the provisions of the uniform ~~grievance~~ problem solving procedure as adopted by rule by the Idaho personnel commission pursuant to subsection (4) of this section. The department ~~grievance~~ problem solving procedure shall be approved by the ~~Idaho personnel commission~~ state personnel director prior to implementation. A copy of the approved ~~grievance~~ problem solving procedure plan shall be furnished and explained to each employee of the department concerned. No employee shall be disciplined or otherwise prejudiced in his employment for exercising his rights under the plan, and department heads shall encourage the use of the plan in the resolution of grievances arising in the course of public employment. A classified employee may ~~grieve~~ file under the problem solving procedure any matter, except that compensation shall not be deemed a proper subject for consideration under the ~~grievance~~ problem solving procedure except as it applies to alleged inequities within a particular agency or department, and except for termination during the entrance probationary period, and except for those matters set forth in subsection (2) of this section.

(2) No action of a participating department relating to a disci-

plinary dismissal, suspension or demotion, or an involuntary transfer shall be effective until the affected employee shall have ~~had--the opportunity--to--complete--the-grievance-procedure-adopted-pursuant-to subsection-(1)-hereof,-unless-such--employee--shall--have--waived--the right-to-proceed-thereunder-in-writing;-provided,-however,-upon-application-to-the-director-of-the-commission-by-the-department-and-a-showing--that--the--matter--is-of-an-emergency-nature,-the-director-of-the commission-may-approve-the-immediate-implementation-of-the--department action.--However,--such-approval-shall-not-deprive-the-employee-of-the right-to-proceed-pursuant-to-the-grievance-procedure-nor-of-the--right to-seek-other-remedies-pursuant-to-the-provisions-of-chapter-53,-title 67,-Idaho-Code.~~

~~The--term--"emergency"-as-used-in-this-section-shall-mean-a-sudden unforeseen-set-of-facts-requiring-immediate-action-to-avoid--irreparable--harm--to--the--role--or--mission-of-the-participating-department. Before-invoking-the--emergency--procedure--provided--for--herein,--the department--shall-give-written-notice-to-the-employee-of-its-intent-to invoke-such-procedure-and-of-the-facts--constituting--such--emergency, and-shall-furnish-proof-of-such-notice-to-the-state-personnel-director~~ received notice and an opportunity to be heard. The employee may then appeal to the Idaho personnel commission those disciplinary matters set forth in section 67-5316(1)(a), Idaho Code.

(3) If the ~~grievance~~ filing concerns a matter which is reviewable pursuant to section 67-5316, Idaho Code, the time for appeal to the commission shall not commence to run until the employee has completed the ~~grievance~~ problem solving procedure provided by the department in accordance with the terms thereof or, in the case of disciplinary actions set forth in subsection (2) of this section, until the disciplinary action becomes effective; provided, however, the failure of an employee to pursue the ~~grievance~~ problem solving procedures established within the department shall constitute a waiver of the employee's right of review by the commission.

(4) On or before July 1, ~~1987~~ 1997, the Idaho personnel commission shall adopt a rule defining ~~a~~ uniform ~~grievance~~ problem solving and due process procedures for use by all participating departments. With respect to the problem solvings procedure, t~~T~~he rule shall provide a complete procedure for all stages of the ~~grievance~~ process. ~~Among-other-provisions,-the-procedure-shall-contain-the-following-minimum-requirements:~~

~~(a)--procedure--requiring--prompt--resolution-of-the-grievance-and establishing-time-periods-for-each-step-of-the-procedure;~~

~~(b)--provision-for-impartial-review-of--the--grievance--which--may include--review--by--persons--not--connected--with--the-particular department;~~

~~(c)--procedure-guaranteeing-the-employee-the-right--to--be--represented--by-a-person-of-the-employee's-own-choosing-at-each-step-of the-procedure,-except-the-initial--informal--discussion--with--the immediate--supervisor,~~ including problem solving meetings with department representatives in the employee's chain of command. With respect to the due process procedure, the rule shall provide that the employee receive notice and an opportunity to be heard before the department decides in favor of disciplinary action. The rule shall also provide for time periods for each step of the pro-

cedures. The rule shall provide for the use of an impartial mediator upon agreement between the agency and the employee. The employee shall be entitled to be represented by a person of the employee's own choosing at each step of the procedures, except the initial informal discussion with the immediate supervisor prior to filing under the problem solving procedure.

SECTION 2. That Section 67-5316, Idaho Code, be, and the same is hereby amended to read as follows:

67-5316. APPEAL PROCEDURE. (1) Appeals shall be limited to the following:

(a) Any classified employee who has successfully completed the entrance probationary period may, after completing the departmental ~~grievance~~ due process procedure, appeal a disciplinary dismissal, demotion or suspension~~, or classification~~.

(b) Any classified employee may, after completing the departmental ~~grievance~~ problem solving procedure, appeal the failure of an appointing authority to provide a right and/or benefit to which the employee is entitled by law.

(c) Any interested person may appeal any decision or action taken by the state personnel director or staff of the Idaho personnel commission in the performance of their official duties.

(d) Any interested person may appeal any other matters as may now or later be assigned to the commission by law.

(2) The decision or action of the appointing authority shall be final and conclusive unless a classified employee files an appeal within thirty-five (35) days after completing the departmental ~~grievance~~ problem solving or due process procedure concerning the actions referred to in subsection (1)(a), (b), (c) and (d) of this section. A decision of the personnel commission director or staff shall be final and conclusive as to any other interested person unless an appeal is filed within thirty-five (35) days of written notice of that decision.

(3) The commission shall assign the matter for hearing to a duly appointed hearing officer, who may be a member of the commission.

(4) Where the action in dispute was the discharge, demotion, or suspension, upon determination that proper cause did not in fact exist within the definitions set forth in section 67-5309(~~nn~~), Idaho Code, or that the action was taken by reason of illegal discrimination, the commission or the hearing officer shall order the reinstatement of the employee in the same position or a position of like status and pay, with or without loss of pay for the period of discharge, demotion, or suspension, or may order such other remedy as may be determined to be appropriate. In all other disputed matters, the commission and the hearing officer may order such action as may be appropriate.

(5) Process and procedure under this act shall be as summary and simple as reasonably may be. The hearing officer appointed by the commission shall have the power to subpoena witnesses, administer oaths, and examine such of the books and records of the parties to a proceeding as relate to the questions in dispute. A verbatim record of the proceedings at hearings before the commission or a hearing officer shall be maintained either by electrical devices or by stenographic means, as the commission or hearing officer may direct, but if any

party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of transcribing the proceedings.

The district court, in and for the county in which any proceedings before the Idaho personnel commission are held, shall have the power to enforce by proper proceedings the attendance and testimony of witnesses, and production and examination of books, papers, and records.

(6) If the parties reach an agreement in regard to the matters of dispute, a memorandum of the agreement shall be filed with the commission and, if approved by it, the memorandum shall be enforceable for all purposes.

(7) The hearing officer shall give written notice of the time and place of hearing, either by personal service or by mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party's last known address, as shown in the records and files of the commission. An affidavit of personal service shall be filed by the person making the same.

(8) The hearing officer to whom the matter has been assigned shall make such inquiry and investigations as shall be deemed necessary. The hearings shall be held in such place as the hearing officer may designate. The decision of the hearing officer, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings, shall be filed in the office of the Idaho personnel commission. A copy of the hearing officer's decision shall be immediately sent to the parties by United States mail. The decision of the hearing officer shall be final and conclusive between the parties, unless a petition for review is filed with the commission within thirty-five (35) days. The petition for review shall specifically cite the alleged errors of fact or law made by the hearing officer.

(9) Any party in interest may file in the district court for the county in which any party to the proceedings resides, a certified copy of the final decision of the hearing officer, which the district court shall have the power to enforce by proper proceedings.

(10) Where the decision and order of the hearing officer directed the reinstatement of an employee, the employee shall be reinstated upon receipt of a copy of the decision unless a petition for review is filed.

Approved March 24, 1997.

CHAPTER 365
(H.B. No. 219, As Amended)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE FOR LICENSE REVOCATION FOR THE UNLAWFUL RELEASE OF ANY SPECIES OF FISH INTO ANY PUBLIC BODY OF WATER IN THE STATE, TO DEFINE UNLAWFUL RELEASE AND PROVIDING EXCEPTIONS; AND AMENDING SECTION 36-1404, IDAHO CODE, TO PROVIDE FOR COURT ORDERED REIM-

BURSEMENT OF UP TO TEN THOUSAND DOLLARS FOR DAMAGE CORRECTION FOR UNLAWFULLY RELEASING ANY FISH SPECIES INTO ANY PUBLIC BODY OF WATER IN THE STATE, TO DEFINE UNLAWFULLY RELEASING AND PROVIDING EXCEPTIONS.

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

SECTION 1. That Section 36-1402, Idaho Code, be, and the same is hereby amended to read as follows:

36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Any person who pleads guilty to or is found guilty of an infraction of this code or rules promulgated pursuant thereto, shall be punished in accordance with the provisions of the Idaho infractions rules.

(b) Misdemeanor Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a misdemeanor under the provisions of this title or rules promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following animals, fish or birds shall be as indicated below:

Animal, Fish or Bird	Minimum Fine
Bighorn sheep, mountain goat and moose	$500
Elk	$300
Deer and pronghorn antelope	$200
Wild turkey, swan and sturgeon	$200
Chinook salmon	$100

(c) Felony Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a felony under the provisions of this title shall be punished in accordance with section 18-112, Idaho Code. Provided further, that the judge hearing the case shall forthwith revoke for life, the hunting, fishing or trapping license and privileges of any person who, within a five (5) year period, pleads guilty to, is found guilty of or is convicted of three (3) or more felony violations of the provisions of this title.

(d) License Revocation. Any person entering a plea of guilty or being found guilty or convicted of violating any of the provisions of this title, or who otherwise fails to comply with the requirements of a citation in connection with any such offense, may, in addition to any other penalty assessed by the court, have his hunting, fishing, or trapping privileges revoked for such period of time as may be determined by the court not to exceed three (3) years, said period beginning on the date of conviction, finding of guilt or the entry of the plea of guilty. Provided further, that the magistrate hearing the case shall forthwith revoke the hunting, fishing, or trapping privileges for a period of not less than one (1) year from the date of such conviction, finding of guilt or the entry of the plea of guilty, of any person who is convicted of, found guilty of or enters a plea of guilty for any of the following offenses:

1. Taking or possessing upland game birds, migratory waterfowl,

salmon, steelhead, sturgeon, or any big game animal during closed season.

2. Exceeding the daily bag or possession limit of upland game birds, migratory waterfowl or big game animals.

3. Taking any fish by unlawful methods as set forth in section 36-902(a) or (c), Idaho Code.

4. Unlawfully purchasing, possessing or using any license, tag or permit as set forth in section 36-405(c), Idaho Code.

5. Trespassing in violation of warning signs as set forth in section 36-1603, Idaho Code.

6. The unlawful sale or purchase of wildlife as set forth in section 36-501, Idaho Code.

7. Taking any game animal with a firearm during an archery only season.

8. The unlawful release of any species of live fish into any public body of water in the state. For purposes of this paragraph, an "unlawful release of any species of live fish" shall mean a release of any species of live fish, or live eggs thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being release from a trap at the same time and place where caught.

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) may require that the offender attend a remedial hunter education course at the offender's expense. Upon successful completion of the course, the remainder of the revocation period shall be subject to a withheld judgment so long as the offender is not convicted of any additional hunting violations during the period. The commission shall establish by rule the curriculum and cost of the hunter education remedial course.

The revocation shall consist of cancellation of an existing license for the required length of time and/or denial of the privilege of purchasing an applicable license for the length of time required to meet the revocation period decreed. In the case of persons pleading guilty, convicted or found guilty of committing multiple offenses, the revocation periods may run consecutively. In the case of pleas of guilty, convictions or findings of guilt involving taking big game animals during closed season or exceeding the daily bag or possession limit of big game, the magistrate hearing the case shall revoke the hunting, fishing or trapping privileges of any person convicted or found guilty of those offenses for a period of not less than one (1) year for each big game animal illegally taken or possessed by the person convicted or found guilty.

It shall be a misdemeanor for any person to hunt, fish, or trap or purchase a license to do so during the period of time for which such privilege is revoked by order of any court of this state. Any person pleading guilty, found guilty or convicted thereof shall be fined in an amount of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by commitment to jail for not more than six (6) months or by both such fine and commitment. Provided further, that the period of revocation of such privileges shall be

extended an additional amount of time equal to the original revocation.

For the purpose of this title, the term "conviction" shall mean either a withheld judgment or a final conviction.

(e) For purposes of the wildlife violator compact, section 36-2301, Idaho Code, et seq., the department shall:

1. Suspend a violator's license for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence.

2. Revoke a violator's license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.

(f) Disposition of Fines and Forfeitures. Distribution of fines and forfeitures remitted shall be in accordance with section 19-4705, Idaho Code.

SECTION 2. That Section 36-1404, Idaho Code, be, and the same is hereby amended to read as follows:

36-1404. UNLAWFUL KILLING, POSSESSION OR WASTE OF WILD ANIMALS, BIRDS AND FISH -- REIMBURSABLE DAMAGES -- SCHEDULE -- ASSESSMENT BY MAGISTRATES -- INSTALLMENT PAYMENTS -- DEFAULT JUDGMENTS -- DISPOSITION OF MONEYS. (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty of or is convicted of the illegal killing or the illegal possession or illegal waste of game animals or birds or fish shall reimburse the state for the value of each animal so killed or possessed or wasted as follows:

1. Elk, five hundred dollars ($500) per animal killed, possessed or wasted.

2. Caribou, bighorn sheep, mountain goat and moose, one thousand dollars ($1,000) per animal killed, possessed or wasted.

3. Deer, and pronghorn antelope, two hundred dollars ($200) per animal killed, possessed or wasted.

4. Wild turkey and swan, two hundred dollars ($200) per bird killed, possessed or wasted.

5. Sturgeon, two hundred dollars ($200) per fish killed, possessed or wasted.

6. Chinook salmon, one hundred dollars ($100) per fish killed, possessed or wasted.

(b) In every case of a plea of guilty, a finding of guilt or a conviction of unlawfully releasing any fish species into any public body of water in the state, the court before whom the plea of guilty, finding of guilt, or conviction is obtained shall enter judgment ordering the defendant to reimburse the state for the cost of the expenses, not to exceed ten thousand dollars ($10,000), incurred by the state to correct the damage caused by the unlawful release. For purposes of this subsection, "unlawfully releasing any fish species" shall mean a release of any species of live fish, or live eggs thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time

and place where caught or when crayfish are being released from a trap at the same time and place where caught.

(c) In every case of a plea of guilty, a finding of guilt or a conviction, the court before whom such plea of guilty, finding of guilt or conviction is obtained shall enter judgment ordering the defendant to reimburse the state in a sum or sums as hereinbefore set forth including postjudgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, bird or fish, such judgment shall be declared against them jointly and severally.

(~~c~~d) The judgment shall fix the manner and time of payment, and may permit the defendant to pay the judgment in installments at such times and in such amounts as, in the opinion of the court, the defendant is able to pay. In no event shall any defendant be allowed more than two (2) years from the date judgment is entered to pay the judgment.

(~~d~~e) A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.

(~~e~~f) All courts ordering such judgments of reimbursement shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game account.

(~~f~~g) The court shall retain jurisdiction over the case. If at any time the defendant is in arrears ninety (90) days or more, the court may revoke the defendant's hunting, fishing or trapping privileges until the defendant completes payment of the judgment.

Approved March 24, 1997.

CHAPTER 366
(H.B. No. 221, As Amended)

AN ACT

RELATING TO THE IDAHO BUSINESS CORPORATION ACT; REPEALING SECTIONS 30-1-1 THROUGH 30-1-153, IDAHO CODE; AMENDING TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 1, TITLE 30, IDAHO CODE, TO PROVIDE FOR GENERAL BUSINESS CORPORATIONS, TO PROVIDE A SHORT TITLE, TO PROVIDE FOR RESERVATION OF POWER TO AMEND OR REPEAL, TO PROVIDE FILING REQUIREMENTS, TO PROVIDE FOR FORMS, TO PROVIDE FOR FILING, SERVICE AND COPYING FEES, TO PROVIDE THE EFFECTIVE TIME AND DATE OF A DOCUMENT, TO PROVIDE FOR CORRECTING A FILED DOCUMENT, TO PROVIDE THE FILING DUTY OF THE SECRETARY OF STATE, TO PROVIDE FOR APPEAL FROM THE SECRETARY OF STATE'S REFUSAL TO FILE A DOCUMENT, TO PROVIDE THE EVIDENTIARY EFFECT OF A COPY OF A FILED DOCUMENT, TO PROVIDE FOR A CERTIFICATE OF EXISTENCE, TO PROVIDE A PENALTY FOR SIGNING A FALSE DOCUMENT, TO PROVIDE POWERS OF THE SECRETARY OF STATE, TO PROVIDE FOR CHAPTER DEFINITIONS, TO PROVIDE FOR NOTICE, TO PROVIDE FOR INCORPORATORS AND ARTICLES OF INCORPORATION, TO PROVIDE FOR LIABILITY FOR PREINCORPORATION TRANSACTIONS, TO PROVIDE FOR ORGANIZATION OF A CORPORATION, TO PROVIDE

FOR BYLAWS, TO PROVIDE FOR PURPOSES OF A CORPORATION, TO PROVIDE GENERAL POWERS OF A CORPORATION, TO PROVIDE FOR EMERGENCY POWERS, TO PROVIDE FOR ULTRA VIRES ACTS OF A CORPORATION, TO PROVIDE FOR A CORPORATE NAME, TO PROVIDE FOR RESERVATION OF A NAME, TO PROVIDE FOR REGISTRATION OF A NAME, TO PROVIDE FOR A REGISTERED OFFICE AND REGISTERED AGENT AND A CHANGE IN THAT OFFICE OR AGENT, TO PROVIDE FOR RESIGNATION OF A REGISTERED AGENT, TO PROVIDE FOR SERVICE ON A CORPORATION, TO PROVIDE FOR AUTHORIZED SHARES, TO PROVIDE FOR TERMS OF A CLASS OR SERIES OF SHARES, TO PROVIDE FOR ISSUED AND OUTSTANDING SHARES, TO PROVIDE FOR FRACTIONAL SHARES, TO PROVIDE FOR SUBSCRIPTION FOR SHARES BEFORE INCORPORATION, TO PROVIDE FOR ISSUANCE OF SHARES, TO PROVIDE THE LIABILITY OF SHAREHOLDERS, TO PROVIDE FOR SHARE DIVIDENDS, TO PROVIDE FOR SHARE OPTIONS, TO PROVIDE THE FORM AND CONTENT OF CERTIFICATES, TO PROVIDE FOR SHARES WITHOUT CERTIFICATES, TO PROVIDE FOR RESTRICTIONS ON THE TRANSFER OF SHARES AND OTHER SECURITIES, TO PROVIDE FOR PAYMENT OF THE EXPENSES OF AN ISSUE, TO PROVIDE FOR SHAREHOLDERS' PREEMPTIVE RIGHTS, TO PROVIDE FOR A CORPORATION'S ACQUISITION OF ITS OWN SHARES, TO PROVIDE FOR DISTRIBUTIONS TO SHAREHOLDERS, TO PROVIDE FOR AN ANNUAL MEETING OF SHAREHOLDERS, TO PROVIDE FOR A SPECIAL MEETING, TO PROVIDE FOR A COURT-ORDERED MEETING, TO PROVIDE FOR ACTION WITHOUT MEETING, TO PROVIDE FOR NOTICE OF A MEETING, TO PROVIDE FOR WAIVER OF NOTICE, TO PROVIDE FOR A RECORD DATE, TO PROVIDE FOR A LIST OF SHAREHOLDERS, TO PROVIDE FOR PROXIES, TO PROVIDE FOR SHARES HELD BY NOMINEES, TO PROVIDE FOR A CORPORATION'S ACCEPTANCE OF VOTES, TO PROVIDE QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS, TO PROVIDE FOR ACTION BY A SINGLE AND MULTIPLE VOTING GROUPS, TO PROVIDE FOR A GREATER QUORUM OR VOTING REQUIREMENTS, TO PROVIDE FOR VOTING OF DIRECTORS AND CUMULATIVE VOTING, TO PROVIDE FOR VOTING TRUSTS, TO PROVIDE FOR VOTING AGREEMENTS AND SHAREHOLDER AGREEMENTS, TO PROVIDE FOR APPLICABILITY OF A RULE OF CIVIL PROCEDURE TO SHAREHOLDER ACTIONS, TO REQUIRE A BOARD OF DIRECTORS AND TO PROVIDE FOR DUTIES OF THE BOARD, TO PROVIDE FOR QUALIFICATIONS, NUMBER AND ELECTION OF DIRECTORS, TO PROVIDE FOR ELECTION OF DIRECTORS BY CERTAIN CLASSES OF SHAREHOLDERS, TO PROVIDE FOR TERMS OF DIRECTORS, TO PROVIDE FOR RESIGNATION OF DIRECTORS, TO PROVIDE FOR REMOVAL OF DIRECTORS BY SHAREHOLDERS OR BY JUDICIAL PROCEEDING, TO PROVIDE FOR A VACANCY ON THE BOARD AND FOR COMPENSATION OF DIRECTORS, TO PROVIDE FOR MEETINGS OF THE BOARD, TO PROVIDE FOR ACTION WITHOUT A MEETING, TO PROVIDE FOR NOTICE OF MEETING AND WAIVER OF NOTICE, TO PROVIDE FOR A QUORUM AND VOTING OF A BOARD, TO PROVIDE FOR COMMITTEES, TO PROVIDE GENERAL STANDARDS FOR DIRECTORS, TO PROVIDE FOR LIABILITY FOR UNLAWFUL DISTRIBUTIONS, TO PROVIDE FOR REQUIRED OFFICERS, TO PROVIDE DUTIES OF OFFICERS, TO PROVIDE STANDARDS OF CONDUCT FOR OFFICERS, TO PROVIDE FOR RESIGNATION AND REMOVAL OF OFFICERS, AND TO PROVIDE FOR CONTRACT RIGHTS OF OFFICERS, TO PROVIDE FOR DEFINITIONS RELATIVE TO INDEMNIFICATIONS, TO PROVIDE FOR PERMISSIBLE AND MANDATORY INDEMNIFICATION, TO PROVIDE FOR AN ADVANCE FOR EXPENSES, TO PROVIDE FOR COURT-ORDERED INDEMNIFICATION AND ADVANCE FOR EXPENSES, TO PROVIDE FOR DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION, TO PROVIDE FOR INDEMNIFICATION OF OFFICERS AND ADVANCE OF EXPENSES, TO PROVIDE FOR INSURANCE, TO PROVIDE FOR VARIATION BY

CORPORATE ACTION AND TO PROVIDE FOR APPLICATION AND EXCLUSIVITY OF INDEMNIFICATION PROVISIONS, TO PROVIDE DEFINITIONS IN CONNECTION WITH DIRECTORS' CONFLICTING INTEREST TRANSACTIONS, TO PROVIDE FOR JUDICIAL ACTION, DIRECTORS' ACTION AND SHAREHOLDERS' ACTION, TO PROVIDE FOR AUTHORITY TO AMEND ARTICLES OF INCORPORATION, TO PROVIDE FOR AMENDMENT BY THE BOARD OF DIRECTORS, TO PROVIDE FOR AMENDMENT BY THE BOARD AND THE SHAREHOLDERS, TO PROVIDE FOR VOTING ON AMENDMENTS BY VOTING GROUPS, TO PROVIDE FOR AMENDMENT BEFORE ISSUANCE OF SHARES, TO PROVIDE FOR ARTICLES OF AMENDMENT, TO PROVIDE FOR RESTATED ARTICLES, TO PROVIDE FOR AMENDMENT PURSUANT TO REORGANIZATION, TO PROVIDE THE EFFECT OF AMENDMENT, TO PROVIDE FOR AMENDMENT OF BYLAWS BY THE BOARD OF DIRECTORS OR SHAREHOLDERS, TO PROVIDE FOR A BYLAW INCREASING QUORUM OR VOTING REQUIREMENTS FOR SHAREHOLDERS AND FOR A BYLAW INCREASING QUORUM OR VOTING REQUIREMENTS FOR DIRECTORS, TO PROVIDE FOR MERGER AND SHARE EXCHANGE, TO PROVIDE FOR ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE, TO PROVIDE FOR MERGER OF A SUBSIDIARY, TO PROVIDE FOR ARTICLES OF MERGER OR SHARE EXCHANGE, TO PROVIDE THE EFFECT OF MERGER OR SHARE EXCHANGE, TO PROVIDE FOR MERGER OR SHARE EXCHANGE WITH A FOREIGN CORPORATION, TO PROVIDE FOR THE SALE OF ASSETS IN THE REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS, TO PROVIDE FOR A SALE OF ASSETS OTHER THAN IN THE REGULAR COURSE OF BUSINESS, TO PROVIDE DEFINITIONS WITH RESPECT TO DISSENTERS' RIGHTS, TO PROVIDE FOR THE RIGHT TO DISSENT, TO PROVIDE FOR DISSENT BY NOMINEES AND BENEFICIAL OWNERS, TO PROVIDE FOR NOTICE OF DISSENTERS' RIGHTS, TO PROVIDE FOR NOTICE OF INTENT TO DEMAND PAYMENT, TO PROVIDE FOR DISSENTERS' NOTICE, TO PROVIDE A DUTY TO DEMAND PAYMENT, TO PROVIDE FOR SHARE RESTRICTIONS, TO PROVIDE FOR PAYMENT, TO PROVIDE FOR FAILURE TO TAKE ACTION, TO PROVIDE FOR AFTER-ACQUIRED SHARES, TO PROVIDE THE PROCEDURE IF A SHAREHOLDER IS DISSATISFIED WITH A PAYMENT OR OFFER, TO PROVIDE FOR JUDICIAL APPRAISAL OF SHARE, TO PROVIDE FOR COURT COSTS AND COUNSEL FEES, TO PROVIDE FOR DISSOLUTION BY THE INCORPORATORS OF INITIAL DIRECTORS, TO PROVIDE FOR DISSOLUTION BY THE BOARD OF DIRECTORS AND SHAREHOLDERS, TO PROVIDE FOR ARTICLES OF DISSOLUTION, TO PROVIDE FOR REVOCATION OF DISSOLUTION, TO PROVIDE THE EFFECT OF DISSOLUTION, TO PROVIDE FOR KNOWN AND UNKNOWN CLAIMS AGAINST A DISSOLVED CORPORATION, TO PROVIDE GROUNDS, PROCEDURE AND THE EFFECT OF ADMINISTRATIVE DISSOLUTION, TO PROVIDE FOR REINSTATEMENT AND APPEAL FROM A DENIAL OF REINSTATEMENT, TO PROVIDE GROUNDS AND PROCEDURE FOR JUDICIAL DISSOLUTION, TO PROVIDE FOR RECEIVERSHIP OR CUSTODIANSHIP, TO PROVIDE FOR A DECREE OF DISSOLUTION, TO PROVIDE FOR ELECTION TO PURCHASE IN LIEU OF DISSOLUTION, TO PROVIDE FOR DEPOSIT WITH THE STATE TREASURER OF ASSETS OF A DISSOLVED CORPORATION, TO REQUIRE A CERTIFICATE OF AUTHORITY FOR A FOREIGN CORPORATION TO TRANSACT BUSINESS IN IDAHO, TO PROVIDE THE CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY, TO PROVIDE FOR APPLICATION FOR A CERTIFICATE OF AUTHORITY AND FOR AN AMENDED CERTIFICATE, TO PROVIDE THE EFFECT OF A CERTIFICATE OF AUTHORITY, TO PROVIDE FOR THE CORPORATE NAME OF A FOREIGN CORPORATION, TO PROVIDE FOR A REGISTERED OFFICE AND REGISTERED AGENT AND FOR A CHANGE IN THE OFFICE OR AGENT OF A FOREIGN CORPORATION, TO PROVIDE FOR RESIGNATION OF A REGISTERED AGENT OF A FOREIGN CORPORATION, TO PROVIDE FOR SERVICE ON A FOREIGN CORPORA-

TION, TO PROVIDE FOR WITHDRAWAL OF A FOREIGN CORPORATION, TO PROVIDE GROUNDS FOR REVOCATION OF A CERTIFICATE OF AUTHORITY, TO PROVIDE THE PROCEDURE AND EFFECT OF REVOCATION, TO PROVIDE FOR APPEAL FROM REVOCATION, TO PROVIDE FOR CORPORATE RECORDS, TO PROVIDE FOR INSPECTION OF RECORDS BY SHAREHOLDERS, TO PROVIDE THE SCOPE OF THE INSPECTION RIGHT, TO PROVIDE FOR COURT-ORDERED INSPECTION, TO PROVIDE FOR FINANCIAL STATEMENTS FOR SHAREHOLDERS, TO PROVIDE FOR OTHER REPORTS TO SHAREHOLDERS, TO PROVIDE FOR AN ANNUAL REPORT FOR THE SECRETARY OF STATE, TO PROVIDE FOR APPLICATION OF THE CHAPTER TO EXISTING DOMESTIC CORPORATIONS AND QUALIFIED FOREIGN CORPORATIONS, TO PROVIDE SAVING PROVISIONS AND TO PROVIDE SEVERABILITY.

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

SECTION 1. That Sections 30-1-1 through 30-1-153, Idaho Code, be, and the same are 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 1, Title 30, Idaho Code, and to read as follows:

CHAPTER 1
GENERAL BUSINESS CORPORATIONS

PART 1
GENERAL PROVISIONS

30-1-101. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Business Corporation Act."

30-1-102. RESERVATION OF POWER TO AMEND OR REPEAL. The Idaho legislature has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

30-1-103 -- 30-1-119. [RESERVED.]

30-1-120. FILING REQUIREMENTS. (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(2) This chapter must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this chapter. It may contain other information as well.

(4) The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably

authenticated English translation.

(6) The document must be executed:

(a) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain a corporate seal, attestation, acknowledgment or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under section 30-1-121, Idaho Code, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one (1) exact or conformed copy to be delivered with the document, except as provided in sections 30-1-503 and 30-1-1509, Idaho Code.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any other fee or penalty required to be paid therewith by this chapter or other law must be paid or provision for payment made in a manner permitted by the secretary of state.

30-1-121. FORMS. (1) The secretary of state shall prescribe and furnish on request forms for:

(a) A foreign corporation's application for a certificate of authority, or amended certificate, to transact business in this state;

(b) A foreign corporation's application for a certificate of withdrawal; and

(c) The annual report.

(2) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

30-1-122. FILING, SERVICE, AND COPYING FEES. (1) The secretary of state shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(a) Articles of incorporation	$100.00
(b) Application for use of deceptively similar name	$ 20.00
(c) Application for reserved name	$ 20.00
(d) Notice of transfer of reserved name	$ 20.00
(e) Application for registered name	$ 60.00
(f) Application for renewal of registered name	$ 60.00
(g) Corporation's statement of change of registered agent or registered office or both	No fee

(h) Agent's statement of change of registered office for each affected corporation..... No fee
(i) Agent's statement of resignation..... No fee
(j) Amendment of articles of incorporation.....$ 30.00
(k) Restatement of articles of incorporation with amendment of articles .....$ 30.00
(l) Articles of merger or share exchange.....$ 30.00
(m) Articles of dissolution.....$ 30.00
(n) Articles of revocation of dissolution.....$ 30.00
(o) Certificate of administrative dissolution.....No fee
(p) Application for reinstatement following administrative dissolution .....$ 30.00
(q) Certificate of reinstatement..... No fee
(r) Certificate of judicial dissolution..... No fee
(s) Application for certificate of authority.....$100.00
(t) Application for amended certificate of authority.....$ 30.00
(u) Application for certificate of withdrawal.....$ 20.00
(v) Certificate of revocation of authority to transact business .....No fee
(w) Annual report.....No fee
(x) Articles of correction.....$ 30.00
(y) Certificate of existence or authorization.....$ 10.00
(z) Any other document required or permitted to be filed by this chapter .....$ 20.00
(aa) Any document when the filing party requires the certificate therefor to be returned within eight (8) working hours, a surcharge of.....$ 20.00
(bb) Any nontyped document which requires a fee, a surcharge of .....$ 20.00

(2) The secretary of state shall collect a fee of ten dollars ($10.00) each time process is served on him under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(3) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) Twenty-five cents (25¢) per page for copying; and
(b) Ten dollars ($10.00) for the certificate.

30-1-123. EFFECTIVE TIME AND DATE OF DOCUMENT. (1) Except as provided in subsection (2) of this section and section 30-1-124(3), Idaho Code, a document accepted for filing is effective:

(a) At the date and time of filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing; or
(b) At the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

30-1-124. CORRECTING FILED DOCUMENT. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if:

(a) The document contains an inaccuracy; or

(b) The document was defectively executed, attested, sealed, verified or acknowledged; or

(c) The electronic transmission was defective.

(2) A document is corrected:

(a) By preparing articles of correction that:

(i) Describe the document, including its filing date, or attach a copy of it to the articles,

(ii) Specify the inaccuracy or defect to be corrected, and

(iii) Correct the inaccuracy or defect; and

(b) By delivering the articles to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

30-1-125. FILING DUTY OF SECRETARY OF STATE. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 30-1-120, Idaho Code, the secretary of state shall file it.

(2) The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in sections 30-1-503 and 30-1-1509, Idaho Code, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(3) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document;

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

30-1-126. APPEAL FROM SECRETARY OF STATE'S REFUSAL TO FILE DOCUMENT. (1) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal, within thirty (30) days after the return of the document, to the fourth judicial district court of the county of Ada, state of Idaho. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

30-1-127. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT. A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is prima facie evidence that the original document is on file with the secretary of state.

30-1-128. CERTIFICATE OF EXISTENCE. (1) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization sets forth:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) That:

(i) The domestic corporation is duly incorporated under the law of this state, and the date of its incorporation, or

(ii) The foreign corporation is authorized to transact business in this state and the date of its certificate of authority; and

(c) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as prima facie evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

30-1-129. PENALTY FOR SIGNING FALSE DOCUMENT. (1) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

(2) An offense under this section is a misdemeanor punishable by a fine of not to exceed five hundred dollars ($500).

30-1-130. POWERS OF SECRETARY OF STATE. The secretary of state has the power reasonably necessary to perform the duties required of him by this chapter.

30-1-131 -- 31-1-139. [RESERVED.]

30-1-140. CHAPTER DEFINITIONS. In this chapter:

(1) "Articles of incorporation" includes amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" is defined in section 30-1-141, Idaho Code.

(8) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction in written form of information by the recipient.

(9) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(10) "Entity" includes corporation and foreign corporation; not-for-profit corporation; limited liability company; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government.

(11) "Foreign corporation" means a corporation incorporated under a law other than the law of this state, but does not include "federally chartered corporations" which are incorporated under the laws of the United States.

(12) "Governmental subdivision" includes authority, county, district and municipality.

(13) "Includes" denotes a partial definition.

(14) "Individual" includes the estate of an incompetent or deceased individual.

(15) "Means" denotes an exhaustive definition.

(16) "Notice" is defined in section 30-1-141, Idaho Code.

(17) "Person" includes individual and entity.

(18) "Principal office" means the office, in or out of this state, where the principal executive offices of a domestic or foreign corporation are located.

(19) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(20) "Receipt" of a document sent by first class mail, in the absence of evidence of earlier actual receipt by the addressee, means five (5) days after the document is mailed postpaid and correctly addressed.

(21) "Record date" means the date established under part 6 or 7 of this chapter, on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(22) "Secretary" means the corporate officer to whom the board of

directors has delegated responsibility under section 30-1-840(3), Idaho Code, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(24) "Shares" means the units into which the proprietary interests in a corporation are divided.

(25) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

(26) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(27) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(28) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

(29) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(30) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

30-1-141. NOTICE. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective:

(a) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or

(b) When electronically transmitted to the shareholder in a manner authorized by the shareholders.

(4) Written notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its correspondance address shown in its most recent

annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

PART 2
INCORPORATION

30-1-201. INCORPORATORS. One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

30-1-202. ARTICLES OF INCORPORATION. (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of section 30-1-401, Idaho Code;

(b) The number of shares the corporation is authorized to issue;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) The name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized,

(ii) Managing the business and regulating the affairs of the corporation,

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors, and shareholders,

(iv) A par value for authorized shares or classes of shares,

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) Any provision that under this chapter is required or permitted to be set forth in the bylaws;

(d) A provision eliminating or limiting the liability of a direc-

tor to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he is not entitled,

(ii) An intentional infliction of harm on the corporation or the shareholders,

(iii) A violation of section 30-1-833, Idaho Code, or

(iv) An intentional violation of criminal law; and

(e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 30-1-850(5), Idaho Code, to any person for any action taken, or any failure to take any action, as a director, except liability for:

(i) Receipt of a financial benefit to which he is not entitled,

(ii) An intentional infliction of harm on the corporation or its shareholders,

(iii) A violation of section 30-1-833, Idaho Code, or

(iv) An intentional violation of criminal law.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

30-1-203. INCORPORATION. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is prima facie proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

30-1-204. LIABILITY FOR PREINCORPORATION TRANSACTIONS. All persons purporting to act as or on behalf of a corporation, when there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

30-1-205. ORGANIZATION OF CORPORATION. (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation, or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written

consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

30-1-206. BYLAWS. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

30-1-207. EMERGENCY BYLAWS. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

PART 3
PURPOSES AND POWERS

30-1-301. PURPOSES. (1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

30-1-302. GENERAL POWERS. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) To make and amend bylaws, not inconsistent with its articles

of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) To transact any lawful business that will aid governmental policy;

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

30-1-303. EMERGENCY POWERS. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors

for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

30-1-304. ULTRA VIRES. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation; or

(c) In a proceeding by the attorney general under section 30-1-1430, Idaho Code.

(3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

PART 4
NAME

30-1-401. CORPORATE NAME. (1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; provided however, that if the word "company" or its abbreviation is used it shall not be immediately preceded by the word "and" or by an abbreviation of or symbol representing the word "and;"

(b) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 30-1-301, Idaho Code, and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4) of this section, a corporate name shall not be the same as, or deceptively similar to:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A name reserved or registered under section 30-1-402 or 30-1-403, Idaho Code, or reserved under section 53-203 or 53-603,

Idaho Code;

(c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(e) The name of any limited partnership, limited liability partnership or limited liability company which is organized under the laws of this state or registered to do business in this state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is the same as, or deceptively similar to, one (1) or more of the names described in subsection (2) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder of a reserved or registered name, limited partnership, limited liability partnership or limited liability company consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is the same as, or deceptively similar to, the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or limited liability company that is used in this state if the other corporation or limited liability company is organized or authorized to transact business in this state and the proposed user corporation:

(a) Has merged with the other corporation or limited liability company;

(b) Has been formed by reorganization of the other corporation or limited liability company; or

(c) Has acquired all or substantially all of the assets, including the name, of the other corporation or limited liability company.

(5) This chapter does not control the use of assumed business names, governed by "The Assumed Business Names Act of 1997," chapter 5, title 53, Idaho Code.

(6) Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practice in the use of trade names, nor derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names.

(7) The assumption of a name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this state, having equity jurisdiction, may, upon the application of the state, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation in violation from doing business under any name assumed in violation of this section.

30-1-402. RESERVED NAME. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign

corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable four (4) month period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

30-1-403. REGISTERED NAME. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 30-1-1506, Idaho Code, if the name is not the same as or deceptively similar to the corporate names that are unavailable under section 30-1-401(2), Idaho Code.

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 30-1-1506, Idaho Code, by delivering to the secretary of state for filing an application:

(a) Setting forth its corporate name, or its corporate name with any addition required by section 30-1-1506, Idaho Code, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use upon the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

PART 5
OFFICE AND AGENT

30-1-501. REGISTERED OFFICE AND REGISTERED AGENT. Each corporation must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business office is identical with the registered office;

(b) A domestic corporation, or a not-for-profit domestic corporation or a domestic limited liability company whose business office is identical with the registered office; or

(c) A foreign corporation, or a not-for-profit foreign corporation or a foreign limited liability company authorized to transact business in this state whose business office is identical with the registered office.

30-1-502. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. (1) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

(3) A corporation may also change its registered office or its registered agent, or both, by indicating such change in the appropriate space on the annual report required by section 30-1-1622, Idaho Code.

30-1-503. RESIGNATION OF REGISTERED AGENT. (1) A registered agent may resign his agency appointment by signing and delivering to the secretary of state for filing the signed original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the secretary of state shall mail one (1) copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

30-1-504. SERVICE ON CORPORATION. (1) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(2) If a corporation has no registered agent, or the agent cannot

with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at the correspondence address shown in the corporation's most recent annual report required by section 30-1-1622, Idaho Code, or at its principal office. Service is perfected under this subsection at the earliest of:

(a) The date the corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the corporation; or

(c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(3) This section does not prescribe the only means, or necessarily the required means of serving a corporation.

PART 6
SHARES AND DISTRIBUTIONS

30-1-601. AUTHORIZED SHARES. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one (1) class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 30-1-602, Idaho Code.

(2) The articles of incorporation must authorize:

(a) One (1) or more classes of shares that together have unlimited voting rights; and

(b) One (1) or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one (1) or more classes of shares that:

(a) Have special, conditional or limited voting rights, or no right to vote, except to the extent prohibited by this chapter;

(b) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(ii) For cash, indebtedness, securities or other property;

(iii) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative;

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the

dissolution of the corporation.

(4) The description of the designations, preferences, limitations and relative rights of share classes in subsection (3) of this section is not exhaustive.

30-1-602. TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations and relative rights, within the limits set forth in section 30-1-601, Idaho Code, of:

(a) Any class of shares before the issuance of any shares of that class; or

(b) One (1) or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series or shares;

(c) The date it was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors.

30-1-603. ISSUED AND OUTSTANDING SHARES. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or cancelled.

(2) The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection (3) of this section and to section 30-1-640, Idaho Code.

(3) At all times that shares of the corporation are outstanding, one (1) or more shares that together have unlimited voting rights and one (1) or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

30-1-604. FRACTIONAL SHARES. (1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders;

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section

30-1-625(2), Idaho Code.

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

30-1-605 -- 30-1-619. [RESERVED.]

30-1-620. SUBSCRIPTION FOR SHARES BEFORE INCORPORATION. (1) A subscription for shares entered into before incorporation must be in writing and is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement, provided that such consideration meets the requirements of section 30-1-621(2), Idaho Code.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 30-1-621, Idaho Code.

(6) A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against the subscriber or the corporation, unless in writing and signed by the party to be bound.

30-1-621. ISSUANCE OF SHARES. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property, including cash, promissory notes, services performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the note is paid. If the note is not paid, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

30-1-622. LIABILITY OF SHAREHOLDERS. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in section 30-1-621, Idaho Code, or specified in the subscription agreement as provided in section 30-1-620, Idaho Code.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

30-1-623. SHARE DIVIDENDS. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one (1) or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) The articles of incorporation so authorize;

(b) A majority of the votes entitled to be cast by the class or series to be issued approve the issue, or

(c) There are not outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

30-1-624. SHARE OPTIONS. A corporation may issue rights, options or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options or warrants are issued, their form and content, and the consideration for which the shares are to be issued, unless the power to make such determination is reserved to the shareholders by the articles of incorporation.

30-1-625. FORM AND CONTENT OF CERTIFICATES. (1) Shares may but need not be represented by certificates. Unless this chapter or

another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum each share certificate must state on its face:

(a) The name of the issuing corporation and that it is organized under the law of this state;

(b) The name of the person to whom issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate:

(a) Must be signed, either manually or in facsimile, by two (2) officers designated in the bylaws or by the board of directors; and

(b) May bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

30-1-626. SHARES WITHOUT CERTIFICATES. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 30-1-625(2) and (3), Idaho Code, and, if applicable, section 30-1-627, Idaho Code.

30-1-627. RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES. (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section

30-1-626(2), Idaho Code. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law;

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

30-1-628. EXPENSE OF ISSUE. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

30-1-629. [RESERVED.]

30-1-630. SHAREHOLDERS' PREEMPTIVE RIGHTS. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unisssued shares upon the decision of the board of directors to issue them.

(b) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(ii) Shares issued to satisfy conversion rights or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation;

(iv) Shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

30-1-631. CORPORATION'S ACQUISITION OF ITS OWN SHARES. (1) A corporation may acquire its own shares. Unless a resolution of the board of directors or the corporation's articles of incorporation provide otherwise, shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the secretary of state for filing. The articles must set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(4) A corporation has authority to use, hold, acquire, cancel and dispose of treasury shares.

(5) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, treasury shares of the corporation that are cancelled shall be treated as authorized but unissued shares.

30-1-632 -- 30-1-639. [RESERVED.]

30-1-640. DISTRIBUTIONS TO SHAREHOLDERS. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7) of this section, the effect of a distribution under subsection (3) of this section is measured:

(a) In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of:

(i) The date money or other property is transferred or debt incurred by the corporation, or

(ii) The date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of:

(i) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization, or

(ii) The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distri-

bution, the effect of which is measured on the date the payment is actually made.

PART 7
SHAREHOLDERS

30-1-701. ANNUAL MEETING. (1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

30-1-702. SPECIAL MEETING. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If the holders of at least twenty percent (20%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) If not otherwise fixed under section 30-1-703 or 30-1-707, Idaho Code, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by section 30-1-705(3), Idaho Code, may be conducted at a special shareholders' meeting.

30-1-703. COURT-ORDERED MEETING. (1) The Idaho district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within fifteen (15) months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under section 30-1-702, Idaho Code, if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary, or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

30-1-704. ACTION WITHOUT MEETING. (1) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one (1) or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under section 30-1-703 or 30-1-707, Idaho Code, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(4) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

30-1-705. NOTICE OF MEETING. (1) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under section 30-1-703 or 30-1-707, Idaho Code, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be

fixed under section 30-1-707, Idaho Code, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

30-1-706. WAIVER OF NOTICE. (1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

30-1-707. RECORD DATE. (1) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

30-1-708 -- 30-1-719. [RESERVED.]

30-1-720. SHAREHOLDERS' LIST FOR MEETING. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, at least ten (10) days before the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting

notice in the city where the meeting will be held. A shareholder, his agent or attorney is entitled on written demand to inspect and, subject to the requirements of section 30-1-1602(3), Idaho Code, to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, his agent or attorney to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection (2) of this section, the Idaho district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

30-1-721. [RESERVED]

30-1-722. PROXIES. (1) A shareholder may vote his shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 30-1-731, Idaho Code.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to section 30-1-724, Idaho Code, and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

30-1-723. SHARES HELD BY NOMINEES. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) The types of nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a beneficial owner;

(c) The manner in which the procedure is selected by the nominee;

(d) The information that must be provided when the procedure is selected;

(e) The period for which selection of the procedure is effective; and

(f) Other aspects of the rights and duties created.

30-1-724. CORPORATION'S ACCEPTANCE OF VOTES. (1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been pre-

sented with respect to the vote, consent, waiver or proxy appointment;

(e) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name or at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

30-1-725. QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) of this section is governed by section 30-1-727, Idaho Code.

(5) The election of directors is governed by section 30-1-728, Idaho Code.

30-1-726. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS. (1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 30-1-725, Idaho Code.

(2) If the articles of incorporation or this chapter provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 30-1-725, Idaho Code. Action may be taken by one (1) voting group on a matter even though no

action is taken by another voting group entitled to vote on the matter.

30-1-727. GREATER QUORUM OR VOTING REQUIREMENTS. (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

30-1-728. VOTING FOR DIRECTORS -- CUMULATIVE VOTING. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(3) A statement included in the articles of incorporation that "[all][a designated voting group of shareholders] are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

30-1-729. [RESERVED.]

30-1-730. VOTING TRUSTS. (1) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten (10) years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing written consent to the extension. An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

30-1-731. VOTING AGREEMENTS. (1) Two (2) or more shareholders may provide for the manner in which they will vote their shares by

signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 30-1-730, Idaho Code.

(2) A voting agreement created under this section is specifically enforceable.

30-1-732. SHAREHOLDER AGREEMENTS. (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one (1) or more other provisions of this chapter in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations in section 30-1-640, Idaho Code;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(f) Transfers to one (1) or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) Requires dissolution of the corporation at the request of one (1) or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(2) An agreement authorized by this section shall be:

(a) Set forth:

(i) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement, or

(ii) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) Valid for ten (10) years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section 30-1-626(2), Idaho Code. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

30-1-733 -- 30-1-739. [RESERVED.]

30-1-740. PROVISIONS RELATING TO ACTIONS BY SHAREHOLDERS. Any action brought in this state by a shareholder in the right of a domestic or foreign corporation shall be brought in accordance with rule 23(f) of the Idaho rules of civil procedure.

PART 8
DIRECTORS AND OFFICERS

30-1-801. REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS. (1) Except as provided in section 30-1-732, Idaho Code, each corporation must have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 30-1-732, Idaho Code.

30-1-802. QUALIFICATIONS OF DIRECTORS. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

30-1-803. NUMBER AND ELECTION OF DIRECTORS. (1) A board of directors must consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent (30%) or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent (30%) the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 30-1-806, Idaho Code.

30-1-804. ELECTION OF DIRECTORS BY CERTAIN CLASSES OF SHAREHOLDERS. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more authorized classes of shares. A class, or classes, of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

30-1-805. TERMS OF DIRECTORS GENERALLY. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 30-1-806, Idaho Code.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

(5) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

30-1-806. STAGGERED TERMS FOR DIRECTORS. If there are nine (9) or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) or three (3) years, as the case may be, to succeed those whose terms expire.

30-1-807. RESIGNATION OF DIRECTORS. (1) A director may resign at any time by delivering written notice to the board of directors, its chairman, or the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

30-1-808. REMOVAL OF DIRECTORS BY SHAREHOLDERS. (1) The shareholders may remove one (1) or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

30-1-809. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING. (1) The Idaho district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent (10%) of the outstanding shares of any class if the court finds that:

(a) The director engaged in fraudulent or dishonest conduct, or

gross abuse of authority or discretion, with respect to the corporation; and

(b) Removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant.

30-1-810. VACANCY ON BOARD. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 30-1-807(2), Idaho Code, or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

30-1-811. COMPENSATION OF DIRECTORS. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

30-1-812 -- 30-1-819. [RESERVED.]

30-1-820. MEETINGS. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

30-1-821. ACTION WITHOUT MEETING. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signed the consent, unless the consent specifies an earlier or later effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

30-1-822. NOTICE OF MEETING. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two (2) days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

30-1-823. WAIVER OF NOTICE. (1) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver must be filed in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

30-1-824. QUORUM AND VOTING. (1) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(a) A majority of the fixed number of directors if the corporation has a fixed board size; or

(b) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors determined under subsection (1) of this section.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(a) He objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting business at the meeting;

(b) His dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) He delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to

the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

30-1-825. COMMITTEES. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one (1) or more committees and appoint members of the board of directors to serve on them. Each committee must have two (2) or more members, who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles of incorporation or bylaws to take action under section 30-1-824, Idaho Code.

(3) Sections 30-1-820 through 30-1-824, Idaho Code, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section 30-1-801, Idaho Code.

(5) A committee may not, however:

(a) Authorize distributions;

(b) Approve or propose to shareholders action that this chapter requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to section 30-1-1002, Idaho Code;

(e) Adopt, amend or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval;

(g) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation, to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 30-1-830, Idaho Code.

30-1-826 -- 30-1-829. [RESERVED.]

30-1-830. GENERAL STANDARDS FOR DIRECTORS. (1) A director shall discharge his duties as a director, including his duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

30-1-831 -- 30-1-832. [RESERVED.]

30-1-833. LIABILITY FOR UNLAWFUL DISTRIBUTIONS. (1) A director who votes for or assents to a distribution made in violation of section 30-1-640, Idaho Code, or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 30-1-640, Idaho Code, or the articles of incorporation if it is established that he did not perform his duties in compliance with section 30-1-830, Idaho Code. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of section 30-1-640, Idaho Code, or the articles of incorporation.

(3) A proceeding under this section is barred unless it is commenced within three (3) years after the date on which the effect of the distribution was measured under section 30-1-640(5) or (7), Idaho Code.

30-1-834 -- 30-1-839. [RESERVED.]

30-1-840. REQUIRED OFFICERS. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one (1) or more officers

or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one (1) office in a corporation.

30-1-841. DUTIES OF OFFICERS. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

30-1-842. STANDARDS OF CONDUCT FOR OFFICERS. (1) An officer with discretionary authority shall discharge his duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he reasonably believes to be in the best interests of the corporation.

(2) In discharging his duties an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One (1) or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

30-1-843. RESIGNATION AND REMOVAL OF OFFICERS. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(2) A board of directors may remove any officer at any time with or without cause.

30-1-844. CONTRACT RIGHTS OF OFFICERS. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract

rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

30-1-845 -- 30-1-849. [RESERVED.]

30-1-850. DEFINITIONS. For purposes of sections 30-1-850 through 30-1-859, Idaho Code:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Disinterested director" means a director who, at the time of a vote referred to in section 30-1-853(3), Idaho Code, or a vote or selection referred to in section 30-1-855(2) or (3), Idaho Code, is not:

(a) A party to the proceeding; or

(b) An individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

(4) "Expenses" includes counsel fees.

(5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(6) "Official capacity" means:

(a) When used with respect to a director, the office of director in a corporation; and

(b) When used with respect to an officer, as contemplated in section 30-1-856, Idaho Code, the office in a corporation held by the officer. "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

(7) "Party" means an individual who was, is or is threatened to be made, a defendant or respondent in a proceeding.

(8) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative and whether formal or informal.

30-1-851. PERMISSIBLE INDEMNIFICATION. (1) Except as otherwise

provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he is a director against liability incurred in the proceeding if:

(a) (i) He conducted himself in good faith; and

(ii) He reasonably believed:

(A) In the case of conduct in his official capacity, that his conduct was in the best interests of the corporation, and

(B) In all cases, that his conduct was at least not opposed to the best interests of the corporation; and

(iii) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; or

(b) He engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by section 30-1-202(2)(e), Idaho Code.

(2) A director's conduct with respect to an employee plan for a purpose he reasonably believed to be in the best interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B) of this section.

(3) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(4) Unless ordered by a court under section 30-1-854(1)(c), Idaho Code, a corporation may not indemnify a director:

(a) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1) of this section; or

(b) In connection with any proceeding with respect to conduct for which he was adjudged liable on the basis that he received a financial benefit to which he was not entitled, whether or not involving action in his official capacity.

30-1-852. MANDATORY INDEMNIFICATION. A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

30-1-853. ADVANCE FOR EXPENSES. (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he is a director if he delivers to the corporation:

(a) A written affirmation of his good faith belief that he has met the relevant standard of conduct described in section 30-1-851, Idaho Code, or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 30-1-202(2)(d), Idaho Code; and

(b) His written undertaking to repay any funds advanced if he is not entitled to mandatory indemnification under section 30-1-852, Idaho Code, and it is ultimately determined under section 30-1-854 or 30-1-855, Idaho Code, that he has not met the relevant standard of conduct described in section 30-1-851, Idaho Code.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section shall be made:

(a) By the board of directors:

(i) If there are two (2) or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purposes constitute a quorum, or by a majority of the members of a committee of two (2) or more disinterested directors appointed by such a vote; or

(ii) If there are fewer than two (2) disinterested directors, by the vote necessary for action by the board in accordance with section 30-1-824(3), Idaho Code, in which authorization directors who do not qualify as disinterested directors may participate; or

(b) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

30-1-854. COURT-ORDERED INDEMNIFICATION AND ADVANCE FOR EXPENSES. (1) A director who is a party to a proceeding because he is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 30-1-852, Idaho Code;

(b) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 30-1-858(1), Idaho Code; or

(c) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director, or

(ii) To advance expenses to the director,

even if he has not met the relevant standard of conduct set forth in section 30-1-851(1), Idaho Code, failed to comply with section 30-1-853, Idaho Code, or was adjudged liable in a proceeding referred to in section 30-1-851(4)(a) or (4)(b), Idaho Code, but if he was adjudged so liable his indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) of this section or to indemnification or advance for expenses under subsection (1)(b) of this section, it shall also order the corporation to pay the director's rea-

sonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

30-1-855. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION. (1) A corporation may not indemnify a director under section 30-1-851, Idaho Code, unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because he has met the relevant standard of conduct set forth in section 30-1-851, Idaho Code.

(2) The determination shall be made:

(a) If there are two (2) or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, (a majority of whom shall for such purpose constitute a quorum), or by a majority of the members of a committee of two (2) or more disinterested directors appointed by such a vote;

(b) By special legal counsel:

(i) Selected in the manner prescribed in paragraph (a) of this subsection; or

(ii) If there are fewer than two (2) disinterested directors, selected by the board of directors (in which selection directors who do not qualify as disinterested directors may participate); or

(c) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

(3) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two (2) disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection (2)(b)(ii) of this section to select special legal counsel.

30-1-856. OFFICERS. (1) A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he is an officer of the corporation.

(a) To the same extent as a director; and

(b) If he is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:

(i) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(ii) Liability arising out of conduct that constitutes:

(A) Receipt by him of a financial benefit to which he is not entitled,

(B) An intentional infliction of harm on the corporation or the shareholders, or

(C) An intentional violation of criminal law.

(2) The provisions of subsection (1)(b) of this section shall apply to an officer who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer.

(3) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 30-1-852, Idaho Code, and may apply to a court under section 30-1-854, Idaho Code, for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

30-1-857. INSURANCE. A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to him against the same liability under this part; provided that banks, savings and loan associations and credit unions chartered under the laws of the state of Idaho may provide indemnification only by insurance.

30-1-858. VARIATION BY CORPORATE ACTION -- APPLICATION OF INDEMNIFICATION PROVISIONS. (1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 30-1-851, Idaho Code, or advance funds to pay for or reimburse expenses in accordance with section 30-1-853, Idaho Code. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 30-1-853(3), Idaho Code, and in section 30-1-855(3), Idaho Code. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 30-1-853, Idaho Code, to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) Any provision pursuant to subsection (1) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 30-1-1106(1)(c), Idaho Code.

(3) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part, other than the rights to

mandatory indemnification under section 30-1-852, Idaho Code, and to court-ordered indemnification and advance for expenses under section 30-1-854, Idaho Code.

(4) Sections 30-1-850 through 30-1-859, Idaho Code, do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(5) Sections 30-1-850 through 30-1-859, Idaho Code, do not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

30-1-859. EXCLUSIVITY. A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 30-1-850 through 30-1-859, Idaho Code.

30-1-860. DEFINITIONS. For purposes of sections 30-1-860 through 30-1-863, Idaho Code:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction:

(i) An entity, other than the corporation, of which the director is a director, general partner, agent or employee,

(ii) A person that controls one (1) or more of the entities specified in subparagraph (i) of this paragraph or an entity that is controlled by, or is under common control with, one (1) or more of the entities specified in subparagraph (i) of this paragraph, or

(iii) An individual who is a general partner, principal or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting

which a director of the corporation has a conflicting interest.

(3) "Related person" of a director means:

(a) The spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified in this paragraph (a) is a substantial beneficiary; or

(b) A trust, estate, incompetent, conservatee or minor of which the director is a fiduciary.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of:

(a) The existence and nature of his conflicting interest; and

(b) All facts known to him respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

30-1-861. JUDICIAL ACTION. (1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation, or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which he has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which he has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with section 30-1-862, Idaho Code;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with section 30-1-863, Idaho Code; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

30-1-862. DIRECTORS' ACTION. (1) Directors' action respecting a transaction is effective for purposes of section 30-1-861(2)(a), Idaho Code, if the transaction received the affirmative vote of a majority, but no fewer than two (2), of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with sub-

section (2) of this section; provided that action by a committee is so effective only if:

(a) All its members are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither he nor a related person of the director specified in section 30-1-860(3)(a), Idaho Code, is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in section 30-1-860(4)(b), Idaho Code, then disclosure is sufficient for purposes of subsection (1) of this section if the director:

(a) Discloses to the directors voting on the transaction the existence and nature of his conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and

(b) Plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two (2), of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either:

(a) A conflicting interest respecting the transaction; or

(b) A familial, financial, professional or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

30-1-863. SHAREHOLDERS' ACTION. (1) Shareholders' action respecting a transaction is effective for purposes of section 30-1-861 (2)(b), Idaho Code, if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

(a) Notice to shareholders describing the director's conflicting interest transaction;

(b) Provision of the information referred to in subsection (4) of this section; and

(c) Required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of

which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings respecting section 30-1-861(2)(c), Idaho Code, take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances.

PART 9
RESERVED

PART 10
AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

30-1-1001. AUTHORITY TO AMEND ARTICLES OF INCORPORATION. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend, entitlement, or purpose or duration of the corporation.

30-1-1002. AMENDMENT BY BOARD OF DIRECTORS. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file or if an annual report has been filed with the secretary of state;

(4) To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) To change the corporate name by substituting "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reduce the number of authorized shares solely as a result of a cancellation of treasury shares; or

(7) To make any other change expressly permitted by this chapter to be made without shareholder action.

30-1-1003. AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS. (1) A corporation's board of directors may propose one (1) or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 30-1-705, Idaho Code. The notice of meeting must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) The votes required by sections 30-1-725 and 30-1-726, Idaho Code, by every other voting group entitled to vote on the amendment.

30-1-1004. VOTING ON AMENDMENTS BY VOTING GROUPS. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized

shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the class;

(g) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection (1) of this section, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two (2) or more series of shares to vote as separate voting groups under this section would affect those two (2) or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

30-1-1005. AMENDMENT BEFORE ISSUANCE OF SHARES. If a corporation has not yet issued shares, its incorporators or board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation.

30-1-1006. ARTICLES OF AMENDMENT. A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

(6) If an amendment was approved by the shareholders:

(a) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

30-1-1007. RESTATED ARTICLES OF INCORPORATION. (1) A corporation's board of directors may restate its articles of incorporation at anytime with or without shareholder action.

(2) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 30-1-1003, Idaho Code.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 30-1-705, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement;

(b) Or if the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 30-1-1006, Idaho Code.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section.

30-1-1008. AMENDMENT PURSUANT TO REORGANIZATION. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section 30-1-202, Idaho Code.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment

setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

30-1-1009. EFFECT OF AMENDMENT. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

30-1-1010 -- 30-1-1019. [RESERVED.]

30-1-1020. AMENDMENT BY BOARD OF DIRECTORS OR SHAREHOLDERS. (1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(b) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

30-1-1021. BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR SHAREHOLDERS. (1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by this chapter. The adoption or amendment of a bylaw that adds, changes or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) of this section may not be adopted, amended or repealed by the board of directors.

30-1-1022. BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR DIRECTORS. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders;

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

PART 11
MERGER AND SHARE EXCHANGE

30-1-1101. MERGER. (1) One (1) or more corporations may merge into another corporation or, subject to any law applicable to limited liability companies, into a limited liabililty company if the board of directors of each corporation adopts and its shareholders, if required by section 30-1-1103, Idaho Code, approve a plan of merger.

(2) The plan of merger must set forth:

(a) The name of each corporation or limited liability company planning to merge and the name of the surviving corporation or limited liability company into which each other corporation or limited liability company plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation or rights or securities of or interests in each limited liability company into shares, obligations, or other securities of the surviving or any other corporation, or into rights or securities of or interests in the surviving or any other limited liability company, or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger.

30-1-1102. SHARE EXCHANGE. (1) A corporation may acquire all the outstanding shares of one (1) or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 30-1-1103, Idaho Code, approve the exchange.

(2) The plan of exchange must set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange; and

(c) The manner and basis of exchanging the shares to be acquired

for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation through a voluntary exchange or otherwise.

30-1-1103. ACTION ON PLAN. (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote must approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 30-1-705, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under section 30-1-1004, Idaho Code;

(b) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 30-1-1002, Idaho Code, from articles before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical desig-

nations, preferences, limitations, and relative rights, immediately after;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in election of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

30-1-1104. MERGER OF SUBSIDIARY. (1) A parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations or other securities of the parent or any other corporation or into cash or other property in whole or part.

(3) The parent shall mail a copy of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent may not deliver articles of merger to the secretary of state for filing until at least thirty (30) days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in section 30-1-1002, Idaho Code.

30-1-1105. ARTICLES OF MERGER OR SHARE EXCHANGE. (1) After a plan of merger or share exchange is approved by the shareholders, or

adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(a) The plan of merger or share exchange;

(b) If shareholder approval was not required, a statement to that effect;

(c) If approval of the shareholders of one (1) or more corporations party to the merger or share exchange was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

30-1-1106. EFFECT OF MERGER OR SHARE EXCHANGE. (1) When a merger takes effect:

(a) Every other corporation or limited liability company party to the merger merges into the surviving corporation or limited liability company and the separate existence of every corporation or limited liability company except the surviving corporation or limited liability company ceases;

(b) The title to all real estate and other property owned by each corporation or limited liability company party to the merger is vested in the surviving corporation or limited liability company without reversion or impairment;

(c) The surviving corporation or limited liability company has all liabilities of each corporation or limited liability company party to the merger;

(d) A proceeding pending against any corporation or limited liability company party to the merger may be continued as if the merger did not occur or the surviving corporation or limited liability company may be substituted in the proceeding for the corporation or limited liability company whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) The shares of each corporation or rights or securities of or interests in each limited liability company party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into rights or securities of or interests in any limited liability company or into cash or other property are converted, and the former holders of the shares or rights or securities or interests are entitled only to the rights provided in the articles of merger or to their rights under part 13 of this chapter or under any law applicable to limited liability companies.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under part 13 of this chapter.

30-1-1107. MERGER OR SHARE EXCHANGE WITH FOREIGN CORPORATION. (1) One (1) or more foreign corporations or limited liability companies may merge with one (1) or more domestic corporations or limited liability companies, or one (1) or more foreign corporations may enter into a share exchange with one (1) or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation or limited liability company is incorporated or organized and each foreign corporation or limited liability company complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with section 30-1-1105, Idaho Code, if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of sections 30-1-1101 through 30-1-1104, Idaho Code, and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange under the provisions of section 30-1-1105, Idaho Code.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation or limited liability company of a merger and the acquiring foreign corporation of a share exchange is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or of each domestic corporation party to the share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under part 13 of this chapter.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one (1) or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

PART 12
SALE OF ASSETS

30-1-1201. SALE OF ASSETS IN REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS. (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of

business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section is not required.

30-1-1202. SALE OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS. (1) A corporation may sell, lease, exchange or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 30-1-705, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution is governed by section 30-1-640, Idaho Code, and not by this section.

PART 13
DISSENTERS' RIGHTS

30-1-1301. DEFINITIONS. In this part:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring cor-

poration by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 30-1-1302, Idaho Code, and who exercises that right when and in the manner required by sections 30-1-1320 through 30-1-1328, Idaho Code.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

30-1-1302. RIGHT TO DISSENT. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by section 30-1-1103, Idaho Code, or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) If the corporation is a subsidiary that is merged with its parent under section 30-1-1104, Idaho Code;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

(d) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares;

(ii) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 30-1-604, Idaho Code; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for his shares under this part may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(3) This section does not apply to the holders of shares of any class or series if the shares of the class or series are redeemable securities issued by a registered investment company as defined pursuant to the investment company act of 1940 (15 U.S.C. 80a-15 U.S.C. 80a-64).

(4) Unless the articles of incorporation of the corporation provide otherwise, this section does not apply to the holders of shares of a class or series if the shares of the class or series were registered on a national securities exchange, were listed on the national market systems of the national association of securities dealers automated quotation system or were held of record by at least two thousand (2,000) shareholders on the date fixed to determine the shareholders entitled to vote on the proposed corporate action.

30-1-1303. DISSENT BY NOMINEES AND BENEFICIAL OWNERS. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one (1) person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(a) He submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) He does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

30-1-1304 -- 30-1-1319. [RESERVED.]

30-1-1320. NOTICE OF DISSENTERS' RIGHTS. (1) If proposed corpo-

rate action creating dissenters' rights under section 30-1-1302, Idaho Code, is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this part and be accompanied by a copy of this part.

(2) If corporate action creating dissenters' rights under section 30-1-1302, Idaho Code, is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 30-1-1322, Idaho Code.

30-1-1321. NOTICE OF INTENT TO DEMAND PAYMENT. (1) If proposed corporate action creating dissenters' rights under section 30-1-1302, Idaho Code, is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) Must deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(b) Must not vote his shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section is not entitled to payment for his shares under this part.

30-1-1322. DISSENTERS' NOTICE. (1) If proposed corporate action creating dissenters' rights under section 30-1-1302, Idaho Code, is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 30-1-1321, Idaho Code.

(2) The dissenters' notice must be sent no later than ten (10) days after the corporate action was taken, and must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the notice in subsection (1) of this section is delivered; and

(e) Be accompanied by a copy of this part.

30-1-1323. DUTY TO DEMAND PAYMENT. (1) A shareholder sent a dissenters' notice described in section 30-1-1322, Idaho Code, must demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to section 30-1-1322(2)(c), Idaho Code, and, with respect to any certificated shares, deposit his certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and, with respect to any certificated shares, deposits his share certificates under subsection (1) of this section retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under this part.

30-1-1324. SHARE RESTRICTIONS. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 30-1-1326, Idaho Code.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

30-1-1325. PAYMENT. (1) Except as provided in section 30-1-1327, Idaho Code, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 30-1-1323, Idaho Code, the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

(2) The payment must be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) A statement of the corporation's estimate of the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under section 30-1-1328, Idaho Code; and

(e) A copy of this part.

30-1-1326. FAILURE TO TAKE ACTION. (1) If the corporation does not take the proposed action within sixty (60) days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 30-1-1322, Idaho Code, and repeat the payment demand procedure.

30-1-1327. AFTER-ACQUIRED SHARES. (1) A corporation may elect to withhold payment required by section 30-1-1325, Idaho Code, from a dissenter unless he was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the pro-

posed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 30-1-1328, Idaho Code.

30-1-1328. PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER. (1) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate, less any payment under section 30-1-1325, Idaho Code, or reject the corporation's offer under section 30-1-1327, Idaho Code, and demand payment of the fair value of his shares and interest due, if:

(a) The dissenter believes that the amount paid under section 30-1-1325, Idaho Code, or offered under section 30-1-1327, Idaho Code, is less than the fair value of his shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under section 30-1-1325, Idaho Code, within sixty (60) days after the date set for demanding payment; or

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.

(2) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (1) of this section within thirty (30) days after the corporation made or offered payment for his shares.

30-1-1329. [RESERVED.]

30-1-1330. COURT ACTION TO DETERMINE SHARE VALUE. (1) If a demand for payment under section 30-1-1328, Idaho Code, remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the Idaho district court of the county where a corporation's principal office or, if none in this state, its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters, whether or not

residents of this state, whose demands remain unsettled parties to the proceeding, as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation; or

(b) For the fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under section 30-1-1327, Idaho Code.

30-1-1331. COURT COSTS AND COUNSEL FEES. (1) The court in an appraisal proceeding commenced under section 30-1-1330, Idaho Code, shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 30-1-1328, Idaho Code.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 30-1-1320 through 30-1-1328, Idaho Code; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to dissenters who were benefited.

PART 14
DISSOLUTION

30-1-1401. DISSOLUTION BY INCORPORATORS OR INITIAL DIRECTORS. A majority of the incorporators or initial directors of a corporation

that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either:

(a) That none of the corporation's shares has been issued, or

(b) That the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

30-1-1402. DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 30-1-705, Idaho Code. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

30-1-1403. ARTICLES OF DISSOLUTION. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(a) The name of the corporation;

(b) The date dissolution was authorized;

(c) If dissolution was approved by the shareholders:

(i) The number of votes entitled to be cast on the proposal to dissolve, and

(ii) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval;

(d) If voting by voting groups was required, the information

required by paragraph (c) of this subsection must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

30-1-1404. REVOCATION OF DISSOLUTION. (1) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was authorized;

(d) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder action was required to revoke the dissolution, the information required by section 30-1-1403(1)(c) or (d), Idaho Code.

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

30-1-1405. EFFECT OF DISSOLUTION. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the

authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in part 8 of this chapter;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

30-1-1406. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline;

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

30-1-1407. UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION. (1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two

(2) years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 30-1-1406, Idaho Code;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

30-1-1408 -- 30-1-1419. [RESERVED.]

30-1-1420. GROUNDS FOR ADMINISTRATIVE DISSOLUTION. The secretary of state may administratively dissolve a corporation under section 30-1-1421, Idaho Code, if:

(1) The corporation does not deliver its annual report to the secretary of state by the date on which it is due;

(2) The corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(3) The secretary of state has credible information that the corporation has failed to notify the secretary of state within sixty (60) days after the occurrence that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(4) The corporation's period of duration stated in its articles of incorporation expires.

30-1-1421. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION. (1) If the secretary of state determines that one (1) or more grounds exist under section 30-1-1420, Idaho Code, for dissolving a corporation, he shall give notice of his determination to the corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the corporation has not yet filed an annual report, to its registered office.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state shall administratively dissolve the corporation by noting the fact of dissolution and the effective date thereof in his records. The secretary of state shall give notice of

the dissolution to the corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the corporation has not yet filed an annual report, to its registered office.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 30-1-1405, Idaho Code, and notify claimants under sections 30-1-1406 and 30-1-1407, Idaho Code.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

30-1-1422. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION. (1) A corporation administratively dissolved under section 30-1-1421, Idaho Code, may apply to the secretary of state for reinstatement within ten (10) years after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the date of its incorporation;

(b) State that the corporation applies for reinstatement;

(c) If the corporation's name or one deceptively similar thereto has been appropriated by another entity whose organizational documents are filed with the secretary of state, be accompanied either by a consent to the use of a deceptively similar name executed by the other entity or by articles of amendment by which the corporation adopts a new name which complies with the requirements of section 30-1-401, Idaho Code; and

(d) Be accompanied by a current annual report, appointment of registered agent or articles of amendment to extend the corporate existence, as appropriate to the reason for administrative dissolution.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the dissolution and prepare a certificate of reinstatement that recites the fact and effective date of the reinstatement, file a copy thereof and return the original to the corporation.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

30-1-1423. APPEAL FROM DENIAL OF REINSTATEMENT. (1) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall give the corporation written notice by first class mail that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the fourth district court, Ada county, Idaho, within thirty (30) days after receipt of the notice of denial. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's notice of dissolution, the corporation's application for reinstatement, and the secretary of

state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

30-1-1424 -- 30-1-1429. [RESERVED.]

30-1-1430. GROUNDS FOR JUDICIAL DISSOLUTION. The Idaho district court designated in section 30-1-1431(1), Idaho Code, may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered because of the deadlock;

(b) The directors or those in control of the corporation have acted or are acting in a manner that is illegal, oppressive or fraudulent, and irreparable injury to the corporation is threatened or being suffered by reason thereof; or

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates to elect successors to directors whose terms have expired;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

30-1-1431. PROCEDURE FOR JUDICIAL DISSOLUTION. (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in Ada County. Venue for a proceeding brought by any other party named in section 30-1-1430, Idaho Code, lies in the county where a corporation's principal office or, if none in this state, its registered office is or was located.

(2) It is not necessary to make shareholders parties to the proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the busi-

ness of the corporation until a full hearing can be held.

(4) Within ten (10) days of the commencement of a proceeding under section 30-1-1430(2), Idaho Code, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders may be entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 30-1-1434, Idaho Code, and accompanied by a copy of section 30-1-1434, Idaho Code.

30-1-1432. RECEIVERSHIP OR CUSTODIANSHIP. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver:

(i) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(ii) May sue and defend in his own name as receiver of the corporation in all courts of this state;

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

30-1-1433. DECREE OF DISSOLUTION. (1) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in section 30-1-1430, Idaho Code, exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified

copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 30-1-1405, Idaho Code, and the notification of claimants in accordance with sections 30-1-1406 and 30-1-1407, Idaho Code.

30-1-1434. ELECTION TO PURCHASE IN LIEU OF DISSOLUTION. (1) In a proceeding under section 30-1-1430(2), Idaho Code, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one (1) or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. In a proceeding under section 30-1-1430(2), Idaho Code, to dissolve a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within ninety (90) days after the filing of the petition under section 30-1-1430(2), Idaho Code, or at such later time as the court in its discretion may allow. If the election to purchase is filed by one (1) or more shareholders, the corporation shall, within ten (10) days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty (30) days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one (1) or more shareholders, the proceeding under section 30-1-1430(2), Idaho Code, may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(3) If, within sixty (60) days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3) of this section, the court, upon application of any party, shall stay the section 30-1-1430(2), Idaho Code, proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section 30-1-1430(2), Idaho Code, was filed or as of such other date as the court deems appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under section 30-1-1430(2)(b), Idaho Code, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(6) Upon entry of an order under subsection (3) or (5) of this section, the court shall dismiss the petition to dissolve the corporation under section 30-1-1430, Idaho Code, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) of this section shall be made within ten (10) days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 30-1-1402 and 30-1-1403, Idaho Code, which articles must then be adopted and filed within fifty (50) days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 30-1-1405 through 30-1-1407, Idaho Code, and the order entered pursuant to subsection (5) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (5) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5) of this section, other than an award of fees and expenses pursuant to subsection (5) of this section, is subject to the provisions of section 30-1-640, Idaho Code.

30-1-1435 -- 30-1-1439. [RESERVED.]

30-1-1440. DEPOSIT WITH STATE TREASURER. Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state.

PART 15
FOREIGN CORPORATIONS

30-1-1501. AUTHORITY TO TRANSACT BUSINESS REQUIRED. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending or settling any proceeding;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) of this section is not exhaustive.

30-1-1502. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the for-

eign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed under this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed under this chapter for failure to pay such fees. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

30-1-1503. APPLICATION FOR CERTIFICATE OF AUTHORITY. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 30-1-1506, Idaho Code;

(b) The name of the state or country under whose law it is incorporated;

(c) Its date of incorporation;

(d) The street address of its principal office;

(e) The address of its registered office in this state and the name of its registered agent at that office; and

(f) The names and usual business addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

30-1-1504. AMENDED CERTIFICATE OF AUTHORITY. (1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(a) Its corporate name; or

(b) The state or country of its incorporation.

(2) The requirements of section 30-1-1503, Idaho Code, for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

30-1-1505. EFFECT OF CERTIFICATE OF AUTHORITY. (1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(2) A foreign corporation with a valid certificate of authority has the same but not greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

30-1-1506. CORPORATE NAME OF FOREIGN CORPORATION. (1) If the corporate name of a foreign corporation does not satisfy the requirements of section 30-1-401, Idaho Code, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state; or

(b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation must not be the same as or deceptively similar to:

(a) The name of any corporation, limited liability company, limited partnership or limited liability partnership organized under the laws of this state or authorized to transact business in this state;

(b) A reserved or registered name for a corporation, limited liability company or limited partnership; or

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state a name which is deceptively similar to the name of another corporation, limited liability company, limited partnership or limited liability partnership which is organized under the laws of this state or which is authorized to transact business in this state. The secretary of state shall authorize use of the name applied for if:

(a) The other entity consents to the use in writing; or

(b) The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in this state.

(4) A foreign corporation may use in this state a name which is the same as the name, including the fictitious name, of another domestic or foreign corporation or limited liability company organized under the laws of this state or authorized to transact business in this state, if the foreign corporation:

(a) Has been formed by reorganization of the other entity; or

(b) Has acquired all or substantially all of the assets, including the name, of the other entity.

(5) If a foreign corporation authorized to transact business in

this state changes its corporate name to one that does not satisfy the requirements of section 30-1-401, Idaho Code, it may not transact business in this state under the changed name, and it shall adopt a name satisfying the requirements of section 30-1-401, Idaho Code, and obtain an amended certificate of authority under section 30-1-1504, Idaho Code.

30-1-1507. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION. Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business office is identical with the registered office;

(b) A domestic corporation or not-for-profit domestic corporation or domestic limited liability company whose business office is identical with the registered office; or

(c) A foreign corporation or foreign not-for-profit corporation or foreign limited liability company authorized to transact business in this state whose business office is identical with the registered office.

30-1-1508. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, or in the corporation's next annual report filed with the secretary of state, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

30-1-1509. RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION. (1) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the secretary of

state for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

30-1-1510. SERVICE ON FOREIGN CORPORATION. (1) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or the correspondence address indicated in its most recent annual report if the foreign corporation:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in this state under section 30-1-1520, Idaho Code; or

(c) Has had its certificate of authority revoked under section 30-1-1531, Idaho Code.

(3) Service is perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

30-1-1511 -- 30-1-1519. [RESERVED.]

30-1-1520. WITHDRAWAL OF FOREIGN CORPORATION. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and agrees that service may be made on it by mailing copies of any process, notice or demand by registered or certified mail to the corporation and its officers at the addresses shown on the most current annual report filed with the secretary of state or as shown on any application for withdrawal of a corporation that has withdrawn from Idaho;

(d) A mailing address at which the service may be made under paragraph (c) of this subsection; and

(e) A commitment to notify the secretary of state in the future of any change in its mailing address.

(3) After the withdrawal of the corporation is effective, service of process under this section is service on the foreign corporation.

30-1-1521 -- 30-1-1529. [RESERVED.]

30-1-1530. GROUNDS FOR REVOCATION OF CERTIFICATE OF AUTHORITY. The secretary of state may commence a proceeding under section 30-1-1531, Idaho Code, to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the secretary of state by the date on which it is due;

(2) The foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(3) The secretary of state has credible information that the foreign corporation has failed to notify the secretary of state within sixty (60) days of the occurrence that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(4) The secretary of state has credible information that an incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(5) The secretary of state receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated, stating that it has been dissolved or disappeared as a result of a merger.

30-1-1531. PROCEDURE FOR AND EFFECT OF REVOCATION. (1) If the secretary of state determines that one (1) or more grounds exist under section 30-1-1530, Idaho Code, for revocation of a certificate of authority, he shall give notice of his determination to the foreign corporation by first class mail addressed to its mailing address as indicated on its most recent annual report or, if the foreign corporation has not yet filed an annual report, to its registered office.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after receipt of the notice of determination, the secretary of state may revoke the foreign corporation's certificate of authority by noting the fact of revoca-

tion and the effective date thereof in his records. The secretary of state shall give notice of the revocation to the foreign corporation by first class mail addressed to its mailing address as indicated on its most recent annual report, or if the foreign corporation has not yet filed an annual report, to its registered office.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the notice of revocation of its certificate of authority.

(4) Service of process on a foreign corporation whose certificate of authority has been revoked may be made upon its registered agent, if any, or pursuant to section 30-1-1510, Idaho Code.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

30-1-1532. APPEAL FROM REVOCATION. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the fourth district court, Ada county, Idaho, within thirty (30) days after receipt of the notice of revocation. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the notice of revocation from the secretary of state.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

PART 16
RECORDS AND REPORTS

30-1-1601. CORPORATE RECORDS. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative

rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

(d) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(e) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under section 30-1-1620, Idaho Code; and

(f) A list of the names and business addresses of its current directors and officers.

30-1-1602. INSPECTION OF RECORDS BY SHAREHOLDERS. (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 30-1-1601(5), Idaho Code, if he gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of his demand at least five (5) days before the date on which he wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under section 30-1-1602(1), Idaho Code;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) He has been a holder of record of shares or of voting trust certificates for at least six (6) months immediately preceding his demand or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent (5%) of all the outstanding shares of the corporation;

(b) His demand is made in good faith and for a proper purpose;

(c) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(d) The records are directly connected with his purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) The right of a shareholder to inspect records under section 30-1-720, Idaho Code, or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

(b) The power of a court, independently of this chapter, to com-

pel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

30-1-1603. SCOPE OF INSPECTION RIGHT. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.

(2) The right to copy records under section 30-1-1602, Idaho Code, includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 30-1-1602(2)(c), Idaho Code, by providing him with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

30-1-1604. COURT-ORDERED INSPECTION. (1) If a corporation does not allow a shareholder who complies with section 30-1-1602(1), Idaho Code, to inspect and copy any records required by that subsection to be available for inspection, the Idaho district court of the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with section 30-1-1602(2) and (3), Idaho Code, may apply to the Idaho district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

30-1-1605 -- 30-1-1619. [RESERVED.]

30-1-1620. FINANCIAL STATEMENTS FOR SHAREHOLDERS. (1) A corporation upon written shareholder request shall furnish its shareholders annual financial statements or, if annual financial statements are not available, other appropriate accounting records, which may be consolidated or combined statements of the corporation and one (1) or more of

its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(2) If any annual financial statements furnished pursuant to subsection (1) of this section are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

30-1-1621. OTHER REPORTS TO SHAREHOLDERS. (1) If a corporation indemnifies or advances expenses to a director under section 30-1-851, 30-1-852, 30-1-853 or 30-1-854, Idaho Code, in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

30-1-1622. ANNUAL REPORT FOR SECRETARY OF STATE. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The address of its registered office and the name of its registered agent at that office in this state;

(c) The address to which correspondence to the corporation's officers may be mailed; and

(d) The names and business addresses of its directors and its president and secretary.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between July 1 and November 30 of the state fiscal year (July 1 -- June 30) following the state fiscal year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between July 1 and November 30 of succeeding state fiscal years.

(4) If an annual report does not contain the information required

by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

PART 17
TRANSITION PROVISIONS

30-1-1701. APPLICATION OF CHAPTER TO EXISTING DOMESTIC CORPORATIONS. This chapter applies to all domestic corporations in existence on the effective date of this chapter that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

30-1-1702. APPLICATION TO QUALIFIED FOREIGN CORPORATIONS. A foreign corporation authorized to transact business in this state on the effective date of this chapter is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

30-1-1703. SAVING PROVISIONS. (1) Except as provided in subsection (2) of this section, the repeal of a statute by this chapter does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

30-1-1704. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Approved March 24, 1997.

CHAPTER 367
(H.B. No. 223)

AN ACT

RELATING TO RESIDENTIAL MORTGAGE PRACTICES; AMENDING SECTION 26-3102, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 26-3103, IDAHO CODE, TO PROVIDE ADDITIONAL EXEMPTIONS AND TO CLARIFY APPLICATION; AMENDING SECTION 26-3105, IDAHO CODE, TO CLARIFY DUTIES OF THE DIRECTOR; AMENDING SECTION 26-3108, IDAHO CODE, TO PROVIDE APPLICATION REQUIREMENTS AND TO PROVIDE FOR RETENTION OF APPLICATION FEES; AMENDING SECTION 26-3109, IDAHO CODE, TO PROVIDE ADDITIONAL CONDITIONS FOR SUSPENSION OR REVOCATION; AND AMENDING SECTION 26-3110, IDAHO CODE, TO PROVIDE DISCLOSURE AND EXAMINATION OF TRUST ACCOUNTS.

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:

(1) "Act" ~~shall~~ means this Idaho residential mortgage practices act.

(2) "Borrower" ~~shall~~ means the person who has applied to a lender for a residential mortgage loan or on whose behalf the activities set forth in subsections (12) and (13) of this section are conducted.

(3) "Department" means the department of finance of the state of Idaho.

(4) "Director" means the director of the department of finance.

(5) "Licensee" ~~shall~~ means a person licensed pursuant to this chapter to engage in the activities regulated by this act.

(6) "Mortgage banker" ~~shall~~ means any person, other than an exempt person, who makes residential mortgage loans to borrowers, and performs the activities described in subsection (12) of this section.

(7) "Mortgage broker" ~~shall~~ means any person, other than an exempt person, who performs the activities described in subsection (13) of this section with respect to a residential mortgage loan. For the purposes of this chapter, the term "mortgage broker" does not include persons who are mortgage bankers.

(8) "Mortgage brokerage agreement" ~~shall~~ means a written agreement in which a mortgage broker agrees to obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan.

(9) "Person" means an individual, sole proprietorship, partnership, corporation, or other association of individuals, however organized.

(10) "Residential mortgage loan" ~~shall~~ 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.

(11) "Residential real property" ~~shall~~ means real property located in this state improved by a one (1) to four (4) family dwelling used as the primary home or residence of one (1) or more persons or located

in a platted subdivision.

(12) "Mortgage banking activities" ~~shall~~ 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.

(13) "Mortgage brokering activities" ~~shall~~ means for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans.

SECTION 2. That Section 26-3103, Idaho Code, be, and the same is hereby amended to read as follows:

26-3103. EXEMPTIONS. The provisions of this chapter do not apply to:

(1) Agencies of the United States and agencies of this state and its political subdivisions;

(2) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(3) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs;

(4) Any person licensed or chartered under the laws of this state or the United States as a bank, regulated lender licensed under the Idaho credit code and regularly engaged in making regulated consumer loans other than those secured by a security interest in real property, savings and loan association, credit union, or trust company;

(5) Any person licensed or chartered under the laws of any other state as a bank, savings and loan association, or credit union;

(6) Attorneys, or persons licensed under either chapter 2 or chapter 20, title 54, Idaho Code, provided that the license held by such attorneys or persons is in an active status; ~~nor~~

(7) Persons employed by licensees on a full-time basis or persons who are employed by no more than one (1) licensee on a part-time basis;

(8) Any person or entity not making more than five (5) loans primarily for personal, family, or household use and primarily secured by a security interest on residential real property, with his own funds for his own investment, in any period of twelve (12) consecutive months; nor

(9) Any person who funds a residential mortgage loan which has been originated and processed by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in this state for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this subsection, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee or exempt person.

SECTION 3. That Section 26-3105, Idaho Code, be, and the same is hereby amended to read as follows:

26-3105. POWERS AND DUTIES OF DIRECTOR. In addition to any other duties imposed upon the director by law, the director shall:

(1) Administer and enforce the provisions and requirements of this chapter;

(2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this chapter or rules promulgated under the authority of this chapter;

(3) Conduct examinations of the books and records of licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter;

(4) Appoint a volunteer advisory board which shall consist of two (2) individuals who are mortgage bankers and two (2) individuals who are mortgage brokers;

(5) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter;

(6) Be authorized to set, by annual written notification to licensees, limits on the fees and charges which are set forth in subsections (1) and (2) of section 26-3113, Idaho Code;

(7) Require that all funds collected by the department under this chapter shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code; and

(8) Review and approve ~~all~~ forms used by licensees prior to their use as prescribed by the director.

SECTION 4. That Section 26-3108, Idaho Code, be, and the same is hereby amended to read as follows:

26-3108. LICENSE TO DO BUSINESS AS A MORTGAGE BANKER OR MORTGAGE BROKER. (1) The director shall receive and act on all applications for licenses to do business as a mortgage banker or mortgage broker. Applications shall be filed in the manner prescribed by the director, shall contain such information as the director may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of two hundred dollars ($200). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(2) An application for license shall be denied unless the director finds that:

(a) The financial responsibility, character, and fitness of the license applicant, and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this chapter;

(b) The ~~applicant--or--each--of--the~~ individuals in charge of applicant's places of business ~~in-this-state,-each~~ have a minimum of three (3) years' experience in residential mortgage lending;

(c) The applicant has a net worth of at least ten thousand dollars ($10,000);

(d) The applicant has not been convicted of a felony or misdemeanor involving moral turpitude, nor has a court accepted a finding of guilt on the part of the applicant, of a felony or a misdemeanor involving moral turpitude; and

(e) The applicant has not had a license, substantially equivalent to a license under this chapter and issued by another state, revoked or suspended under the law of such state.

(3) The director is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (2) of this section.

(4) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied, or objections filed;

(b) The director has not issued a license within sixty (60) days after the application for the license was filed. If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application or that objections have been filed and the substance thereof.

(5) The director may, on application, issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing the issuance of a single license. A separate license shall be required for each place of business ~~and~~ from which mortgage brokering activities or mortgage banking activities are directly or indirectly conducted. T~~t~~he individual in charge of each place of business must satisfy the requirements of subsections (2)(b), (d) and (e) of this section. Each license shall remain in full force and effect unless annual renewal fees are not paid or the license is relinquished, suspended, or revoked.

(6) No licensee shall change the location of any place of business, consolidate two (2) or more locations, or close any location, without giving the director at least fifteen (15) days' prior written notice.

(7) A licensee shall not engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license.

(8) The director may suspend action upon a license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which would disqualify that applicant if convicted.

SECTION 5. That Section 26-3109, Idaho Code, be, and the same is hereby amended to read as follows:

26-3109. REVOCATION OR SUSPENSION OF LICENSE. (1) If the department has reason to believe that grounds exist for revocation or suspension of a license, the department may initiate a contested case

against the license of the mortgage banker or mortgage broker in accordance with chapter 52, title 67, Idaho Code. The director may, after proceedings pursuant to chapter 52, title 67, Idaho Code, suspend the license for a period not to exceed six (6) months, or revoke the license, if he finds that:

(a) The licensee or any employee or agent of the licensee has violated this chapter or any rule or order lawfully made pursuant to this chapter; or

(b) The licensee or any employee or agent of the licensee has violated any other laws of this state, or federal laws or regulations pertaining to the mortgage banking or mortgage brokering activities set forth in section 26-3102, Idaho Code; or

(c) Facts or conditions exist which would clearly have justified the director in refusing to grant a license had these facts or conditions been known to exist at the time the license was issued; or

(d) The licensee or any employee or agent of the licensee has been convicted of a felony or a misdemeanor involving moral turpitude, or a court has accepted a finding of guilt on the part of the licensee or employee or agent of the licensee, of any felony or a misdemeanor involving moral turpitude; or

(e) The licensee or any employee or agent of the licensee has had a license substantially equivalent to a license under this chapter, and issued by another state, revoked or suspended under the laws of such state; or

(f) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(2) If the director finds that probable cause for revocation of a license exists and that enforcement of this chapter and the public interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(3) Any licensee may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(4) The director may, in his discretion, reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the department in refusing to grant a license.

SECTION 6. That Section 26-3110, Idaho Code, be, and the same is hereby amended to read as follows:

26-3110. SURETY BONDS AND TRUST ACCOUNTS. (1) All licensees, with or without an office located in this state, shall maintain a surety bond to the state of Idaho in accordance with this section. The bond to be maintained shall be in the amount of ten thousand dollars

($10,000). This amount shall be increased by additional sums of five thousand dollars ($5,000) for each office, in addition to an initial office, that the licensee maintains within the state of Idaho. In the event that a licensee has violated any of the provisions of this chapter, any other governing state law, any governing federal law, or in the event that a court of competent jurisdiction has found that a licensee has damaged any person, then the bond shall be forfeited and paid by the surety to the state of Idaho for the benefit of any person damaged by the licensee. The bond shall be a continuing obligation of the issuing surety. The surety's liability under the bond for any claims made thereunder either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Idaho. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department.

(2) Each licensee shall deposit all fees allowed by section 26-3113, Idaho Code, paid to the licensee by borrowers in a trust account established at a bank, savings and loan association, or credit union located in the state of Idaho. Funds held in a trust account may only be withdrawn in accordance with a written agreement with the borrower.

(3) Each licensee shall file with the director, on a form approved by the director, a statement identifying the name of the financial institution, account number, and name of account for the trust account maintained.

(4) Each licensee shall authorize the director or a duly authorized representative of the director, on a form approved by the director, to examine the licensee's trust account at such times as the director may direct.

Approved March 24, 1997.

CHAPTER 368
(H.B. No. 224)

AN ACT

RELATING TO THE IDAHO SECURITIES ACT; AMENDING SECTION 30-1434, IDAHO CODE, TO INCREASE THE VALUE OF SECURITIES WHICH MAY BE OFFERED BY COMPANIES ENGAGED IN MINING WITHOUT REGISTRATION OF THE SECURITIES.

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

SECTION 1. That Section 30-1434, Idaho Code, be, and the same is hereby amended to read as follows:

30-1434. EXEMPT SECURITIES. (1) Sections 30-1416 through 30-1433 inclusive, Idaho Code, shall not apply to:

(a) any security including a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of

a state or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing,

(b) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor,

(c) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States or any bank, savings institution or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state,

(d) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state,

(e) any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the director of the department of insurance,

(f) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state,

(g) any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is:

(i) Subject to the jurisdiction of the interstate commerce commission,

(ii) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act,

(iii) Regulated with respect to its rates and charges by a governmental authority of the United States or any state or municipality, or

(iv) Regulated with respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection,

(h) any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved or any warrant or right to purchase or subscribe of the foregoing,

(i) any security issued by any person organized and operated not for private profit but exclusively for religious, educational,

benevolent, charitable, fraternal, social, athletic or reformatory purposes, also any securities issued by a community-sponsored or owned industrial corporation or foundation organized for the purpose of promoting growth and/or economic development of the community,

(j) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal when such commercial paper is sold to the banks or insurance companies,

(k) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan,

(l) any security issued by a nonprofit cooperative corporation organized pursuant to this title, if no expenditure is made by or on its behalf in connection with the issuance or sale of its securities other than the actual expenses of organization, calling or holding meetings of incorporators or shareholders, printing, mailing, and taxes,

(m) any security issued by a domestic or foreign corporation, partnership, trust or association engaged in actual mining operations or the exploration and development of mining properties in this state, whether or not sold through a broker-dealer, provided the following conditions are met:

(i) The term "actual mining operations" within the meaning of this subsection does not include the development or production of gas or oil;

(ii) The total amount of the securities to be offered and sold does not exceed ~~one~~ <u>five</u> hundred thousand dollars ($~~1~~<u>5</u>00,000) in any twelve (12) month period;

(iii) All sales brochures, pamphlets, advertisements and literatures are filed with the director prior to being used;

(iv) At least eighty per cent (80%) of the gross amount paid by the purchasers of the securities is used in actual mining operations or for actual exploration and development expenses, including legal, accounting, engineering and geological expenses; and

(v) The issuer shall file a report in a form prescribed by the director and at such times that the director by rule may 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.

(2) Provided, that any person shall give notice in the form prescribed by the director of his intention to avail himself of the exemption afforded by paragraphs (d), (e), (f), (i), (k), (l) or (m) of subsection (1) of this section thirty (30) days prior to the first offer or sale to be made thereunder. The director may by order deny or revoke the exemption specified in such subsections with respect to a specific security. Upon the entry of such an order the director shall

promptly notify all interested parties that it has been entered and of the reasons therefor and that within twenty (20) days of the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the director the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered the director, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under said subsections may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under said subsections if he sustains the burden of proof that he did not know, and in the exercise of reasonable care, could not have known of the order.

Approved March 24, 1997.

CHAPTER 369
(H.B. No. 227)

AN ACT

RELATING TO AUTHORIZED INVESTMENTS OF A SERVICE CORPORATION; AMENDING SECTION 41-3423, IDAHO CODE, TO AUTHORIZE A SERVICE CORPORATION TO INVEST IN INVESTMENTS PERMITTED BY CHAPTER 7, TITLE 41, IDAHO CODE.

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

SECTION 1. That Section 41-3423, Idaho Code, be, and the same is hereby amended to read as follows:

41-3423. INVESTMENTS. (1) A service corporation shall invest and have invested its funds in the following investments only:

(a) Cash on deposit or in savings accounts in banks or trust companies;

(b) Deposits in or shares of such savings and loan associations as are insured by an instrumentality of the United States government, and not in excess of the amount of such insurance in any one (1) such institution; <u>and</u>

(c) ~~Public--obligations;-as-provided-under-section-41-707-(public obligations);~~

~~(d)--Corporate--obligations;--as--provided--under--section--41-711 (corporate-obligations);-and~~

~~(e)~~ Real estate for use as a home office and/or one or more branch offices, at a cost not exceeding ten per cent (10%) of the corporation's assets at the time of investment, unless a larger amount has been approved by the director.

(2) ~~The-following-sections-shall-likewise-apply-as-to-the-investments--of--service--corporations;--to--the--extent--so--applicable~~ <u>The investable funds of a service corporation may also be invested in securities and other investments permitted by and pursuant to the provisions of chapter 7, title 41, Idaho Code,</u> and for the purposes of

~~such application~~ chapter 7, title 41, Idaho Code, a service corporation shall be deemed to be an "insurer."~~:~~

~~(a) Section 41-702, Idaho Code, (eligible investments);~~
~~(b) Section 41-703, Idaho Code, (general qualifications);~~
~~(c) Section 41-704, Idaho Code, (authorization of investments);~~
~~(d) Section 41-705, Idaho Code, (record of investments);~~
~~(e) Section 41-706(1), Idaho Code, (diversification of investments ---- one person);~~
~~(f) Section 41-729, Idaho Code, (time limit for disposal of real estate); and~~
~~(g) Section 41-730, Idaho Code, (disposal of ineligible property and securities).~~

Approved March 24, 1997.

CHAPTER 370
(H.B. No. 230)

AN ACT

RELATING TO COLLECTION AGENCIES; AMENDING SECTION 26-2222, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-2225, IDAHO CODE, TO SPECIFY INFORMATION WHICH MUST BE FILED WITH AN APPLICATION; AMENDING SECTION 26-2229, IDAHO CODE, TO STRIKE OBSOLETE REFERENCES AND TO REDUCE FEES; AMENDING SECTION 26-2229A, IDAHO CODE, TO STRIKE OBSOLETE REFERENCES; AMENDING SECTION 26-2230, IDAHO CODE, TO SPECIFY APPLICATION OF THIS ACT TO AGENTS OF THE PERMIT HOLDER; AMENDING SECTION 26-2233, IDAHO CODE, TO ALLOW PERMITTEE ACCOUNTS TO BE MAINTAINED IN INSTITUTIONS OUTSIDE THE STATE OF IDAHO; AMENDING SECTION 26-2235, IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO SANCTION COLLECTION AGENCIES FOR VIOLATIONS OF LAW BY AGENTS AND TO PROHIBIT USE OF CERTAIN INDIVIDUALS AS AGENTS IN IDAHO; AMENDING SECTION 26-2238, IDAHO CODE, TO STRIKE OBSOLETE REFERENCES; REPEALING SECTIONS 26-2240, 26-2241 AND 26-2242, IDAHO CODE; AMENDING CHAPTER 22, TITLE 26, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 26-2240, IDAHO CODE, TO REQUIRE AGENT IDENTIFICATION, QUARTERLY NOTICE AND TO SPECIFY FEES; AND AMENDING SECTION 26-2250, IDAHO CODE, TO STRIKE REQUIREMENTS TO FOREIGN PERMITTEES MAINTAINING AGENTS OR OFFICES IN IDAHO.

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

SECTION 1. That Section 26-2222, Idaho Code, be, and the same is hereby amended to read as follows:

26-2222. DEFINITIONS. As used in this chapter:

(1) "Agent" means any person who is compensated on a commission basis or by salary, or both, by any permittee and who either contacts debtors or creditors in connection with the collection agency business of the permittee.

(2) "Business funds" means all moneys belonging to or due the

permittee in connection with the operation of a collection agency business.

(3) "Collection agency," "collection bureau" or "collection office" shall be a person who engages in any of the activities enumerated in section 26-2223, Idaho Code.

(4) "Director" means the director of the department of finance.

(5) "Creditor" means any person who transfers to a permittee accounts due and owing for collection purposes.

(6) "Creditors' account" means all funds due and owing a creditor within the definition of this chapter.

(7) ~~"Licensee"--means--any-person-licensed-by-the-director-who-is employed-by-a-collection-agency,-debt-counselor,-or--credit--counselor engaged--in-any-of-the-activities-enumerated-in-section-26-2223,-Idaho Code.~~

~~(8)~~ "Net collections" means all funds that are due to creditors from the permittee pursuant to the contract between the permittee and creditor, or permittee and debtor without taking into account any offset or funds due from the creditor to the permittee, because of the creditor having collected any part of the account due, plus all funds that the permittee agreed to return to debtors or that were not to be applied to debts.

(~~9~~8) "Permittee" means a person who has a permit to do business as a collection agency, or debt counselor, or credit counselor in Idaho.

(~~10~~9) "Person" means any permittee, ~~licensee,~~ agent, solicitor, individual, corporation, association, ~~co-partnership~~ copartnership, trust, company or unincorporated organization.

(1~~1~~0) "Debt counselor" means any person engaged in any of the activities enumerated in subsections (6) of section 26-2223, Idaho Code.

(1~~2~~1) "Credit counselor" means any person engaged in any of the activities enumerated in subsections (6) and (7) of section 26-2223, Idaho Code, which is exempt from federal income taxes as provided in section 501(c)(3) of the internal revenue code.

SECTION 2. That Section 26-2225, Idaho Code, be, and the same is hereby amended to read as follows:

26-2225. INFORMATION AND MATERIALS REQUIRED WITH APPLICATION -- EXAMINATION FEE -- CONSENT TO SERVICE. Such application shall be accompanied by:

(1) Complete copies of all literature and circulars issued or circulated by or on behalf of the applicant in soliciting or advertising for business including circular and form letters.

(2) Complete forms of all contracts designed for execution by persons placing any account, bill, claim or other indebtedness in the hands of the applicant for collection.

(3) Complete forms of all contracts and assignments designed for execution by debtors making any assignments to or placing any property with the applicant for the purpose of paying the creditors of such debtors.

(4) Complete forms of all contracts and releases designed for execution by creditors to whom payments are made or are to be made by

the applicant.

(5) If the applicant is a corporation or association, a copy of its articles of incorporation or association, duly authenticated.

(6) A list of the names and addresses of all agents~~,--representatives,-and-solicitors~~ who will ~~represent~~ contact debtors or creditors or solicit business for the applicant in this state.

(7) The names and addresses of all directors and officers, if the applicant is a corporation or association; and the names of the members, if the applicant is an unincorporated company, a firm or copartnership.

(8) An agreement executed by the applicant stipulating that no literature or form of contract not submitted with the application will be issued, circulated or used by the applicant prior to the filing thereof ~~in--said--department,--and--that--no-agent,-representative-or solicitor-of-the-applicant-will-solicit,-engage-in-or-conduct-business as-such-in-the-state-of-Idaho,-until-his-name-and--address--have--been filed-in-said-department~~ with the director.

(9) An initial examination fee as fixed by the director, but not to exceed one hundred dollars ($100), except that no examination fee need be paid by a nonprofit corporation or association conducting credit counseling or debt prorating activities.

(10) Complete copies of all literature, circulars, contracts, and/or other related material to be circulated or distributed by the permit holder to a debtor.

(11) An irrevocable consent to service executed by the applicant appointing the director and his successors in office to be attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant which arises under this act or any rule or order hereunder. After the consent has been filed, any service hereunder shall have the same force and validity as if personally served on a person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director.

SECTION 3. That Section 26-2229, Idaho Code, be, and the same is hereby amended to read as follows:

26-2229. EXAMINATION -- PERMIT. (1) The director shall examine each application for a permit and accompanying papers and investigate the qualifications of the applicant and if he finds therefrom that the same are in proper form, that the literature proposed to be circulated does not tend to conceal or misrepresent any fact to the detriment of any person dealing with the applicant, that the contract or contracts proposed to be entered into for the collection or payment or prorating of accounts, bills, claims or other indebtedness by the applicant, or prorating or receiving money for payment to creditors are equitable, fair and reasonable, and that the applicant meets all other requirements and qualifications of this act, he shall examine the applicant if an individual, or the designated officer or officers or employees of any corporation and the designated member or members of any partnership, in the manner described in section 26-2225, Idaho Code, and if such applicant or designee passes a satisfactory examination, he

shall cause a permit to be issued authorizing the applicant to conduct such a business in this state subject to the provisions of this act, until the fifteenth day of March next thereafter.

(2) If the director finds that the applicant does not qualify under the provisions of this act, the application shall be denied. If he finds the applicant is qualified he must issue a permit upon the filing of the bonds required by this act and the payment of an annual permit fee as fixed by the director, but not to exceed ~~one--hundred~~ fifty dollars (~~$100~~50), except that no permit fee need be paid by a nonprofit corporation or association conducting credit counseling or debt prorating activities.

(3) Contracts between collection agencies and clients shall be in writing. No collection contract shall be deemed equitable, fair or reasonable within the meaning of this section which in substance either:

(a) Permits the applicant to retain any sums due the creditor on any account, bill, claim or other indebtedness collected for him by the applicant on account of, or as a setoff against, any fee, commission, charge, expense or compensation claimed, other than the regular collection fees or commissions, to be due from such creditor on any other account whatever.

(b) Penalizes the creditor for failure to produce evidence in support of any account, bill, claim or item of indebtedness placed with the applicant for collection in addition to that delivered upon the execution of such contract.

(c) Penalizes such creditor for any unintentional error, mistake or omission in furnishing to the applicant the correct name or address of any debtor.

(d) Stipulates, directly or indirectly, for the payment of any fee, commission or compensation in excess of fifty per cent (50%) of the amount actually collected on any account, bill, claim or other indebtedness entrusted to the applicant for collection, provided, however, that in the case of interest collected by a permittee, the creditor and the permittee by agreement between them may provide for division of such interest between them without such percentage limitation; and provided further that in the case of collection of checks dishonored by nonacceptance or nonpayment the creditor and the permittee by written agreement between them may provide, in place of a percentage fee, for the payment of a set dollar amount collection fee not to exceed the amount provided in section 28-22-105, Idaho Code, which shall not be subject to the fifty per cent (50%) limitation. Collection agreements to proceed under section 1-2301A, Idaho Code, shall be subject to the fifty per cent (50%) limitation.

(4) A permit ~~or--license~~ holder, engaging in the business of receiving money from debtors for application to or payment or prorating the account or accounts of any creditor or creditors of such debtor, for compensation or otherwise, or in the business of acting as the assignee for the benefit of creditors as a primary or secondary object, shall not take or receive for services performed by such permit ~~or--license~~ holder for any one (1) person more than fifteen per cent (15%) of the amount received by it at any one (1) time from or on behalf of that person for payment or prorating to creditors and no

other charges shall be made or received for any such service.

SECTION 4. That Section 26-2229A, Idaho Code, be, and the same is hereby amended to read as follows:

26-2229A. REQUIREMENT OF FAIR, OPEN AND HONEST DEALING. (1) Every permittee, foreign permittee and ~~licensee~~ agent shall deal openly, fairly, and honestly without deception in the conduct of the collection agency business. When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, may be enforced by the director against ~~licensees~~ agents, permittees and foreign permittees under the provisions of this chapter.

(2) In any and every instance where the permittee has a managerial or financial interest in the creditor, or where the creditor has a managerial or financial interest in the permittee, disclosure of such interest must be made on each and every contact with a debtor in seeking to make a collection of any account, claim, or other indebtedness where such interest or relationship exists between creditor and permittee.

(3) No permittee, foreign permittee, or ~~licensee~~ agent shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses are:

(a) Expressly authorized by statute;

(b) Allowed by court rule against the debtor;

(c) Have been judicially determined; or

(d) Are provided for in a written form agreement, to be signed by both the debtor and the permittee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses.

(4) No person shall sell, distribute or make use of collection letters, demand forms or other printed matter which are made similar to or resemble governmental forms or documents, or legal forms used in civil or criminal proceedings.

(5) No person shall use any trade name, address, insignia, picture, emblem or any other means which creates any impression that such person is connected with or is an agency of government.

SECTION 5. That Section 26-2230, Idaho Code, be, and the same is hereby amended to read as follows:

26-2230. BRANCH OFFICES. (1) The director may authorize a permittee, upon request, to conduct collection activities authorized in this chapter at additional locations. The additional locations shall be considered branches of the permittee. The director shall be informed of the opening and closing of all branch locations operated by permittees.

(2) The director may authorize a permittee, upon written request, to conduct limited collection activities at locations other than the principal location of the permittee or branches. The facilities may be at the domiciles of the ~~individuals licensed under section 26-2240, Idaho Code~~ agents employed by the permit holder. Collection activities

at facilities shall be limited to telecommunications with creditors, clients, debtors, and the permittee's offices and branches. The director shall be informed of the opening and closing of all facility locations operated by permittees.

SECTION 6. That Section 26-2233, Idaho Code, be, and the same is hereby amended to read as follows:

26-2233. PERMITTEE ACCOUNTS REQUIRED. A permittee shall in its own name:

(1) Establish and maintain a separate trust account for deposit and remittance of creditors' funds in a ~~bank or savings and loan association in the state of Idaho~~ financial institution, the deposits of which are insured by the federal deposit insurance corporation.

(2) Establish and maintain a separate business account for the business funds and moneys in a ~~bank or savings and loan association in the state of Idaho~~ financial institution, the deposits of which are insured by the federal deposit insurance corporation.

SECTION 7. That Section 26-2235, Idaho Code, be, and the same is hereby amended to read as follows:

26-2235. DENIAL, SUSPENSION, REVOCATION OF PERMIT. (1) An application for a permit may be denied and, after notice and hearing, a permit may be suspended or revoked, by the director if he finds that the holder of or the applicant for, or any member or manager of an applicant or holder, or any officer or manager of an applicant or holder of such permit:

(a) has violated any provision of this chapter or any rule or order of the director authorized under this chapter; or

(b) is not legally qualified to do business in this state; or

(c) has violated any contract or agreement of a type mentioned in this chapter; or

(d) has failed, refused, neglected, on demand, to pay or remit to any client the agreed portion of any sum collected by the permittee on any bill, claim, account or other indebtedness entrusted to such permittee for collection; or

(e) has failed to return to a debtor an amount that was not to be paid on his debts; or

(f) has made a material misstatement in the application for such permit or renewal; or

(g) has obtained or attempted to obtain a permit or renewal by fraud or misrepresentation; or

(h) has misappropriated or converted to his own use or illegally withheld moneys collected or held for any other person; or

(i) has without properly qualifying as herein provided represented himself as a permittee for the purpose of soliciting for or representing any business covered in this chapter; or

(j) has been convicted of, found guilty of, pled guilty to, or has received a withheld judgment by a court of competent jurisdiction for forgery, embezzlement, fraud, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offense, any theft offense, a crime involving moral turpitude, or

violating any provision of this chapter or is currently disbarred from the practice of law in any state; provided, the director may, in his discretion, issue a permit to any person convicted of any of the above enumerated crimes providing a period of five (5) years has elapsed from the date of his conviction, finding of guilty, plea of guilty, or withheld judgment; or

(k) has had a permit revoked, canceled, or denied; or

(l) owes outstanding, unpaid, delinquent and undisputed accounts or judgments.

(2) The director, after notice and hearing, may impose a civil penalty of not more than one thousand dollars ($1,000) for each violation upon any permittee found to have violated any provision of this chapter.

(3) Permits shall be issued hereunder only to persons who are, and to partnerships, firms, companies, and associations whose members and managers are, and to corporations whose managers are over twenty-one (21) years of age.

(4) The director may, after notice and hearing, impose any sanction authorized by this section on a permit holder if the director finds that an agent of the permit holder has violated any provision of section 26-2229A, Idaho Code.

(5) The director may, in his discretion, and by an order issued in accordance with chapter 52, title 67, Idaho Code, prohibit permit holders from utilizing an individual as an agent if the individual has participated in a violation of this act, or any similar statute of another state.

SECTION 8. That Section 26-2238, Idaho Code, be, and the same is hereby amended to read as follows:

26-2238. VIOLATIONS -- PENALTIES. Any person who shall do business within the state of Idaho as defined in this act, without a permit, or any permit holder ~~or licensee~~ who fails to establish and maintain a separate ~~creditors'~~ trust account for such creditors' funds for each permit which he holds, or fails to make and keep the records required by this act, shall be guilty of a felony and punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in the state penitentiary for not more than five (5) years, or both, and any person who shall fail to comply with any of the other provisions of this act shall be guilty of a misdemeanor.

SECTION 9. That Sections 26-2240, 26-2241 and 26-2242, Idaho Code, be, and the same are hereby repealed.

SECTION 10. That Chapter 22, Title 26, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 26-2240, Idaho Code, and to read as follows:

26-2240. AGENT IDENTIFICATION -- QUARTERLY NOTICE -- FEE. Each permit holder shall, with its initial application and each annual renewal, file with the director a list of all agents including the name of the agent and any other identifying information the director

may require. A fee of twenty dollars ($20.00) for each listed agent shall accompany the list. The director shall be notified in writing of any additions to the agent list no less often than every calendar quarter. A fee of twenty dollars ($20.00) shall be filed with the director for each additionally identified agent in the quarterly notification of additions to a permit holder's agent list. An agent is not required to be listed, nor the fee paid therefor, unless the agent acted for the permit holder for more than five (5) business days.

SECTION 11. That Section 26-2250, Idaho Code, be, and the same is hereby amended to read as follows:

26-2250. FOREIGN PERMITTEES. (1) Notwithstanding any other provision of this chapter, if a permittee meets the conditions of subsection (~~1~~2) of this section, it shall be exempt, as a foreign permittee, from the requirements ~~of this chapter as provided in subsection (2) of this section~~ that it maintain an agent or office in this state.

(~~1~~2) To be a foreign permittee, a collection agency must:

(a) Be qualified to do business in the state of Idaho;

(b) Be the holder of a valid permit or license to do business as a collection agency in the state where it has its principal place of business, or holds a license in another state if the state where its principal place of business is located does not require licenses to operate collection agencies;

(c) Certify in its application for a permit and each annual renewal that it will not solicit any creditor client which has its principal place of business in this state;

(d) Maintain a bond substantially similar, as determined by the director, to the bond required by subsection (b) of section 26-2232, Idaho Code;

(e) Maintain no agent or place of business in this state;

(f) Conduct its business in this state exclusively by mail or telecommunications; and

(g) Maintain its books and records in accordance with generally accepted accounting practices. The director or his duly authorized representatives may make an annual examination, or more frequent in the director's discretion, of the principal place of business of a foreign permittee outside the state of Idaho, and for that purpose the director shall have free access to the offices and places of business, books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults of all such permittees. The actual cost of examination for the first annual examination each year and any investigation shall be paid to the director by each permittee so examined or investigated. The director may maintain an action for the recovery of such costs against the foreign permittee.

~~(2) A foreign permittee is exempt from the requirements that it:~~

~~(a) Maintain either an agent or an office in this state;~~

~~(b) Maintain a trust account in a bank in this state; and~~

~~(c) Arrange that employees collecting accounts from debtors in this state be licensed by the director.~~

(3) The director shall examine each application for a foreign permit hereunder in the manner provided in section 26-2229, Idaho

Code, and if the applicant is found to be qualified under the provisions of this chapter, shall cause a permit to be issued authorizing the applicant to conduct a business in this state as a foreign permittee. An applicant who has been issued a foreign permit pursuant to this chapter shall be known as a "foreign permittee." If the director finds that the applicant does not qualify under the provisions of this chapter, the application shall be denied.

(4) The failure of a permittee to comply with the provisions of this section shall constitute grounds for denial, revocation or suspension of a foreign permit pursuant to section 26-2235, Idaho Code.

Approved March 24, 1997.

CHAPTER 371
(H.B. No. 248)

AN ACT

RELATING TO HEARINGS ON ABANDONMENT OF RAILROAD FACILITIES BY THE PUBLIC UTILITIES COMMISSION; AMENDING SECTION 62-424, IDAHO CODE, TO REMOVE THE SPECIFIED TIME FRAME REQUIRED OF THE PUBLIC UTILITIES COMMISSION FOR SCHEDULING A HEARING ON THE PROPOSED ABANDONMENT OF ANY BRANCH OR MAIN LINE AND TO PROVIDE PROPER TERMINOLOGY.

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

SECTION 1. That Section 62-424, Idaho Code, be, and the same is hereby amended to read as follows:

62-424. HEARING ON ABANDONMENT. Whenever any railroad proposes to abandon any branch line or main line now in operation within the state of Idaho, the railroad shall file notice of the intended abandonment with the public utilities commission. ~~Not less than ninety (90) days after such notice, t~~The public utilities commission shall schedule a public hearing on the proposed abandonment. If the hearing results in a finding by the commission that the abandonment of the branch line or main line would adversely affect the area then being served and that there is reason to believe that the closure would impair the access of Idaho communities to vital goods and services and market access to those communities and that the line has potential for profitability, then the public utilities commission shall transmit a report of its findings to the ~~interstate commerce commission~~ United States surface transportation board on behalf of the people of the state of Idaho.

Approved March 24, 1997.

CHAPTER 372
(H.B. No. 250, As Amended, As Amended in the Senate)

AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1411A, IDAHO CODE, TO PROVIDE FOR CONSOLIDATION OF DISTRICTS PURSUANT TO AN ELECTION; AMENDING CHAPTER 14, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-1411B, IDAHO CODE, TO PROVIDE FOR AN ELECTION ON CONSOLIDATION IN THE DISCRETION OF THE FIRE DISTRICT COMMISSIONERS OR UPON A PETITION OF THE ELECTORS IN THE DISTRICTS PROPOSED FOR CONSOLIDATION, TO PROVIDE THE QUESTION TO BE SUBMITTED, TO PROVIDE FOR AN AGREEMENT OF CONSOLIDATION UPON APPROVAL OF THE CONSOLIDATION AND TO PROVIDE THE EFFECT IF LESS THAN A MAJORITY OF THE VOTES CAST IN A DISTRICT ARE IN FAVOR OF THE PROPOSED CONSOLIDATION; AMENDING SECTION 31-1428, IDAHO CODE, TO PROVIDE FOR A DISTRIBUTION OF ASSETS AND TAX REVENUES UPON A DIVISION OF A DISTRICT INTO TWO DISTRICTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 31-1411A, Idaho Code, be, and the same is hereby amended to read as follows:

31-1411A. CONSOLIDATION OF DISTRICTS -- HEARING -- PROTEST -- ELECTION. Any fire protection district may consolidate with one (1) or more existing fire protection districts subject to the following procedure, or pursuant to an election for consolidation as provided in section 31-1411B, Idaho Code, and with the following effects:

(a) If, in the opinion of the board of any fire protection district, it would be to the advantage of said district to consolidate with one (1) or more other existing fire protection districts, the said board shall cause to be prepared an agreement for consolidation which shall among other things provide:

(1) The name of the proposed consolidated fire protection district.

(2) That all property of the districts to be consolidated shall become the property of the consolidated district.

(3) That all debts of the districts to be consolidated shall become the debts of the consolidated district.

(4) That the existing commissioners of the districts to be consolidated shall be the commissioners of the consolidated district until the next election, said election to be held pursuant to the terms of section 31-1410, Idaho Code, at which three (3) commissioners shall be elected. Commissioners from fire protection subdistricts one (1) and two (2) shall be elected for terms of four (4) years, and the commissioner from fire protection subdistrict three (3) shall be elected for a term of two (2) years.

(5) That the employees of the consolidated fire protection district shall be selected from the employees of the fire protection districts being consolidated, which employees shall retain the seniority rights under their existing employment contracts.

(b) After approval of said agreement of consolidation by each of

the fire protection district boards involved, the boards of commissioners of each fire protection district shall hold a hearing not less than ten (10) or more than thirty (30) days thereafter, and shall cause notice of said hearing, designating the time and place, to be published in at least one (1) issue of a newspaper of general circulation within the district not less than five (5) days prior to such hearing. Any person supporting or objecting to such petition shall be heard at such meeting, if in attendance, and at the close of such hearing said board shall approve or reject the agreement of consolidation. If each board approves the agreement of consolidation, the agreement shall become effective and the consolidation of said district complete thirty (30) days after such approval unless within such thirty (30) days a petition signed by five per cent (5%) of the qualified electors of one of the fire protection districts objecting to such consolidation be filed with the secretary of such district. In the event of such objection, election shall be held as provided in section 31-1405, Idaho Code, except that the question shall be "consolidation of .... fire protection district, yes", or "consolidation of .... fire protection district, no", or words equivalent thereto. If more than one-half (1/2) of the votes cast are yes, the agreement shall become effective. If more than one-half (1/2) of the votes cast are no, the agreement shall be void and of no effect; and no new consolidation shall be proposed for at least six (6) months following the date of the consolidation election.

(c) Upon the agreement of consolidation becoming effective, the board of the consolidated fire protection district shall file a certified copy of the agreement with the county recorder of each county in which such district is situated, and shall comply with the provisions of section 63-215, Idaho Code. The consolidated district shall thereafter have the same rights and obligations as any other fire protection district organized under the statutes of this state.

SECTION 2. That Chapter 14, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-1411B, Idaho Code, and to read as follows:

31-1411B. ELECTION FOR THE CONSOLIDATION OF DISTRICTS. Any two (2) or more fire districts may, in the discretion of the fire district commissioners, or shall, upon a petition signed by ten percent (10%) or more of the electors in the last general election residing in each of the fire protection districts proposed for consolidation conduct an election in the manner provided in section 31-1405, Idaho Code, at which the following question shall be submitted to the electorate: "Shall ..... fire protection districts be consolidated?" or words equivalent thereto. At least one (1) public hearing shall be held by the boards of fire district commissioners prior to the election. If a majority of the votes cast in each district proposed for consolidation are in favor of consolidation, the districts shall be deemed consolidated and an agreement of consolidation in conformity with the provisions of section 31-1411A, Idaho Code, shall be entered into by the fire protection district boards involved, except that an agreement of consolidation entered into pursuant to an election as provided in this

section shall not thereafter be subject to an election upon objection as provided in subsection (b) of section 31-1411A, Idaho Code.

If two (2) districts are proposed for consolidation and less than a majority of the votes cast in any one (1) of the districts are in favor of the consolidation, the consolidation shall not become effective. If more than two (2) districts are proposed for consolidation, the consolidation may proceed with respect to those districts in which a majority of the votes cast are in favor of the consolidation. The failure of an election for consolidation shall not prohibit a proposed consolidation under the procedures and subject to the limitations of section 31-1411A, Idaho Code.

SECTION 3. That Section 31-1428, Idaho Code, be, and the same is hereby amended to read as follows:

31-1428. HEARING OF PETITION FOR WITHDRAWAL -- DISTRIBUTION OF ASSETS. (1) Any person interested may appear at said hearing and testify upon any issue pertaining to the withdrawal of said portion from said district, or may object to or support the continuance of the remaining territory as a county fire protection district, and the board of county commissioners shall consider all objections and shall pass upon the same, and if it finds that said portion of the district sought to be withdrawn will not be benefited by remaining within said district, and that the territory not sought to be withdrawn will be benefited by continuing as a county fire protection district, then it shall grant said petition and enter an order thereon upon its records. Subject to the provisions of subsection (2) of this section upon the withdrawal of any territory from a county fire protection district, as in this section provided, all property acquired for the district shall remain vested in the county and be used for the purposes of the district.

(2) If the territory withdrawn from the fire protection district is thereafter organized as a fire protection district under the provisions of this chapter, the county commissioners shall direct that an appraisal be conducted with respect to the assets of the district prior to the withdrawal, including rolling equipment, specialized equipment and any cash reserves and such property or the value thereof shall be divided between the remaining district and the new district in accordance with the percentage that the assessed valuation for property tax purposes of the property in the withdrawing territory bears to the total assessed valuation for property tax purposes of the property in the district before the withdrawal. The new district shall also be entitled to receive its pro rata share of the tax revenues received or receivable from levies made by the preexisting district based upon the formula provided in this subsection for the division of the other assets of the preexisting district.

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 24, 1997.

CHAPTER 373
(H.B. No. 256)

AN ACT

RELATING TO WATER RIGHTS USAGE; AMENDING SECTION 42-202B, IDAHO CODE, TO ADD A DEFINITION OF "CONSUMPTIVE USE" AS THAT TERM RELATES TO THE USE OF WATER UNDER A WATER RIGHT; AND AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES MAY CONSIDER CONSUMPTIVE USE AS A FACTOR IN DETERMINING WHETHER A PROPOSED CHANGE WOULD CONSTITUTE AN ENLARGEMENT IN USE OF THE ORIGINAL WATER RIGHT.

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

SECTION 1. That Section 42-202B, Idaho Code, be, and the same is hereby amended to read as follows:

42-202B. DEFINITIONS. Whenever used in this chapter, the term:

(1) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use does not include any water that falls as precipitation directly on the place of use unless the precipitation is captured, controlled and used under an appurtenant water right.

(2) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.

(~~2~~3) "Municipal provider" means: (a) a municipality that provides water for municipal purposes to its residents and other users within its service area; (b) any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or (c) a corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(15), Idaho Code.

(~~3~~4) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

(~~4~~5) "Planning horizon" refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. The length of the planning horizon may vary according to the needs of the particular municipal provider.

(~~5~~6) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a ser-

vice area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

(6~~7~~) "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

SECTION 2. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such

watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost

through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that all water rights appurtenant to land contracted in a federal cropland set-aside program, shall not be lost and forfeited for nonuse during the contracted period. The five (5) year period of nonuse for forfeiture of a water right shall begin to accrue upon termination of the contract if a period of nonuse did not occur prior to the effective date of the contract or shall continue to accrue if a period of nonuse occurred prior to the effective date of the contract. A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute a beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs. A water right shall not be forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to discharge from dairy lagoons, used in combination with or substituted for water diverted under the water right. 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. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights appurtenant to land contracted in a federal cropland set-aside program, or covered by the waste provision of this section, are exempt from this requirement. 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. 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. 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. 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. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(3) 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 24, 1997.

CHAPTER 374
(H.B. No. 258)

AN ACT

RELATING TO THE ADJUDICATION OF WATER RIGHTS; AMENDING SECTION 42-701, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 42-1401A, IDAHO CODE, TO DELETE THE DEFINITION OF "CONSUMPTIVE USE"; AMENDING SECTIONS 42-1409, 42-1411, 42-1412 AND 42-1424, IDAHO CODE, TO REMOVE THE ANNUAL VOLUME OF CONSUMPTIVE USE AS AN ELEMENT OF A WATER RIGHT TO BE DETERMINED IN A WATER RIGHTS ADJUDICATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-5201, IDAHO CODE, TO PROVIDE CORRECT CITATIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-701, Idaho Code, be, and the same is hereby amended to read as follows:

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- REPORT FILING FEE. (1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(2) If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to sections 42-311, 42-350 and 42-351, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

(5) All appropriators of the public waters of the state of Idaho who are given thirty (30) days' written notice by the director prior to the beginning of the irrigation season but no later than March 15

of any year, shall measure their water diversions and report said diversions annually thereafter on a form approved by the director of the department of water resources. Such report shall include: a legal description of the point of diversion, the number assigned to each water right diverting from the public waters of the state, the maximum authorized rate of diversion, the maximum rate at which diversions have been made during the reporting period, the total volume diverted during the reporting period, and a description of the physical changes to the diversion works that have been made during the reporting period. The appropriator shall furnish each year the depth to water in any well prior to commencement of pumping, the depth to water during the pumping period, and the pressure in the pipe distribution system during diversion if the well is not free flowing. Failure to comply with such measurement and reporting requirements or the willful submittal of false or inaccurate data is a violation of the law controlling use of water under the right and is subject to the enforcement and penalty provisions of sections 42-311, 42-350 and 42-351, Idaho Code. Subsections (5) and (6) of this section shall not apply to:

(a) any appropriator or water user with respect to a water right included in an active water district created pursuant to chapter 6, title 42, Idaho Code, the annual report of which meets the reporting requirements of section 42-708, Idaho Code;

(b) any irrigation district or ground water district having shown to the satisfaction of the director that they are currently making and recording sufficient measurements of their diversions with measuring methods acceptable to the director and upon their agreement to provide an annual report of their diversions to the director in substantially the same form as required in section 42-708, Idaho Code; and

(c) any water right included in an active water measurement district created pursuant to this chapter.

(6) The director of the department of water resources shall collect a report processing fee of twenty-five dollars ($25.00) per diversion required to be reported, including those diversions covered by an agreement in lieu of a measuring device as provided in subsection (2) of this section. Such fee shall be submitted with the annual report of diversions and well data. All such fees received by the department shall be deposited in the water administration account created pursuant to section 42-238a, Idaho Code, for use by the department to collect, analyze and report water use information and to regulate water withdrawal and use.

(7) All domestic uses, as defined in section 42-111, Idaho Code, and all stock watering uses, as defined in section 42-1401A~~(12)~~, Idaho Code, shall be exempt from the measuring device installation and maintenance, measuring and reporting requirements of this section.

SECTION 2. That Section 42-1401A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1401A. DEFINITIONS. The following terms are defined for purposes of this chapter as follows:

(1) "Claimant" means any person asserting ownership of rights to the use of water within the state of Idaho or on whose behalf owner-

ship of rights to the use of water is asserted.

(2) ~~"Consumptive-use"-means-the-amount-of--water--that--does--not remain--in--the-water-system-after-use-or-is-not-returned-to-the-water system-through-return-flows-or-seepage,-whether-or-not--treatment--for purposes-of-maintaining-water-quality-is-required-before-the-water-may be--returned--to-the-water-system.-"Consumptive-use"-for-an-irrigation water-right-shall-be-based-upon-the-most-water-consumptive--crop--that can--be--grown-in-the-area-during-the-period-of-the-year-when-water-is used-for-irrigation.-"Consumptive-use"-is--included--as--a--rebuttable presumption--in-a-decree-only-for-the-purpose-of-transfers-pursuant-to section-42-222,-Idaho-Code.-The-determination-of-the-annual-volume--of "consumptive-use"-for-all-uses-of-water-other-than-irrigation-need-not be-decreed-unless-reported-in-the-director's-report.-"Consumptive-use" amounts--not--decreed-may-be-quantified,-when-quantification-is-necessary,-as-part-of-any-future-transfer-proceedings-pursuant--to--section 42-222,-Idaho-Code.~~

(~~3~~) "Department" means the Idaho department of water resources.

(~~4~~3) "Director" means collectively the director of the Idaho department of water resources and the Idaho department of water resources.

(~~5~~4) "Domestic use" is defined in section 42-111, Idaho Code.

(~~6~~5) "General adjudication" means an action both for the judicial determination of the extent and priority of the rights of all persons to use water from any water system within the state of Idaho that is conclusive as to the nature of all rights to the use of water in the adjudicated water system, except as provided in section 42-1420, Idaho Code, and for the administration of those rights.

(~~7~~6) "Party" means any person who is a claimant or any person who is served or joined.

(~~8~~7) "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity, except that "person" does not include the director of the department or the department.

(~~9~~8) "Private adjudication" means an action commenced in accordance with section 42-1404, Idaho Code, for the judicial determination of both the extent and priority of the rights of named persons to the use of water from any water system within the state of Idaho, for which a general adjudication has not been commenced or completed, that binds only those persons joined in the action and for the administration of such rights.

(~~10~~9) "Purchaser" means any successor in interest of a claimant, whether the interest is acquired by purchase, gift, inheritance, or other means.

(1~~1~~0) "Supplemental adjudication" means an action commenced in accordance with section 42-1424, Idaho Code, for the judicial determination of both the extent and priority of the rights of a person to the use of water from any water system within the state of Idaho which has been adjudicated in a general adjudication or in a private adjudication.

(1~~2~~1) "Stock watering use" means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day.

(1~~3~~2) "Water system" includes all rivers, streams, lakes, springs, ground waters, or other sources within this state, including any river system or other source, as used in 43 U.S.C. section 666.

SECTION 3. That Section 42-1409, Idaho Code, be, and the same is hereby amended to read as follows:

42-1409. NOTICE OF CLAIM. (1) The director shall prepare and furnish on request a standard notice of claim form.

The notice of claim form shall include the following:

(a) the name and address of the claimant;

(b) the source of water;

(c) the quantity of water claimed:

(i) the quantity of water claimed to be used for water rights acquired under state law shall describe the rate of diversion or, for an instream flow claim, a rate of water flow in cubic feet per second or the annual volume of diversion of water for use or storage in acre-feet per year, or both;

(ii) the quantity of water claimed for water rights established under federal law shall describe for each and every purpose the rate of present and future water diversion or, in the case of an instream flow claim the rate of flow in cubic feet per second or annual volume of present and future diversion in acre-feet per year or both;

(d) the date of priority claimed:

(i) the date of priority claimed for water rights acquired under state law shall be from any license, permit, or decree; or if the right is not based upon a license, permit, or decree, then the date when the water was first applied to beneficial use;

(ii) the date of priority claimed for water rights established under federal law shall be determined in accordance with federal law;

(e) the number thereof, if founded upon a right on file with the department; or if the right is founded upon judicial decree not on file with the department, then the title of the court and cause, number of the action and the date of entry;

(f) the legal description of the existing point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(g) the purpose(s) of use and the period of use:

(i) the purpose(s) of use for water rights acquired under state law shall describe each purpose of use and the period of the year when water is used for each purpose;

(ii) the purpose(s) of use for a water right established under federal law shall describe the purposes for which the water included in the claim is presently being used, if at all, and the period of the year when water is necessary for the designated purposes;

(h) a legal description of the place of use:

(i) the legal description of the place of use for water rights acquired under state law shall describe the land where

the water is beneficially used; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;

(ii) the legal description of the place of use for a water right established under federal law shall describe the federal reservation and the existing or proposed place of use for each consumptive use;

(i) the dates of any changes or enlargements in use for water rights acquired under state law, including the dimension of the diversion works as originally constructed and as enlarged;

(j) ~~the annual volume of consumptive use;~~

~~(k)~~ conditions on the exercise of any water right included in any decree, license, approved transfer application or other document; and

(~~l~~k) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right or for administration of the right by the director.

(2) With respect to any water right for which a change was approved by the director pursuant to sections 42-211 or 42-222, Idaho Code, after filing the notice of claim and prior to filing of the director's report, the claimant shall amend the notice of claim consistent with the determination of the director on the change.

(3) Each claimant shall sign and verify under oath that the statements contained in a notice of claim or amended notice of claim are true and correct.

(4) All claimants of water rights that are included in a general adjudication shall file with the director a notice of claim for all water rights, except for those types of water rights designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code.

(5) Any person who fails to submit a required notice of claim shall be deemed to have been constructively served with notice of a general adjudication by publication and mailing as required by section 42-1408, Idaho Code.

(6) Each purchaser of a water right from the water system shall inquire of the director whether a notice of claim has been filed, and if not, shall file a notice of claim in accordance with this section. All claimants and purchasers shall provide the director written notice of any change in ownership or of any change in mailing address during the pendency of a general adjudication. All purchasers shall submit some evidence of ownership along with the notice of change of ownership.

(7) At least one hundred twenty (120) days prior to filing of the director's report with the court, the director may notify each holder of a permit or license to appropriate water from the water system, for which proof of beneficial use was filed after entry of the court's order commencing a general adjudication, to file a notice of claim within thirty (30) days of mailing of the notice. The director shall notify the holder of the permit or license by certified mail at the most recent address shown in the records of the department.

(8) The district court or director may extend the time for filing a notice of claim.

SECTION 4. That Section 42-1411, Idaho Code, be, and the same is hereby amended to read as follows:

42-1411. REPORT OF THE DIRECTOR. (1) The director shall prepare a director's report on the water system. The director may file the director's report in parts as the director deems appropriate. The director may include such explanatory material as he deems appropriate in the director's report. Such explanatory material shall not impose any conditions or restrictions on the rights reported and shall not be subject to objection. This explanatory material shall not be used to support any notice of claim, objection to a notice of claim, or response to an objection.

(2) The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:

(a) the name and address of the claimant;

(b) the source of water;

(c) the quantity of water used describing the rate of water diversion or, in the case of an instream flow right, the rate of water flow in cubic feet per second or annual volume of diversion of water for use or storage in acre-feet per year as necessary for the proper administration of the water right;

(d) the date of priority;

(e) the legal description of the point(s) of diversion; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow;

(f) the purpose of use;

(g) the period of the year when water is used for such purposes;

(h) a legal description of the place of use; if one (1) of the purposes of use is irrigation, then the number of irrigated acres within each forty (40) acre subdivision, except as provided in section 42-219, Idaho Code;

(i) ~~the--annual--volume-of-consumptive-use-as-provided-in-section 42-1401A(2),-Idaho-Code;~~

~~(j)~~ conditions on the exercise of any water right included in any decree, license, or approved transfer application; and

(~~k~~j) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

(3) The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights.

(4) The director shall file the director's report with the district court, and the director's report shall be a part of the record. Upon filing with the court, the director's report, except for the explanatory material referred to in subsection (1) of this section, shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law. The unobjected to portions of the director's report shall be decreed as reported.

(5) Each claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right. Since the director's report is prima facie evidence of the nature and extent of the water rights acquired under state law, a claimant of a

water right acquired under state law has the burden of going forward with the evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report. Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection. Any other party to the proceeding may submit evidence in opposition to the objector's position and in support of the director's report. All such proceedings shall be governed by the Idaho rules of civil procedure and Idaho rules of evidence.

(6) The director shall file an original of the director's report with the district court. The director shall also distribute for display and review at least one (1) copy of the director's report to the office of the clerk of the district court for each county in which any part of the water system is located. The director shall also serve on each claimant or the claimant's attorney whose water right is listed in the director's report a notice of filing of the director's report. Notice shall be sent to the last known address of the claimant or the claimant's attorney. The notice shall be prepared by the director using plain and concise language and shall include:

(a) a statement that the director's report of the various water rights acquired under state law has been filed with the district court, naming the district court(s) to which the report was filed;

(b) a copy of that portion of the report setting forth the claimant's water right;

(c) a statement that a complete copy of the director's report is available for inspection, listing the locations at which the director's report is available, which shall include the office of the clerk of the district court for each county in which any part of the water system is located, the offices of the department, and any other locations the director may designate;

(d) a statement that all or a portion of the director's report is available upon request at the offices of the department, subject to payment of a reasonable fee to cover costs of reproduction and mailing;

(e) a statement that any claimant may file objections to any portion of the director's report with the district court specified in the notice and must mail a copy of the objection to the director, and to the claimant of each claimed right objected to, if the objector is not also the claimant of the right for which the objection is filed;

(f) the date prior to which all objections must be filed, which shall not be less than sixty (60) days for any director's report containing five hundred (500) claims or less, one hundred twenty (120) days for any director's report containing more than five hundred (500) claims and not more than five thousand (5,000) claims, and one hundred eighty (180) days for any director's report containing more than five thousand (5,000) claims; the above-stated periods of time shall commence on the date of service by mail of the notice of filing;

(g) a statement that claimants may file responses with the court to objections filed against their claims, and that a copy of any response must be mailed to the director and to the objector;

(h) the date prior to which all responses to objections must be filed with the court, which shall not be less than one hundred twenty (120) days following receipt of a copy of the objection; and

(i) a statement that any part of the report to which no objections are filed shall be decreed by the district court and the time and location set for the hearing at which the unobjected parts of the report will be decreed, which time shall not be less than sixty (60) days following the expiration of the period for filing responses to objections.

(7) The director shall file an affidavit with the district court demonstrating compliance with the notice requirements of subsection (6) of this section.

SECTION 5. That Section 42-1412, Idaho Code, be, and the same is hereby amended to read as follows:

42-1412. OBJECTIONS -- RESPONSES TO OBJECTIONS -- HEARING BEFORE DISTRICT JUDGE -- ENTRY OF FINAL DECREE. (1) Any claimant who desires to object to a water right, or to a general provision in the director's report, shall file an objection with the district court within the time specified in the notice of filing of the director's report. The claimant shall also send a copy of the objection to the claimant whose water right claim is the subject of the objection and to the director.

(2) The director may file with the district court a supplemental report to any objection to the director's report within the time specified in the notice of filing of the report. The director shall file with the district court the original of the notice of claim. The director shall mail a copy of the supplemental report to the objector and the claimant whose right is the subject of the objection. A claimant may file with the district court a response to any objection filed with respect to the claimant's water right within the time specified in the notice of filing of the report. If a party other than the claimant or the objector desires to participate in the proceeding concerning a particular objection, the party shall file a response to the objection that states the position of the party. In addition, any party may intervene in any objection proceeding in accordance with rules of practice and procedure established by the district court.

(3) The notice of claim, objections, and responses to objections, shall identify the issues to be heard for water rights acquired under state law.

(4) Following expiration of the period for filing objections and responses thereto, the district court shall hear and determine the objections to any water right or to any general provision in the director's report. The court shall before any trial, however, order a settlement conference to determine whether the matter can be settled. The court may request the director to conduct a further investigation and to submit a supplemental report for any water right acquired under state law that is the subject of an objection. In addition, the district court or a party may request the director or his designee to present the basis for the recommendations in the director's report.

(5) The district court or special master shall conduct the trial

without a jury on an objection or any group of objections in accordance with the Idaho rules of civil procedure.

(6) The district court shall enter a partial decree determining the nature and extent of the water right which is the subject of the objection or other matters which are the subject of the objection. The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable~~,-except-that-a-decree-for--any--adjudication commenced--prior--to-July-1,-1986,-need-not-contain-a-determination-of the-annual-volume-of-consumptive-use-for-any-water-right~~. The decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights. Upon entry of the decree, the clerk of the district court shall send a certified copy of the decree to the director in accordance with section 42-1403, Idaho Code. The clerk of the district court shall notify the objector and claimant of each right as to which an objection was determined by the district court of entry of the decree in the manner provided in the Idaho rules of civil procedure.

(7) Not less than sixty (60) days after the expiration of the period for filing responses to objections, the director shall file with the district court a statement of those portions of the director's report for which no objection was filed. Following hearing, the district court shall enter a partial decree as to those portions of the director's report for which no objection has been filed. However, the district court may exclude unobjected claims from this list if the unobjected claim may be affected by the outcome of a contested matter. The decree shall contain or incorporate a statement of those elements of a water right contained in the director's report for water rights acquired under state law~~,-except-that-a-decree-for-any--adjudication--commenced-prior-to-July-1,-1986,-need-not-contain-a-determination-of-the-annual-volume--of--consumptive--use~~. Upon entry of the decree, the clerk of the district court shall send a certified copy of the decree to the director in accordance with section 42-1403, Idaho Code. The clerk of the district court shall notify each claimant of entry of the decree in the manner provided in the Idaho rules of civil procedure.

(8) Upon resolution of all objections to water rights acquired under state law, to water rights established under federal law, and to general provisions, and after entry of partial decree(s), the district court shall combine all partial decrees and the general provisions into a final decree.

(9) The district court may extend or shorten the time for filing any objection to the director's report or any response to an objection.

SECTION 6. That Section 42-1424, Idaho Code, be, and the same is hereby amended to read as follows:

42-1424. SUMMARY SUPPLEMENTAL ADJUDICATION OF WATER RIGHTS. (1) Where an adjudication of a water system has been commenced prior to July 1, 1986, or where an adjudication of a water system has been commenced pursuant to subsection (3) of section 42-1404, Idaho Code,

resulting in a decree of any court of competent jurisdiction, and thereafter it appears that any claimant having the right to the use of any part of those waters was not included in the decree as a party, and the right was not determined thereby, or that a claimant subsequent to the decree has acquired any right to the use of those waters, the claimant may bring an action to have such right adjudicated in the manner specified in subsection (3) of this section.

(2) Where a general adjudication of a water system has been commenced or enlarged after July 1, 1986, pursuant to section 42-1405 or 42-1406, Idaho Code, resulting in a decree of any court of competent jurisdiction, and thereafter, it appears that a claimant subsequent to the decree has acquired any right to the use of those waters, or that a claimant who possesses a water right designated in paragraphs (a) through (d) of subsection (1) of section 42-1420, Idaho Code, did not have those water rights determined, the claimant may bring an action to have those water rights adjudicated in the manner specified in subsection (3) of this section.

(3) The following procedure shall be used for any supplemental adjudication:

(a) A claimant may bring an action in the district court that originally heard the general adjudication to conduct a supplemental adjudication of the water rights of the claimant; and

(b) The claimant shall, in his complaint, set forth his acceptance as binding upon him of all prior applicable decrees and the findings of fact and conclusions of law upon which they are based, shall request the commencement of a supplemental adjudication and shall set forth the claimed water right in a notice of claim form furnished by the director and attached to the complaint. Thereupon, the district court shall issue a summons and it shall be served upon the state of Idaho and the United States; and

(c) After return of service of summons, the claimant shall cause to be published once a week for not less than three (3) weeks, a notice of the pendency and purpose of the action in such newspaper or newspapers as the judge of the district court may order, which notice shall contain the title of the court and the cause, the name and post-office address of the claimant, the date of priority of the water right claimed, the source of the water supply, the amount of water claimed, in general the nature of the water use, the approximate location of the point of diversion, and the place of use; and

(d) Any person who may be injured and who objects to the water right claimed by the claimant, as described in the published notice, shall, within forty-five (45) days of the date of the first publication of notice, file with the district court written notice of such objection stating the reasons for the objection. A copy of the objection shall be served upon the claimant, upon all other parties of record in the action, the watermasters, and the director; and

(e) The district court may request that the director determine the water rights in accordance with the procedures set forth in sections 42-1410 through 42-1413, Idaho Code; and

(f) The director, within thirty (30) days after the district court requests the director to prepare a director's report in

accordance with sections 42-1410 through 42-1413, Idaho Code, shall file with the court notification as to whether the director will conduct an examination of the water rights claimed in the complaint in accordance with the procedures set forth in sections 42-1410 through 42-1413, Idaho Code; and

(g) Notification to the court that the director will proceed in accordance with sections 42-1410 through 42-1413, Idaho Code, shall include an approximation of the time when the director's report will be completed, and an estimate of the director's costs that will be incurred in conducting the examination and in preparing the reports; and

(h) The claimant shall then be required to advance to the director, the estimated costs to be incurred by the director in conducting the examination and in preparing the reports. Prior to the filing of the director's report with the court, the claimant shall pay the balance of the director's verified costs or be refunded any unused estimated costs advanced to the director. In the event that the claimant shall contest the director's costs, the court shall then determine the reasonable costs to be paid by the claimant; and

(i) The director shall file the report with the court upon completion and shall send a copy thereof to all parties to the action. Objections to the report of the director and hearing upon the objections shall be in accordance with the provisions of section 42-1412, Idaho Code; and

(j) For those cases in which the director notifies the district court that the director does not intend to proceed in accordance with sections 42-1410 through 42-1413, Idaho Code, the cause may thereafter be brought on for hearing in open court, and any claimant having filed a timely objection with the court may appear and defend against the claim.

(4) The court's decree shall determine the rights of the claimant in accordance with the proof submitted but subject to the terms of the original decree or decrees. The decree shall contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code, as applicable~~;--except-that a-decree-for-any-adjudication-commenced-prior-to-July--1,--1986,--need not--contain--a-determination-of-the-annual-volume-of-consumptive-use~~. The decree shall also determine all other matters necessary for the efficient administration of the water rights. Whereupon water shall be distributed to the claimant in accordance therewith and in the same manner as though the claimant's right had been included in the decree or decrees.

(5) Any person who has appeared in the action may appeal in accordance with the Idaho appellate rules from the decree entered in the action hereby authorized to be brought.

SECTION 7. That Section 42-5201, Idaho Code, be, and the same is hereby amended to read as follows:

42-5201. SHORT TITLE -- TITLE OF DISTRICTS -- DEFINITIONS. This chapter is known as the "Ground Water District Act"; the districts created hereunder may be termed "ground water districts." When used

in this chapter, and unless otherwise specified, the following terms shall be defined as follows:

(1) "Board" means the board of directors of a ground water district organized pursuant to this chapter.

(2) "Corporation" means a corporation or limited liability company.

(3) "County commission" means the board of county commissioners or any other governing board or authority for a county, as provided by law.

(4) "Department" means the Idaho department of water resources.

(5) "Director" means the director of the department of water resources.

(6) "District" means a ground water district established, or to be established, pursuant to this chapter.

(7) "Ground water" when used in this chapter means water under the surface of the ground whatever may be the geologic structure in which it is standing or moving, as provided in section 42-230(a), Idaho Code.

(8) "Ground water user" means the legal or beneficial owner of a ground water right, or the user of a ground water right pursuant to lease or contract of a ground water right to divert ground water of the state for a beneficial use or purpose, except for those diverting under rights used solely for domestic or stock use as defined by sections 42-111 and 42-1401A~~(12)~~, Idaho Code. A ground water user is within the boundary of a ground water district if the well or other point of diversion used by that ground water user is within the boundary. A husband and wife together diverting ground water pursuant to right shall constitute one (1) ground water user. Ground water user includes both a ground water irrigator and a nonirrigator as defined in this chapter.

(9) "Ground water irrigator" means a ground water user holding a ground water right for irrigation purposes within a ground water district.

(10) "Land" or "lands," when used in the context of the property of a ground water user subject to district assessment under this chapter, means the real property where ground water is diverted or placed to beneficial use, including the facilities in or through which a ground water user makes beneficial use of ground waters.

(11) "Nonirrigator" means a ground water user holding a ground water right for commercial, municipal, or industrial purposes within a ground water district. A ground water user will be deemed a nonirrigator for purposes of this chapter even though: (a) some component of the user's ground water use is for irrigation; or (b) the user holds a ground water right for irrigation that is incidental to, or normally associated with, the user's commercial, municipal or industrial purpose.

(12) "Member" means a ground water user whose lands, facilities and/or water rights are included in and subject to a ground water district and its policies.

(13) "Mitigation plan" means a plan to prevent or compensate for material injury to holders of senior water rights caused by the diversion and use of water by the holders of junior priority ground water rights who are participants in the mitigation plan.

(14) "Person" means an individual, partnership, trust, estate, association, corporation, municipal corporation, the state of Idaho and any of its agencies, the United States, an Indian tribe, a public corporation, or any other public or private entity.

(15) "Public corporation" means counties, city and counties, cities, school districts, municipal water districts, irrigation districts, recharge districts, water districts, park districts, subdistricts, and all other governmental agencies of this state, having the power of levying or providing for the levy of general or special taxes or special assessments, and any political subdivision of another state of the United States.

(16) "Water right" means the legal right to divert and beneficially use the public waters of the state of Idaho where such right is evidenced by a decree, a permit or a license issued by the department, a beneficial or constitutional use right evidenced by an adjudication claim or claim based on section 42-243, Idaho Code, or a right based on federal law.

SECTION 8. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 24, 1997.

CHAPTER 375
(H.B. No. 268)

AN ACT
RELATING TO SPECIAL FUELS TAX; AMENDING SECTION 63-2423, IDAHO CODE, TO EXPAND A DEFINITION OF VEHICLES OPERATED BY GOVERNMENTAL UNITS.

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

SECTION 1. That Section 63-2423, Idaho Code, be, and the same is hereby amended to read as follows:

63-2423. CREDITS AND REFUNDS TO CONSUMERS. (1) Any person who has paid his special fuels tax directly to the vendor from whom it was purchased shall be refunded the amount of:

(a) Any special fuels tax paid on special fuels used for purposes other than propulsion of motor vehicles upon the highways in the state of Idaho;

(b) Any tax paid on special fuels used in motor vehicles ~~over sixteen--thousand--(16,000)--pounds--maximum-gross-weight~~ owned or leased and operated by an instrumentality of the federal government or of the state of Idaho, including the state and all of its political subdivisions;

(c) Any tax paid on special fuels used in motor vehicles to which gaseous special fuel is delivered and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code;

(d) Any special fuels tax paid on special fuels exported for use

outside the state of Idaho. Special fuels carried from the state in the fuel tank of a motor vehicle will not be deemed to be exported from the state unless it is subject to a like or similar tax in the state to which it is taken and that tax is actually paid to the other state; and

(e) Any tax, penalty or interest erroneously or illegally paid or collected.

(2) No refund of special fuels tax shall be paid on:

(a) Special fuels used in a recreational vehicle; or

(b) Special fuels used in noncommercial motor boats or in motor boats operated by a governmental entity.

(3) Refunds authorized in this section shall be claimed in the same manner as applies to refunds of gasoline tax under section 63-2410, Idaho Code.

Approved March 24, 1997.

CHAPTER 376
(H.B. No. 270)

AN ACT

RELATING TO REQUIREMENTS AS TO A FENDER OR COVERS OVER ALL WHEELS ON MOTOR VEHICLES; AMENDING SECTION 49-949, IDAHO CODE, TO PROVIDE AN EXEMPTION FOR A BUMPER THAT IS A FACTORY BUILT BUMPER FASTENED DIRECTLY TO THE FRAME OF THE VEHICLE PURSUANT TO FACTORY INSTALLATION REQUIREMENTS.

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

SECTION 1. That Section 49-949, Idaho Code, be, and the same is hereby amended to read as follows:

49-949. REQUIREMENT AS TO FENDER OR COVERS OVER ALL WHEELS ON MOTOR VEHICLES. (1) It shall be unlawful for any person to operate or move or any owner to permit to be operated or moved, any motor vehicle, truck, bus, semitrailer or trailer, upon any highway without having the vehicle equipped with fenders or covers which may include flaps or splash aprons, over and to the rear of wheels, as follows:

(a) On the rear wheels of every truck equipped with a body, bus, trailer or semitrailer the fenders or covers shall extend in full width from a point above and forward of the center of the tires over and to the rear of the wheels to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty;

(b) Behind the rear wheels of every truck not equipped with a body the fenders or covers shall extend downward in full width from a point not lower than halfway between the center of the wheels and the top of the tires on the wheels to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty;

(c) Behind all wheels of every motor vehicle other than trucks,

buses, semitrailers, or trailers, the fenders or covers shall extend in full width from a point above and forward of the center of the tire over and to the rear of the wheel to a point that is not more than twenty (20) inches above the surface of the highway, unless the bumper is a factory built bumper fastened directly to the frame of the vehicle pursuant to factory installation requirements;

(d) Fenders or covers are not required on any modified American-made pre-1935 vehicle, or any identifiable vintage or replica thereof that is titled as a later assembled vehicle or replica and is used for show and pleasure use when such vehicle is used and driven only during fair weather on well-maintained hard-surfaced roads.

(2) Fenders or covers, as used in subsection (1) of this section, shall be deemed to be of sufficient size and construction as to comply with those requirements if constructed as follows:

(a) When measured on the cross sections of the tread of the wheel or on the combined cross sections of the treads of multiple wheels, the fender or cover extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be;

(b) The fender or cover is constructed as to be capable at all times of arresting and deflecting dirt, mud, water, or other substance as may be picked up and carried by wheels;

(c) For school buses if the body extension behind the rear wheels exceeds five (5) feet.

Approved March 24, 1997.

CHAPTER 377
(H.B. No. 276, As Amended)

AN ACT

RELATING TO SPEED LIMITS; AMENDING SECTION 49-654, IDAHO CODE, TO PROVIDE THAT THE MAXIMUM SPEED LIMIT OF SIXTY-FIVE MILES PER HOUR APPLIES TO STATE HIGHWAYS AND TO PROVIDE A SPEED LIMIT OF FIFTY-FIVE MILES PER HOUR IN LOCATIONS OTHER THAN INTERSTATES, STATE HIGHWAYS, AND ROADS IN URBAN DISTRICTS UNLESS OTHERWISE POSTED UP TO A MAXIMUM OF SIXTY-FIVE MILES PER HOUR.

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

SECTION 1. That Section 49-654, Idaho Code, be, and the same is hereby amended to read as follows:

49-654. BASIC RULE AND MAXIMUM SPEED LIMITS. (1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching

and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(2) Where no special hazard exists that requires lower speed for compliance with subsection (1) of this section the limits as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of the maximum limits:

(a) Thirty-five (35) miles per hour or a lesser maximum speed adopted pursuant to section 49-207(2)(a), Idaho Code, in any residential neighborhood of any urban district;

(b) Thirty-five (35) miles per hour in any urban district;

(c) Seventy-five (75) miles per hour on interstate highways;

(d) Sixty-five (65) miles per hour on state highways;

(e) Fifty-five (55) miles per hour in other locations unless otherwise posted up to a maximum of sixty-five (65) miles per hour.

Approved March 24, 1997.

CHAPTER 378
(H.B. No. 271)

AN ACT

RELATING TO COMPENSATION OF HIGHWAY DISTRICT COMMISSIONERS; AMENDING SECTION 40-1314, IDAHO CODE, TO PROVIDE FOR THE COMPENSATION OF COMMISSIONERS OF COUNTYWIDE HIGHWAY DISTRICTS ORGANIZED UNDER CHAPTERS 14 AND 17, TITLE 40, IDAHO CODE, AND COMMISSIONERS OF ALL OTHER DISTRICTS.

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

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

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

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

(b) Commissioners of a countywide highway district organized under the provisions of chapter 17, title 40, Idaho Code, a salary not to exceed five hundred dollars ($500) per calendar month for each member with the exception of the president or chairman of the highway commissioners who may receive six hundred dollars ($600) per calendar month, provided the population of the county exceeds fifty thousand (50,000).

(c) Commissioners of all other highway districts, a salary of fifty dollars ($~~4~~50.00) for each day in the actual performance of duties, but the total amount to be received as compensation shall

not exceed the sum of ~~three~~ four thousand dollars ($~~3~~4,000) per year.

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

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

(~~3~~4) Commissioners are considered employees of the district. The district shall be liable and responsible for the actions of the commissioners, officers, agents and/or employees of the district when the commissioners, officers, agents and/or employees are performing their duties on behalf of the district.

Approved March 24, 1997.

CHAPTER 379
(H.B. No. 302)

AN ACT

RELATING TO REMEDIAL HUNTER EDUCATION COURSES; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE THAT THE COSTS OF REMEDIAL HUNTER EDUCATION COURSES SHALL BE SEVENTY-FIVE DOLLARS TO BE PAID TO THE DEPARTMENT OF FISH AND GAME.

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

SECTION 1. That Section 36-1402, Idaho Code, be, and the same is hereby amended to read as follows:

36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Any person who pleads guilty to or is found guilty of an infraction of this code or rules promulgated pursuant thereto, shall be punished in accordance with the provisions of the Idaho infractions rules.

(b) Misdemeanor Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a misdemeanor under the provisions of this title or rules promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following ani-

mals, fish or birds shall be as indicated below:

Animal, Fish or Bird	Minimum Fine
Bighorn sheep, mountain goat and moose	$500
Elk	$300
Deer and pronghorn antelope	$200
Wild turkey, swan and sturgeon	$200
Chinook salmon	$100

(c) Felony Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a felony under the provisions of this title shall be punished in accordance with section 18-112, Idaho Code. Provided further, that the judge hearing the case shall forthwith revoke for life, the hunting, fishing or trapping license and privileges of any person who, within a five (5) year period, pleads guilty to, is found guilty of or is convicted of three (3) or more felony violations of the provisions of this title.

(d) License Revocation. Any person entering a plea of guilty or being found guilty or convicted of violating any of the provisions of this title, or who otherwise fails to comply with the requirements of a citation in connection with any such offense, may, in addition to any other penalty assessed by the court, have his hunting, fishing, or trapping privileges revoked for such period of time as may be determined by the court not to exceed three (3) years, said period beginning on the date of conviction, finding of guilt or the entry of the plea of guilty. Provided further, that the magistrate hearing the case shall forthwith revoke the hunting, fishing, or trapping privileges for a period of not less than one (1) year from the date of such conviction, finding of guilt or the entry of the plea of guilty, of any person who is convicted of, found guilty of or enters a plea of guilty for any of the following offenses:

1. Taking or possessing upland game birds, migratory waterfowl, salmon, steelhead, sturgeon, or any big game animal during closed season.
2. Exceeding the daily bag or possession limit of upland game birds, migratory waterfowl or big game animals.
3. Taking any fish by unlawful methods as set forth in section 36-902(a) or (c), Idaho Code.
4. Unlawfully purchasing, possessing or using any license, tag or permit as set forth in section 36-405(c), Idaho Code.
5. Trespassing in violation of warning signs as set forth in section 36-1603, Idaho Code.
6. The unlawful sale or purchase of wildlife as set forth in section 36-501, Idaho Code.
7. Taking any game animal with a firearm during an archery only season.

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) may require that the offender attend a remedial hunter education course at the offender's expense. Upon successful completion of the course, the remainder of the revocation period shall be subject to a withheld judgment so long as the offender is not convicted of any additional hunting violations during the period. The cost of the course shall be seventy-five dollars ($75.00) to be paid to the department. The commission shall establish by rule the curriculum ~~and cost~~ of the hunter

education remedial course.

The revocation shall consist of cancellation of an existing license for the required length of time and/or denial of the privilege of purchasing an applicable license for the length of time required to meet the revocation period decreed. In the case of persons pleading guilty, convicted or found guilty of committing multiple offenses, the revocation periods may run consecutively. In the case of pleas of guilty, convictions or findings of guilt involving taking big game animals during closed season or exceeding the daily bag or possession limit of big game, the magistrate hearing the case shall revoke the hunting, fishing or trapping privileges of any person convicted or found guilty of those offenses for a period of not less than one (1) year for each big game animal illegally taken or possessed by the person convicted or found guilty.

It shall be a misdemeanor for any person to hunt, fish, or trap or purchase a license to do so during the period of time for which such privilege is revoked by order of any court of this state. Any person pleading guilty, found guilty or convicted thereof shall be fined in an amount of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by commitment to jail for not more than six (6) months or by both such fine and commitment. Provided further, that the period of revocation of such privileges shall be extended an additional amount of time equal to the original revocation.

For the purpose of this title, the term "conviction" shall mean either a withheld judgment or a final conviction.

(e) For purposes of the wildlife violator compact, section 36-2301, Idaho Code, et seq., the department shall:

1. Suspend a violator's license for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence.

2. Revoke a violator's license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.

(f) Disposition of Fines and Forfeitures. Distribution of fines and forfeitures remitted shall be in accordance with section 19-4705, Idaho Code.

Approved March 24, 1997.

CHAPTER 380
(H.B. No. 304, As Amended)

AN ACT

RELATING TO RESPONSIBILITY FOR THE PAYMENT OF CORPORATE INCOME TAXES AND PENALTIES; AMENDING SECTION 63-3078, IDAHO CODE, TO PROVIDE THAT ANY PERSON AS THE TERM IS DEFINED IN THE INCOME TAX LAW SHALL BE LIABLE FOR PENALTIES IF CERTAIN EVENTS OCCUR AND TO PROVIDE CIRCUMSTANCES WHEN NO PENALTY SHALL OCCUR.

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

SECTION 1. That Section 63-3078, Idaho Code, be, and the same is hereby amended to read as follows:

63-3078. ~~RESPONSIBILITY FOR PAYMENT OF CORPORATE TAXES AND PENALTIES~~ FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO EVADE OF DEFEAT TAX. ~~(a) Every person with the duty to account for and pay over any tax imposed by this act on behalf of a corporation as an officer or employee of a corporation or on behalf of a partnership as a member or employee of a partnership shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.~~

~~(b)~~ Any ~~such individual~~ person required to collect, truthfully account for and pay over any tax imposed by this title who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for or paid over. No penalty shall be imposed under this or other Idaho Code sections for any offense to which this section is applicable except and to the extent that such would be imposed when this section is interpreted in a manner similar to the interpretation given to section 6672(a) of the internal revenue code.

Approved March 24, 1997.

CHAPTER 381
(H.B. No. 322)

AN ACT

RELATING TO THE IDAHO SECURITIES ACT; AMENDING SECTION 30-1402, IDAHO CODE, TO ADD AND AMEND DEFINITIONS TO BRING THE IDAHO SECURITIES ACT INTO CONFORMANCE WITH THE PROVISIONS OF THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996 (NSMIA) AND THE UNIFORM SECURITIES ACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 30-1403A, IDAHO CODE, TO CONFORM THE PROSPECTUS DELIVERY REQUIREMENTS TO THE NSMIA; AMENDING SECTION 30-1405, IDAHO CODE, TO REFERENCE THE SECTION IN WHICH THE REQUIREMENTS FOR WAIVER OF THE INVESTMENT ADVISER SURETY BOND ARE FOUND AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-1406, IDAHO CODE, TO CONFORM THE INVESTMENT ADVISER REGISTRATION REQUIREMENTS TO THE PROVISIONS OF THE NSMIA AND TO PROVIDE PROCEDURES; AMENDING SECTION 30-1407, IDAHO CODE, TO AMEND THE APPLICATION REQUIREMENTS OF THE IDAHO SECURITIES ACT TO CONFORM TO THE PROVISIONS OF THE NSMIA; AMENDING SECTION 30-1408, IDAHO CODE, TO PROVIDE THE DIRECTOR WITH DISCRETION AS TO THE INFORMATION REQUIRED TO BE SUBMITTED ON AN APPLICATION FOR REGISTRATION; AMENDING SECTION 30-1409, IDAHO CODE, TO SET FORTH, IN CONFORMANCE WITH THE NSMIA, THE TIME OF EFFECTIVENESS OF A SECURITIES OFFERING WHERE A NOTICE FILING HAS BEEN MADE

AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-1410, IDAHO CODE, TO STATE THE DURATION OF EFFECTIVENESS OF CERTAIN FILINGS; AMENDING SECTION 30-1411, IDAHO CODE, TO STATE THE RENEWAL REQUIREMENTS OF REGISTRATIONS AND NOTICE FILINGS; AMENDING SECTION 30-1412, IDAHO CODE, TO SET FORTH BOOKS AND RECORDS REQUIREMENTS FOR BROKER-DEALERS AND INVESTMENT ADVISERS IN CONFORMANCE WITH THE NSMIA; AMENDING SECTION 30-1416, IDAHO CODE, TO PROVIDE THAT A FEDERAL COVERED SECURITY IS NOT REQUIRED TO BE REGISTERED UNDER THE ACT; AMENDING SECTION 30-1433, IDAHO CODE, TO PROVIDE FOR NOTICE AND HEARING IN THE CASE OF STOP ORDERS FOR COVERED SECURITIES; AMENDING CHAPTER 14, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1433A, IDAHO CODE, TO SET FORTH THE FILING REQUIREMENTS AND OTHER MATTERS RELATING TO FEDERAL COVERED SECURITIES AND TO PROVIDE PROCEDURES; AMENDING SECTION 30-1434, IDAHO CODE, TO PROVIDE THAT THE REQUIREMENTS OF SECTION 30-1433A, IDAHO CODE, SHALL NOT APPLY TO A SECURITY WHICH OPTS TO PERFECT AN EXEMPTION UNDER THIS SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-1435, IDAHO CODE, TO PROVIDE THAT THE REQUIREMENTS OF SECTION 30-1433A, IDAHO CODE, SHALL NOT APPLY TO A SECURITY WHICH OPTS TO PERFECT AN EXEMPTION UNDER THIS SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 30-1436, IDAHO CODE, TO GIVE THE DIRECTOR DISCRETION TO WAIVE THE REQUIREMENT FOR THE FILING OF A CONSENT TO SERVICE OF PROCESS; AMENDING SECTION 30-1437, IDAHO CODE, TO PROVIDE FOR FEES FOR NOTICE FILINGS AND NOTICE FILING RENEWALS; AMENDING SECTION 30-1439, IDAHO CODE, TO EXPAND THE PROHIBITION AGAINST THE MAKING OF MISLEADING FILINGS WITH THE DIRECTOR TO SECURITIES FOR WHICH A NOTICE FILING HAS BEEN MADE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-1442, IDAHO CODE, TO PROVIDE THAT THE RELIEF PROVIDED BY THIS SECTION IS NOT AVAILABLE WHERE THE ONLY VIOLATION IS A FAILURE TO MAKE A NOTICE FILING OR THE NONPAYMENT OR UNDERPAYMENT OF FEES, TO GRANT THE DIRECTOR THE AUTHORITY TO ISSUE CEASE AND DESIST ORDERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 30-1443, IDAHO CODE, TO PROVIDE THAT THE RELIEF PROVIDED BY THIS SECTION IS NOT AVAILABLE WHERE THE ONLY VIOLATION IS A FAILURE TO MAKE A NOTICE FILING OR THE NONPAYMENT OR UNDERPAYMENT OF FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 30-1446, IDAHO CODE, TO PROVIDE THAT NO CIVIL LIABILITY ATTACHES WHERE THE ONLY VIOLATION IS A FAILURE TO MAKE A NOTICE FILING OR THE NONPAYMENT OR UNDERPAYMENT OF FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 30-1448, IDAHO CODE, TO GIVE THE DIRECTOR THE AUTHORITY TO ISSUE ORDERS; AMENDING SECTION 30-1450A, IDAHO CODE, TO CLARIFY THAT THE DIRECTOR MAY PARTICIPATE IN STATE SPONSORED SUPPLEMENTAL BENEFITS PLANS; AMENDING SECTION 30-1453, IDAHO CODE, TO REQUIRE THAT THE DIRECTOR INCLUDE NOTICE FILINGS IN THE REGISTER OF REGISTRANTS; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 30-1402, Idaho Code, be, and the same is hereby amended to read as follows:

30-1402. DEFINITIONS. When used in this act, unless the context

otherwise requires:

(1) "Director" means the director of the department of finance.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, but "salesman" does not include an individual who represents:

(a) an issuer in:

(~~a~~i) effecting a transaction in a security exempted in paragraphs (a), (b), (c), (f), (i), (j) or (k) of subsection (1) of section 30-1434, Idaho Code~~,~~;

(~~b~~ii) effecting transactions exempted by section 30-1435, Idaho Code;~~, or~~

(~~c~~iii) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(iv) effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4)(D) of the securities act of 1933; or

(b) a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the securities exchange act of 1934. A partner, officer or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, credit union or insurance company~~,~~;

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustee~~,~~; or

(c) a person who has no place of business in this state if during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in subsection (3)(b) of this section.

(4) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(5) "Full business day" means all calendar days except Saturdays, Sundays and all legal holidays as defined by statute.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in, purchasing or selling securities or, who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an

integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing advisory services to others for compensation. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, credit union or insurance company;

(b) a certified public accountant or licensed public accountant who holds himself out to the public as a certified public accountant or licensed public accountant;

(c) a lawyer, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;

(d) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them;

(e) a publisher of any newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(f) a person whose advice, analyses or reports relate only to securities exempted by section 30-1434(1)(a), Idaho Code;

(g) ~~such--other--persons-not-within-the-intent-of-this-subsection as-the-director-may-by-rule-or-order-designate;-or~~

~~(h)~~ an investment adviser representative;

(h) any person that is a federal covered advisor;

(i) such other persons not within the intent of this subsection as the director may, by rule or order, designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates or collateral-trust certificates or with respect to certificates of interest or shares in any unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person," for the purpose of this act, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(10) "Sale" or "sell" includes every contract of sale or contract to sell or dispose of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, and every solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and

sold for value. A purported gift of or the levying of an assessment on assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes identified by those names as amended before or after the effective date of this ~~act~~ chapter.

(12) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, 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, or, in general, any interest or instrument commonly known as a "security" or any 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" does not include any 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 some other specified period.

(13) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

(14) "Investment adviser representative or agent" means any partner, officer, director, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, (a) employed by or associated with an investment adviser registered in this state, ~~except clerical or ministerial personnel;~~ or (b) who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who:

(a) makes any recommendation or otherwise renders advice regarding securities ~~directly to Idaho advisory clients~~;

(b) manages accounts or portfolios of ~~Idaho~~ clients;

(c) determines which recommendation or advice regarding securities should be given ~~to Idaho clients if such person is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or, if the investment adviser has no investment committee, the person determines general client advice (if there are more than five (5) such persons, only the supervisors of such persons are deemed to be investment adviser representatives)~~;

(d) solicits, offers or negotiates for the sale of or sells investment advisory services ~~to Idaho clients~~; or

(e) ~~immediately~~ supervises employees in the performance of any of the foregoing.

"Investment adviser representative or agent" does not include a person

whose performance of these services is solely incidental to the conduct of such person's business as a salesman for a broker-dealer and who does not share in an investment advisory fee paid by the investment adviser client.

(15) "Federal covered adviser" means a person who is: (a) registered under section 203 of the investment advisers act of 1940; or (b) is excluded from the definition of "investment adviser" under section 202(a)(11) of the investment advisers act of 1940.

(16) "Federal covered security" means any security that is a covered security under section 18(b) of the securities act of 1933, or rules or regulations promulgated thereunder.

SECTION 2. That Section 30-1403A, Idaho Code, be, and the same is hereby amended to read as follows:

30-1403A. PROSPECTUS OR OFFERING CIRCULAR DELIVERY REQUIREMENT. (1) It is unlawful for any broker-dealer or salesman registered under this ~~act~~ chapter to fail to deliver to each purchaser of a security a current prospectus or offering circular no later than the earlier of:

(a) The confirmation of such sale; or

(b) Delivery of such security to the purchaser.

(2) This section shall not be construed to preclude the use or distribution of a preliminary prospectus, provided:

(a) An application to register the securities is pending with the director or a notice filing has been made with the director pursuant to the provisions of section 30-1433A, Idaho Code; and

(b) The outside front cover page of such prospectus bears, in red ink, the caption "Preliminary Prospectus," the date of issuance, and the following statement printed in boldface type: **"A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE IDAHO DEPARTMENT OF FINANCE, BUT HAS NOT YET BECOME EFFECTIVE. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY."**

(c) The requirements of subsection (b) of this section shall not apply to any federal covered security.

(3) The director may, in lieu of the statement set forth in subsection (2)(b) of this section, authorize, by order, the use of a statement that complies with regulations promulgated under the securities act of 1933.

SECTION 3. That Section 30-1405, Idaho Code, be, and the same is hereby amended to read as follows:

30-1405. UNLAWFUL ACTS OF INVESTMENT ADVISER. (1) Except as may be permitted by rule or order of the director, it is unlawful for any investment adviser to enter into, extend or renew any investment advisory contract unless it provides in writing:

(a) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Paragraph (a) of this subsection does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment" as used in paragraph (~~a~~b) of this subsection includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(2) If the investment adviser has qualified under section 30-1407(2)(~~c~~b), Idaho Code, for a waiver of the surety bond requirement it is unlawful for the investment adviser to enter into, extend, or renew any investment advisory contract unless the contract provides that the investment adviser will not have custody of or discretionary authority over client funds or securities.

SECTION 4. That Section 30-1406, Idaho Code, be, and the same is hereby amended to read as follows:

30-1406. REGISTRATION OR NOTICE FILING REQUIRED OF BROKER-DEALERS, SALESMEN, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES ~~REQUIRED~~. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman unless he is registered under this ~~act~~ chapter, and it is unlawful for any broker-dealer or issuer to employ a salesman unless the salesman is registered under this ~~act~~ chapter.

(2) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(~~1~~a) he is so registered under this ~~act~~ chapter, or

(~~2~~b) he has no place of business in this state and his only clients in this state are investment companies as defined in the ~~I~~investment ~~C~~company ~~A~~act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plan with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the director, or

(~~3~~c) he has no place of business in this state and during ~~any period--of~~ the preceding twelve (12) ~~consecutive~~ months~~-does-not direct-business-communications-in-this--state--in--any--manner--to~~ period has had not more than five (5) clients, other than those specified in ~~subsection~~ paragraph (~~2~~b) of this subsection, ~~whether or-not-he-or-any-of-the-persons-to--whom--the--communications--are directed-is-then-present-in~~ who are residents of this state, or

(d) he is registered as a salesman under this chapter and is employed by a broker-dealer registered under this chapter and: (i) his investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under this chapter or a federal covered adviser, and all such recommendations are made on behalf of the employing broker-dealer; (ii) he is not compensated directly for making such recommendations; and (iii) he provides written notice to the director that he is relying on this exemption from the requirement to be registered as an investment adviser representative.

(3) (a) ~~Further,--i~~It is unlawful for any investment adviser required to be registered under this chapter, to employ an investment adviser representative unless the investment adviser representative is registered under this ~~act~~ chapter or is exempt from registration.

~~Any-person-who-is-registered-as-a-salesman-of-a-registered-broker-dealer-and-as-an-investment-adviser--representative--of--such--broker-dealer--or--affiliate--thereof-shall-not-be-required-to-register-additionally-as-an--investment--adviser--representative--of--nonaffiliated investment--advisers--who-perform-investment-advisory-services-for-the clients-of-such-investment-adviser-representative-when-those--services are-recommended-by-the-broker-dealer-or-investment-adviser-affiliate~~

(b) It is unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered under this chapter, or is exempt from registration.

(4) Except with respect to advisers whose only clients are those described in paragraphs (2)(b) and (c) of this section, it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director, prior to acting as a federal covered adviser in this state: (a) such documents as have been filed with the securities and exchange commission as the director, by rule or order, may require; (b) a consent to service of process as prescribed by section 30-1436, Idaho Code; and (c) pays a fee as provided in section 30-1437, Idaho Code. The director may issue an order of suspension against any person rendering investment advice in violation of this subsection.

(5) Notwithstanding anything to the contrary in this chapter, until October 11, 1999, the director may require the registration of any person who is registered or required to be registered as an investment adviser under section 203 of the investment advisers act of 1940 and who has failed to promptly pay the fees required by section 30-1437, Idaho Code, after being notified in writing by the director of the nonpayment or underpayment of such fees. A person shall be considered to have promptly paid such fees if they are remitted to the

director within fifteen (15) days following such person's receipt of the written notification from the director.

SECTION 5. That Section 30-1407, Idaho Code, be, and the same is hereby amended to read as follows:

30-1407. APPLICATION FOR REGISTRATION -- FINGERPRINTS, WRITTEN EXAMINATION, BOND, WAIVER, MINIMUM CAPITAL REQUIRED -- EFFECT OF BROKER-DEALER REGISTRATION ON PARTNERS' OFFICES. (1) A broker-dealer, salesman or investment adviser or investment adviser representative shall apply for registration by filing with the director or an organization which the director by rule designates an application in such form as the director shall prescribe and payment of the fee prescribed in section 30-1437, Idaho Code. Such application shall be accompanied by the fingerprints of the applicant, unless waived by the director.

(2) (a) A registered ~~broker-dealer--or~~ investment adviser shall file with the director a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand dollars ($25,000) and conditioned upon faithful compliance with the provisions of this ~~act~~ chapter by the ~~broker-dealer--or~~ investment adviser, or its ~~salesmen-and~~ agents, such that upon failure to so comply by the ~~broker-dealer--or~~ investment adviser, or its ~~salesmen-and~~ agents, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding requirements.

(b) ~~Any-salesman-acting-as-agent-for-an-issuer-or--issuers--shall file--with-the-director-a-bond-of-a-surety-company-duly-authorized to-transact-business-in-this-state;-said-bond-to-be-in-the-sum--of ten--thousand-dollars-($10,000)-and-conditioned-upon-faithful-compliance-with-the-provisions-of-this-act-by-the-salesman;-such-that upon-failure-to-so-comply-by-the-salesman-the-surety-company-shall be-liable-to-any-and-all-persons-who-may--suffer--loss--by--reason thereof.-Provided,-however,-that-the-obligation-of-the-surety-bond must--be--maintained--at-all-times-in-the-amount-therein-provided; and-provided-further,-that-a-certificate-of-deposit-issued-by--any bank--in--the--state--of--Idaho-and-assigned-to-the-director-in-an amount-equal-to-the-bond-which-would-otherwise-be-required-may--be accepted--by-the-director-in-lieu-of-a-bond;-if-the-certificate-of deposit-is-maintained-at-all-times-in-the-amount-and-manner-herein provided-during-the-term-for-which-the-registration--is--effective and-for-three-(3)-years-thereafter.~~

~~(c)~~ Upon a proper showing, the director, in his discretion, may waive the surety bond requirement of an investment adviser or an investment adviser applicant who satisfies both of the following conditions:

(i) The investment adviser will not have custody of or discretionary authority over client funds or securities; and

(ii) The investment adviser includes a provision in all

investment advisory contracts which states that the investment adviser will not have custody of or discretionary authority over client funds or securities, as required by section 30-1405(2), Idaho Code.

(c) Any salesman acting as agent for an issuer or issuers shall file with the director a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars ($10,000) and conditioned upon faithful compliance with the provisions of this act by the salesman, such that upon failure to so comply by the salesman the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the director in an amount equal to the bond which would otherwise be required may be accepted by the director in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter.

(3) The director may by rule or order require a minimum capital for registered broker-dealers, subject to the limitations of section 15 of the securities exchange act of 1934, and establish minimum financial requirements for investment advisers, ~~or may prescribe a ratio between net capital and aggregate indebtedness by type or classification~~ subject to the limitations of section 222 of the investment advisers act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these minimum financial requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's minimum financial or net capital requirements, as the case may be.

(4) The director shall require as a condition of registration that the applicant (and, if the applicant is a corporation or partnership, all officers, directors or partners doing securities business in this state) pass a written examination in such form as the director shall prescribe as evidence of knowledge of the securities business: Provided, that not more than two (2) officers of an issuer may be registered as salesmen for a particular original offering of the issuer's securities without being required to pass such written examination or file a salesman's bond as required by section 30-1407(2)(c), Idaho Code; and provided further, that no such officer may again register within five (5) years as such salesman for this or any other issuer without passing the written examination. Such examination shall be given twice a year or at such more frequent intervals as the director shall direct.

(5) Any person who is licensed to sell securities or conduct a securities business in this state and (a) is a member or registered representative of a member of the New York Stock Exchange, the Ameri-

can Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or the National Association of Securities Dealers or any other exchange registered with the Securities and Exchange Commission and approved by the director; or, (b) has successfully completed the general examination for nonmembers of the National Association of Securities Dealers, commonly known as the SECO examination, shall not be required to pass an examination given by the director as a condition of registration.

SECTION 6. That Section 30-1408, Idaho Code, be, and the same is hereby amended to read as follows:

30-1408. CONTENTS OF APPLICATION FOR REGISTRATION. The application shall contain such information relating to the applicant as the director shall require~~, including~~ concerning such matters as:

(1) the applicant's form and place of business,

(2) the applicant's proposed method of doing business,

(3) the qualifications and business history of the applicant, and in the case of a broker-dealer or investment adviser of the partners, officers or directors,

(4) any injunction, administrative order, indictment or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony, and

(5) the applicant's financial condition and history.

SECTION 7. That Section 30-1409, Idaho Code, be, and the same is hereby amended to read as follows:

30-1409. WHEN REGISTRATION EFFECTIVE. If no denial order is in effect and no proceeding is pending under section 30-1413, Idaho Code, registration becomes effective at noon of the thirtieth ~~(30th)~~ calendar day after an application is filed. The director may specify an earlier effective date and he may by order defer the effective date for an additional sixty (60) calendar days. The effective date after the filing of any amendment shall be noon of the thirtieth ~~(30th)~~ calendar day thereafter unless otherwise accelerated by the director. A notice filing pursuant to section 30-1406(4), Idaho Code, shall be effective upon receipt by the director of the documents required under section 30-1406(4), Idaho Code, and payment of the fees required by section 30-1437, Idaho Code.

SECTION 8. That Section 30-1410, Idaho Code, be, and the same is hereby amended to read as follows:

30-1410. DURATION OF REGISTRATION -- NOTICE OF ASSOCIATION WITH ISSUER, BROKER-DEALER OR INVESTMENT ADVISER. Registration of a broker-dealer, salesman, investment-adviser or investment adviser representative and a notice filing pursuant to section 30-1406(4), Idaho Code, shall be effective until the thirty-first day of December next following such registration or notice filing or as otherwise designated by rule and may be renewed as hereinafter provided. The registration of a salesman is not effective during any period when he is not associated with a specified issuer or a specified broker-dealer registered under

this ~~act~~ chapter. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not associated with a specified investment adviser registered under this ~~act~~ chapter or with a federal covered adviser. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the director. When an investment adviser representative begins or terminates an association with an ~~registered~~ investment adviser registered under this chapter, the registered investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates an association with a federal covered adviser, the investment adviser representative shall promptly notify the director.

SECTION 9. That Section 30-1411, Idaho Code, be, and the same is hereby amended to read as follows:

30-1411. RENEWAL OF REGISTRATION -- FINANCIAL STATEMENT -- APPLICATION FOR A SUCCESSOR. (1) Registration of a broker-dealer, salesman, investment adviser or investment adviser representative may be renewed by filing with the director or an organization which the director by rule designates prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser or investment adviser representative filed with the director, or an organization which the director by rule designates, by the applicant, and payment of the ~~prescribed~~ fee ~~and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) calendar days~~ required by section 30-1437, Idaho Code.

(2) A notice filing pursuant to section 30-1406(4), Idaho Code, may be renewed prior to the expiration thereof by providing the director, or an organization which the director by rule or order designates, a copy of the documents filed with the securities and exchange commission to renew its registration as an investment adviser under federal law together with the fees required by section 30-1437, Idaho Code.

(3) A registered broker-dealer or investment adviser may file an application for registration of a successor to become effective upon approval of the director.

SECTION 10. That Section 30-1412, Idaho Code, be, and the same is hereby amended to read as follows:

30-1412. ACCOUNTS AND RECORDS -- EXAMINATION. (1) Every registered broker-dealer and investment adviser shall make and keep such accounts, memoranda, papers, books and other records, as may be prescribed by the director, except as provided by section 15 of the securities exchange act of 1934 (in the case of a broker-dealer) and section 222 of the investment advisers act of 1940 (in the case of an investment adviser). All records so required, with respect to an investment adviser, shall be preserved for ~~three (3) years unless~~ such

period as the director prescribes ~~otherwise for particular types of records~~ by rule or order. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these recordkeeping requirements provided that such investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to accounts and records.

(2) With respect to investment advisers, the director may require by rule or order that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the investment advisers act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(3) Every registered broker-dealer and investment adviser shall file such financial reports as the director may prescribe by rule or order, except as provided by section 15 of the securities exchange act of 1934 (in the case of a broker-dealer) and section 222 of the investment advisers act of 1940 (in the case of an investment adviser).

(4) All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the director, as the director deems necessary or appropriate in the public interest or for the protection of investors.

SECTION 11. That Section 30-1416, Idaho Code, be, and the same is hereby amended to read as follows:

30-1416. SECURITIES REQUIRED TO BE REGISTERED -- EXCEPTIONS. It is unlawful for any person to sell or to offer to sell any security in this state, except securities exempt under section 30-1434, Idaho Code, or except securities sold in transactions exempt under section 30-1435, Idaho Code, unless such security is registered by notification, coordination or qualification under this ~~act~~ chapter or is a federal covered security.

SECTION 12. That Section 30-1433, Idaho Code, be, and the same is hereby amended to read as follows:

30-1433. NOTICE OF STOP ORDER -- HEARING -- FINDING -- MODIFICATION. Upon the entry of an order under section 30-1431 or section 30-1433A, Idaho Code, the director shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that if requested by the issuer or registrant within twenty (20) days after the receipt of the director's notification the matter will be set promptly for hearing. If no hearing is requested within twenty (20) days and none is ordered by the director the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered the director, after notice of and opportunity for hearing, may affirm,

modify or vacate the order.

SECTION 13. That Chapter 14, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1433A, Idaho Code, and to read as follows:

30-1433A. FEDERAL COVERED SECURITIES. (1) The director, by rule or order, may require the filing of any or all of the following documents with respect to a covered security under section 18(b)(2) of the securities act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933, together with a consent to service of process signed by the issuer, as prescribed by section 30-1436, Idaho Code, and with the payment of the fee prescribed by section 30-1437, Idaho Code; and

(b) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933 which shall be filed concurrently with the director.

(2) With respect to any security that is a covered security under section 18(b)(4)(D) of the securities act of 1933, the director, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process, as prescribed by section 30-1436, Idaho Code, signed by the issuer no later than fifteen (15) days after the first sale of such covered security in this state, together with the fee prescribed by section 30-1437, Idaho Code.

(3) The director, by rule or order, may require the filing of any document filed with the securities and exchange commission under the securities act of 1933, with respect to a covered security under section 18(b)(3) or (4) of the securities act of 1933, together with the fee prescribed by section 30-1437, Idaho Code.

(4) The director may issue a stop order suspending the offer and sale of a covered security, except a covered security under section 18(b)(1) of the securities act of 1933, if he finds that: (a) the order is in the public interest; and (b) there is a failure to comply with any condition established under this section.

(5) The director, by rule or order, may waive any or all of the provisions of this section.

(6) Notwithstanding the provisions of this section, until October 11, 1999, the director may require the registration of any covered security for which the fees required by section 30-1437, Idaho Code, have not been paid promptly following written notification from the director to the issuer of the nonpayment or underpayment of such fees. An issuer shall be considered to have promptly paid such fees if they are remitted to the director within fifteen (15) days following the issuer's receipt of written notification from the director.

SECTION 14. That Section 30-1434, Idaho Code, be, and the same is hereby amended to read as follows:

30-1434. EXEMPT SECURITIES. (1) Sections 30-1416 through 30-1433A inclusive, Idaho Code, shall not apply to:

(a) any security including a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing,

(b) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor,

(c) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States or any bank, savings institution or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state,

(d) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state,

(e) any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the director of the department of insurance,

(f) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state,

(g) any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is:

(i) Subject to the jurisdiction of the interstate commerce commission,

(ii) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act,

(iii) Regulated with respect to its rates and charges by a governmental authority of the United States or any state or municipality, or

(iv) Regulated with respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection,

(h) any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or

approved or any warrant or right to purchase or subscribe of the foregoing,

(i) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, also any securities issued by a community-sponsored or owned industrial corporation or foundation organized for the purpose of promoting growth and/or economic development of the community,

(j) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal when such commercial paper is sold to the banks or insurance companies,

(k) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan,

(l) any security issued by a nonprofit cooperative corporation organized pursuant to this title, if no expenditure is made by or on its behalf in connection with the issuance or sale of its securities other than the actual expenses of organization, calling or holding meetings of incorporators or shareholders, printing, mailing, and taxes,

(m) any security issued by a domestic or foreign corporation, partnership, trust or association engaged in actual mining operations or the exploration and development of mining properties in this state, whether or not sold through a broker-dealer, provided the following conditions are met:

(i) The term "actual mining operations" within the meaning of this subsection does not include the development or production of gas or oil;

(ii) The total amount of the securities to be offered and sold does not exceed one hundred thousand dollars ($100,000) in any twelve (12) month period;

(iii) All sales brochures, pamphlets, advertisements and literatures are filed with the director prior to being used;

(iv) At least eighty per cent (80%) of the gross amount paid by the purchasers of the securities is used in actual mining operations or for actual exploration and development expenses, including legal, accounting, engineering and geological expenses; and

(v) The issuer shall file a report in a form prescribed by the director and at such times that the director by rule may 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.

(2) Provided, that any person shall give notice in the form prescribed by the director of his intention to avail himself of the exemption afforded by paragraphs (d), (e), (f), (i), (k), (l) or (m)

of subsection (1) of this section thirty (30) days prior to the first offer or sale to be made thereunder. The director may by order deny or revoke the exemption specified in such subsections with respect to a specific security. Upon the entry of such an order the director shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within twenty (20) days of the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the director the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered the director, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under said subsections may operate retroactively. No person may be considered to have violated this ~~act~~ chapter by reason of any offer or sale effected after the entry of an order under said subsections if he sustains the burden of proof that he did not know, and in the exercise of reasonable care, could not have known of the order.

SECTION 15. That Section 30-1435, Idaho Code, be, and the same is hereby amended to read as follows:

30-1435. EXEMPT TRANSACTIONS. (1) Except as hereinafter in this section expressly provided, sections 30-1416 through 30-1433A, ~~inclusive,~~ Idaho Code, shall not apply to~~:~~:

(a) any isolated transaction,

(b) sales not involving a public offering, whether effected through a broker-dealer or not,

(c) any nonissuer distribution of an outstanding security by a registered broker-dealer if:

(i) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years or during the existence of the issuer and any predecessors, if less than three (3) years, in the payment of principal, interest or dividends on the security,

(d) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may require that the customer acknowledge on a form prescribed by the director that the sale was unsolicited and the director may require that a signed copy of each such form be preserved by the broker-dealer for a specified period,

(e) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters,

(f) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator in the performance of his official duties as such,

(g) any transaction executed by a bona fide pledgee without any

purpose of evading this ~~act~~ chapter,

(h) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity,

(i) any transaction pursuant to an ~~limited~~ offer directed by the offerer to not more than ten (10) persons in this state other than those designated in paragraph (h) of subsection (1) of this section during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if

(i) the seller reasonably believes that all the buyers are purchasing for investment and,

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer,

(j) any offer or sale of a preorganization certificate or subscription, if

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber,

(ii) the number of subscribers does not exceed ten (10), and

(iii) no payment is made by any subscriber,

(k) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than ninety (90) days of their issuance, if

(i) no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state, or

(ii) the issuer files a notice in the form prescribed by the director not less than thirty (30) days before making the offer,

(l) any offer, but not a sale, of a security for which registration statements have been filed under both this ~~act~~ chapter and the Securities Act of 1933 if no stop order or denial order is in effect and no public proceeding or examination looking toward such an order is pending under either act,

(m) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock,

(n) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets, if

(i) no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state, or

(ii) the issuer files a notice in the form specified by the

director not less than thirty (30) days before making the offer,

(o) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(2) The director may by order deny or revoke the exemption specified in paragraph (c), (d), (k) or (n) of subsection (1) of this section with respect to a specific security. Upon the entry of such an order the director shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within twenty (20) days of the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under said subsections may operate retroactively. No person may be considered to have violated this ~~act~~ chapter by reason of any offer or sale effected after the entry of any order under said subsections if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

SECTION 16. That Section 30-1436, Idaho Code, be, and the same is hereby amended to read as follows:

30-1436. CONSENT TO SERVICE OF PROCESS. Unless otherwise provided by the director, e~~E~~very applicant for registration as a broker-dealer or investment adviser, salesman or investment adviser representative under this ~~act~~ chapter and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common-law sense, shall file with the director or an organization which the director designated by rule or otherwise, in such form as the director shall prescribe, an irrevocable consent appointing the director and his successors in office to be the attorney of the applicant to receive service of any lawful process in any civil suit, action or proceeding against the applicant or its or his successor, executor or administrator which arises under this ~~act~~ chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless;

(1) the plaintiff, who may be the director in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the director, and

(2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any,

or within such further time as the court may allow.

SECTION 17. That Section 30-1437, Idaho Code, be, and the same is hereby amended to read as follows:

30-1437. FEES. Fees shall be fixed by the director and shall be paid in advance under the provisions of this ~~act~~ chapter, but shall not exceed the following:

(1) (a) Except as otherwise provided herein, for the initial registration of securities by notification or coordination or qualification or for a notice filing pursuant to section 30-1433A(1), Idaho Code, there shall be paid to the director or to an organization designated by the director, a registration fee of five hundred dollars ($500) notwithstanding the number of shares registered. The ~~initial registration~~ notice filing fee ~~to register~~ for shares of a unit investment trust shall be two hundred dollars ($200) notwithstanding the number of shares ~~registered~~ to be offered or sold.

(b) Each series or portfolio of an investment company offering shall be required to ~~register separately under this section~~ make a separate notice filing under section 30-1433A(1), Idaho Code. Separate ~~registration~~ notice filings for classes of an ~~open-end~~ investment company ~~is~~ are not required so long as classes are used solely as a method of distinguishing payment plans within a series or portfolio.

(c) Unless renewed as provided in subparagraph (d) of this subsection, the ~~registration~~ notice filing of a unit investment trust shall expire one (1) year from the date effective registration is granted to the offering by the securities and exchange commission. The ~~registration~~ notice filing of ~~an open-end investment company~~ all other investment companies shall expire two (2) months after the last day of the issuer's next fiscal year end. The registration of all other offerings shall expire one (1) year from the date registration is granted by the director. If the issuer is an ~~open-end~~ investment company, other than a unit investment trust, with a fiscal year end which falls within thirty (30) days after the ~~date registration is granted~~ effectiveness of a notice filing, such shares ~~shall~~ may be ~~considered~~ lawfully ~~registered~~ offered or sold until two (2) months after the last day of the following fiscal year of the issuer. No registration or notice filing may be renewed at any time after the registration or notice filing has expired.

(d) For the renewal of a registration or notice filing made pursuant to section 30-1433A, Idaho Code, a renewal fee shall be paid to the director in an amount fixed by the director not to exceed the amount specified in subparagraph (a) of this subsection for the securities of the issuer.

(e) When an application for registration of securities is denied or withdrawn the director shall retain all fees paid by the applicant.

(2) For filing an annual statement the fee shall not exceed ten dollars ($10.00).

(3) For registration of a broker-dealer or investment adviser or

for a notice filing made pursuant to section 30-1406(4), Idaho Code, the fee shall not exceed one hundred dollars ($100) for original registration or for an initial notice filing and one hundred dollars ($100) for each annual renewal thereof. When an application is denied or withdrawn the director shall retain the fee.

(4) For registration of a salesman or investment adviser representative the fee shall not exceed twenty dollars ($20.00) for the original registration with each employer and twenty dollars ($20.00) for each annual renewal. When an application is denied or an application or notice filing is withdrawn the director shall retain the fee.

(5) For certified copies of any documents filed with the director the fee shall be the cost to the department as determined by the director.

(6) For each examination, exemption, ~~or~~ opinion letter or notice filing under section 30-1433A(2) and (3), Idaho Code, the fee shall not exceed fifty dollars ($50.00), which fee shall not be refundable.

All fees, fines, examination and miscellaneous charges collected by the director pursuant to the Idaho securities act shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

SECTION 18. That Section 30-1439, Idaho Code, be, and the same is hereby amended to read as follows:

30-1439. CERTAIN REPRESENTATIONS CONCERNING REGISTRATION, NOTICE FILING OR EXEMPTION PROHIBITED. The fact that an application for registration under section 30-1407, Idaho Code, or a notice filing under section 30-1406(4), Idaho Code, or a registration statement under sections 30-1417, 30-1420~~,~~ or 30-1423, Idaho Code, or a notice filing under section 30-1433A, Idaho Code, has been filed or the fact that a person or security is effectively registered does not constitute a finding by the director that any document filed under this ~~act~~ chapter is true, complete and not misleading. Any such fact or the fact that an exemption or exception is available for a security or a transaction does not mean that the director has passed in any way upon the merits or qualifications of or recommended or given approval to, any person, security or transaction. It is unlawful to make or cause to be made any representation to the contrary, to any prospective purchaser, customer or client.

SECTION 19. That Section 30-1442, Idaho Code, be, and the same is hereby amended to read as follows:

30-1442. INJUNCTIONS -- OTHER REMEDIES. ~~(1)~~ Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this ~~act~~ chapter or any rule or order hereunder, except sections 30-1406(4) and 30-1433A, Idaho Code, he may in his discretion:

(1) Order the person to cease and desist from the violation of any provision of this chapter, rule or order hereunder.

(2) Order the person to cease and desist from the violation of any provision of this chapter, rule or order thereunder and, after giving reasonable notice of an opportunity for a hearing, issue the

following:

(a) An order restoring to any person in interest any consideration which may have been acquired or transferred in violation of this chapter;

(b) An order that the person violating this chapter, or any rule or order thereunder pay a civil penalty to the department in an amount not to exceed five thousand dollars ($5,000) for each violation;

(c) An order that the person violating this chapter, or any rule or order thereunder pay cost, which in the discretion of the director may include an amount representing reasonable attorney fees and reimbursements of investigative efforts;

(d) An order that the person violating the provisions of this chapter, or any rule or order thereunder not claim the availability of, use, or offer or sell securities under any exemptions under this chapter without receiving prior written permission or confirmation from the director;

(e) An order granting other appropriate remedies upon a proper showing.

(3) ~~B~~bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this ~~act~~ chapter or any rule or order hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this ~~act~~ chapter or any rule hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director shall not be required to furnish a bond.

~~(2)~~ In addition to the foregoing, the director, in his discretion and upon a showing in any court of competent jurisdiction that a person has violated the provisions of this ~~act~~ chapter or any rule or order thereunder, may be granted the following additional remedies:

(a) An order restoring to any person in interest any consideration which may have been acquired or transferred in violation of this ~~act~~ chapter;~~,~~

(b) An order that the person violating ~~the act~~ this chapter, rules or an order thereunder pay a civil penalty to the department in an amount of not to exceed ten thousand dollars ($10,000) for each violation~~,~~;

(c) An order allowing the director to recover costs, which in the discretion of the court may include an amount representing reasonable attorney fees and reimbursements for investigative efforts~~,~~;

(d) An order that the person violating the provisions of this ~~act~~ chapter, rules or order not claim the availability of, use, or offer or sell securities under any exemptions under the ~~act~~ chapter without receiving prior written permission or confirmation from the director~~,~~;

(e) An order granting other appropriate remedies upon a proper showing.

(~~3~~4) Liability for sanctions, both civil and criminal, and personal jurisdiction shall extend to all persons who engaged in violations or who aided and abetted others in violations of this ~~act~~ chapter and rules and orders thereunder. Officers and directors of corpo-

rations shall not be exempt from actions brought for violations, merely because of their capacity as officers or directors, if they have participated in acts making the violations possible or if they have actual or constructive knowledge of violations by the corporation while acting as an officer or director.

SECTION 20. That Section 30-1443, Idaho Code, be, and the same is hereby amended to read as follows:

30-1443. PENALTY FOR VIOLATIONS -- LIMITATION OF ACTIONS. Any person who wilfully violates any provision of this ~~act~~ chapter, except section 30-1406(4), 30-1433A or 30-1438, Idaho Code, who wilfully violates any rule or order under this ~~act~~ chapter or who wilfully violates said section 30-1438, Idaho Code, knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars ($5,000) or imprisoned not more than three (3) years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than one (1) year shall be mandatory. No indictment or information may be returned under this ~~act~~ chapter more than five (5) years after the alleged violation.

SECTION 21. That Section 30-1446, Idaho Code, be, and the same is hereby amended to read as follows:

30-1446. CIVIL LIABILITIES -- SURVIVAL AND LIMITATION OF ACTIONS -- WAIVER OF ACT VOID. (1) Any person who offers or sells a security in violation of any provisions of sections 30-1416 through 30-1431, Idaho Code, transacts business in violation of the provisions of section 30-1406, Idaho Code, except section 30-1406(4), Idaho Code, or offers to sell or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, the untruth or omission is liable to the person buying the security from him, who shall be entitled to sue either at law or in equity to recover the consideration paid for the security, together with interest at six per cent (6%) per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less~~:~~:

(a) the value of the security when the buyer disposed of it, and

(b) interest at six per cent (6%) per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1) of this section, every partner, officer or director or person occupying a similar status or performing similar functions or employee of such a seller and every broker-dealer or salesman who participates or materially aids in the sale is liable

jointly and severally with and to the same extent as the seller if such person knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section more than three (3) years after the contract of sale. No person may sue under this section~~,~~:

(a) if the buyer has received a bona fide offer in writing at a time when he owned the security, to refund the consideration paid together with interest at six per cent (6%) per annum from the date of payment, less the amount of any income received on the security, and failed to accept such offer within thirty (30) days of its receipt, or

(b) if the buyer has received a bona fide offer in writing at a time when he did not own the security in the amount that would be recoverable under this section upon a tender less;

(i) the value of the security when the buyer disposed of it and,

(ii) interest at six per cent (6%) per annum from the date of disposition, and failed to accept such offer within thirty (30) days of its receipt.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of this ~~act~~ chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on such contract. Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this ~~act~~ chapter or any rule or order hereunder is void as against public policy and in the public interest.

SECTION 22. That Section 30-1448, Idaho Code, be, and the same is hereby amended to read as follows:

30-1448. ADMINISTRATION OF ~~ACT~~ CHAPTER -- RULES, ~~AND~~ FORMS, AND ORDERS. The administration of the provisions of this ~~act~~ chapter shall be under the general supervision and control of the director. The director may from time to time make, amend and rescind such rules, ~~and~~ forms and orders as are necessary to carry out the provisions of this ~~act~~ chapter. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this ~~act~~ chapter. In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the United States securities and exchange commission with a view to effectuating the policy of this ~~act~~ chapter to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable.

SECTION 23. That Section 30-1450A, Idaho Code, be, and the same is hereby amended to read as follows:

30-1450A. DISCLOSURE OF RELATIONSHIPS WITH LICENSED PERSONS OR QUALIFIED ORGANIZATIONS. (a) If the director or any employee of the department of finance, during the term of his employment, is directly or indirectly interested as a director, officer, shareholder, member (other than a member of an organization formed for religious purposes), partner, agent or employee of any person who, during the period of such employment with the department of finance, was licensed or applied for a license as a broker-dealer, agent, investment adviser, investment adviser representative or applied for or secured a registration or an exemption from registration of the sale of securities, he shall disclose not less often than annually the nature of such interest as follows:

(1) If it be the director, to the governor, on a form prescribed by the governor and retained by the governor as a public document; or

(2) If it be an employee of the department of finance, to the director, on a form prescribed by the director and retained by the director as a public document.

(b) Except as provided in section 67-2701, Idaho Code, employees of the department of finance shall be permitted to hold or purchase any security in accordance with such rules as the director may adopt for the purpose of protecting the public interest and avoiding conflicts of interest with respect to such employees.

(c) Except as provided in section 67-2701, Idaho Code, the director shall be permitted to hold any security acquired by him prior to his appointment as director or purchase or sell any security during the term of his employment as director if:

(1) Such security is held, purchased, or sold through a management account or trust administered by a bank or trust company authorized to do business in this state which has sole investment discretion regarding the holding, purchase and sale of securities; and

(2) The director did not, directly or indirectly, advise, counsel, command or suggest the holding, purchase or sale of any such security or furnish any information relating to such security to such bank or trust company.

<u>This section shall not limit the director's participation in any state sponsored supplemental benefit plan such as those offered under sections 401(k) and 457 of the internal revenue code.</u> The director shall furnish to the governor not less often than annually a report from said management account or trust listing all holdings, purchases, and sales of securities, which report shall be retained by the governor as a public document.

SECTION 24. That Section 30-1453, Idaho Code, be, and the same is hereby amended to read as follows:

30-1453. DOCUMENT FILED WHEN RECEIVED -- REGISTER -- INSPECTION. A document is filed when it is received by the director. The director shall keep a register of all applications for registration and regis-

tration statements and all notice filings which are or have ever been effective under this ~~act~~ chapter and all denial, suspension or revocation orders which have ever been entered under this ~~act~~ chapter. Such register shall be open for public inspection. The information contained in or filed with any registration statement, notice filing, application or report may be made available to the public under such rules as the director shall prescribe.

SECTION 25. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after April 9, 1997.

Approved March 24, 1997.

CHAPTER 382
(H.B. No. 347, As Amended)

AN ACT

RELATING TO LOTTERY WINNINGS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 67-7439, IDAHO CODE, TO DELETE THE PROHIBITION AGAINST IMPOSING STATE OR LOCAL TAXES UPON PRIZES AWARDED BY THE STATE LOTTERY, TO PROVIDE WHEN INCOME TAXES WILL BE IMPOSED ON LOTTERY PRIZES, TO PROVIDE THAT LOTTERY PRIZES UNDER SIX HUNDRED DOLLARS SHALL NOT BE SUBJECT TO THE STATE INCOME TAX AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3035A, IDAHO CODE, TO PROVIDE PROCEDURES FOR WITHHOLDING OF INCOME TAX ON LOTTERY PRIZES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. LEGISLATIVE INTENT. It is the purpose of this act to provide a source of funds for county juvenile probation services and for substance abuse programs in the public schools. It is the Legislature's intent that the schools and county juvenile probation services establish substance abuse programs which will be available to youth through the schools or county juvenile probation services. It is not the intent of the Legislature to prohibit county juvenile probation services from utilizing their share of these funds to perform their other responsibilities under the Juvenile Corrections Act of 1995. The youth of Idaho will be best served in their communities through the combined efforts of public school administrators and county juvenile probation officers to provide an integrated system of programs designed to meet the needs of youth with substance abuse problems and those requiring juvenile probationary services. It is the Legislature's intent that the schools and county juvenile probation services act in concert to deliver services to affected youth in the most efficient manner and avoid duplication and competition of programs.

It is the Legislature's further intent that all the funds available for distribution as a result of state income taxes imposed on

lottery prizes be appropriated equally to the public school income fund and county juvenile probation services in accordance with the formula provided in Section 63-3067, Idaho Code, if maximal use is being made of these funds to address the needs of youth in their communities.

SECTION 2. That Section 67-7439, Idaho Code, be, and the same is hereby amended to read as follows:

67-7439. TAXES. ~~No--state--or-local-taxes-of-any-kind-whatsoever shall-be-imposed-upon-the-proceeds-from-a-prize-awarded-by--the--state lottery.~~ Income taxes shall only be imposed on lottery prizes received from lottery tickets purchased after the effective date of this act. Lottery prizes under six hundred dollars ($600) shall not be subject to the state income tax. No taxes of any kind whatsoever shall be imposed upon the sale, purchase, storage, use or other consumption of Idaho lottery tickets or shares, or upon equipment, devices or systems directly used in the production, operation, sales, distribution, tracking, drawing, accounting, communication of or computation of lottery games.

The state lottery shall pay to a city, county, the state or any political subdivision or municipality thereof in which the state lottery occupies a premises owned by the state a grant not to exceed the amount that would be payable as taxes on the property in that year, if the property were not exempt from taxation.

SECTION 3. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3035A, Idaho Code, and 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%) of the prize, proceeds or winnings to be applied to Idaho income taxes due from the recipient.

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

(3) When the total amount withheld (along with other credits due, withholding or payments attributable to the taxpayer) exceeds the taxes due from the recipient, the state tax commission shall, after examining the state income tax return filed by the recipient, refund the amount of the excess withheld in the manner provided for refunds of withholding under section 63-3035, Idaho Code. The state tax commission shall make no credit or refund to a person who fails to file within three (3) years from the due date, without regard to extensions, the return on which the tax withheld could have been credited.

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

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

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

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

SECTION 4. This act shall be in full force and effect on and after January 1, 1998.

Approved March 24, 1997.

CHAPTER 383
(H.B. No. 351)

AN ACT

RELATING TO MOTOR CLUBS; REPEALING CHAPTER 45, TITLE 41, IDAHO CODE.

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

SECTION 1. That Chapter 45, Title 41, Idaho Code, be, and the same is hereby repealed.

Approved March 24, 1997.

CHAPTER 384
(H.B. No. 355)

AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING CHAPTER 14, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-1420A, IDAHO CODE, TO AUTHORIZE A SPECIAL ELECTION TO INCREASE THE BUDGET BASE AMOUNT UNDER CONDITIONS SPECIFIED; AND PROVIDING A SUNSET DATE.

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

SECTION 1. That Chapter 14, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-1420A, Idaho Code, and to read as follows:

31-1420A. SPECIAL LEVY CONDITIONS -- AUTHORIZATION. A fire protection district is qualified for the special levy authorized by this section if it has: (a) increased in valuation by more than fifty percent (50%) within the immediate past five (5) years through growth, consolidation or annexation; and (b) a levy rate of sixty percent (60%) or less of the statutorily authorized levy rate; and (c) by action of the board of county commissioners, exempted from the fire protection district levy the unimproved real property within the district as provided in section 31-1422, Idaho Code.

A fire protection district authorized to seek levy authority pursuant to this section may submit to the electors in the same manner as an election for creation of a fire protection district, the question whether the budget may be increased beyond the amount authorized in section 63-802, Idaho Code, but not beyond the levy authorized in section 31-1420, Idaho Code. If approved by sixty percent (60%) of the electors voting on the question, the new budget amount shall be the base budget for purposes of section 63-802, Idaho Code.

SECTION 2. The provisions of this act shall be null, void and of no force and effect on and after July 1, 1999.

Approved March 24, 1997.

CHAPTER 385
(H.B. No. 367)

AN ACT

RELATING TO PUBLIC RIGHTS-OF-WAY; AMENDING CHAPTER 7, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-701A, IDAHO CODE, TO DEFINE PUBLIC RIGHTS-OF-WAY AND TO PROVIDE AUTHORITY TO REGULATE PUBLIC RIGHTS-OF-WAY TO CERTAIN GOVERNMENTAL ENTITIES REGARDING THE INSTALLATION OF TELECOMMUNICATIONS FACILITIES.

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

SECTION 1. That Chapter 7, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-701A, Idaho Code, and to read as follows:

62-701A. AUTHORITY PRESERVED. (1) As used in this section, "public rights-of-way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, leasehold interest, or similar property which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a telecommunications system.

(2) With respect to the installation of its facilities within public rights-of-way, the telecommunications provider shall at all times be subject to the authority of a city, county or highway dis-

trict. No grant of authority pursuant to this section shall be deemed to waive other rights or requirements of the codes, ordinances or resolutions of a city, county or highway district regarding permits, reasonable fees to be paid, manner of construction, or the like, nor to grant any property interest in the public rights-of-way.

Approved March 24, 1997.

CHAPTER 386
(H.B. No. 378)

AN ACT

RELATING TO FEDERAL MIGRATORY BIRD RESERVATIONS; AMENDING SECTION 36-1806, IDAHO CODE, TO PROVIDE THAT ONLY THE LEGISLATURE BY ADOPTION OF A CONCURRENT RESOLUTION MAY GRANT THE CONSENT OF THE STATE TO THE ACQUISITION BY THE UNITED STATES OF LANDS FOR ESTABLISHMENT OF MIGRATORY BIRD RESERVATIONS AND TO PROVIDE THAT THE STATE OF IDAHO RESERVES FULL AND COMPLETE JURISDICTION AND AUTHORITY OVER ALL SUCH AREAS FOR WHICH CONSENT IS GRANTED.

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

SECTION 1. That Section 36-1806, Idaho Code, be, and the same is hereby amended to read as follows:

36-1806. FEDERAL MIGRATORY BIRD RESERVATIONS -- ACQUISITION CONSENTED TO. Only the legislature by adoption of a concurrent resolution may grant the c~~C~~onsent of the state of Idaho ~~is given~~ to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the state of Idaho, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of congress approved February 18, 1929, entitled "An Act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and water to furnish in perpetuity reservations for the adequate protection of such birds and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes~~,~~." ~~reserving, however, to t~~The state of Idaho reserves full and complete jurisdiction and authority over all such areas for which consent is granted not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

Approved March 24, 1997.

CHAPTER 387
(H.B. No. 379)

AN ACT
RELATING TO TRUST DEEDS; AMENDING SECTION 45-1502, IDAHO CODE, TO FURTHER DEFINE THE TERM "REAL PROPERTY" FOR PURPOSES OF TRUST DEEDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 45-1502, Idaho Code, be, and the same is hereby amended to read as follows:

45-1502. DEFINITIONS -- TRUSTEE'S CHARGE. As used in this act:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) "Trust deed" means a deed executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest.

(5) "Real property" means any right, title, interest and claim in and to real property owned by the grantor at the date of execution of the deed of trust or acquired thereafter by said grantor or his successors in interest. Provided, nevertheless, real property as so defined which may be transferred in trust under this act shall be limited to either (a) any real property located within an incorporated city or village at the time of the transfer, or (b) any real property not exceeding ~~twenty--(20)~~ forty (40) acres, regardless of its location, and in either event where the trust deed states that the real property involved is within either of the above provisions, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make such transfer and trust and power of sale conferred in this act.

(6) The trustee shall be entitled to a reasonable charge for duties or services performed pursuant to the trust deed and this chapter, including compensation for reconveyance services notwithstanding any provision of a deed of trust prohibiting payment of a reconveyance fee by the grantor or beneficiary, or any provision of a deed of trust which limits or otherwise restricts the amount of a reconveyance fee to be charged and collected by the trustee. A trustee shall be entitled to refuse to reconvey a deed of trust until the trustee's reconveyance fees and recording costs for recording the reconveyance instruments are paid in full. The trustee shall not be entitled to a foreclosure fee in the event of judicial foreclosure or work done prior to the recording of a notice of default. If the default is cured prior to the time of the last newspaper publication of the notice of sale, the trustee shall be paid a reasonable fee.

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 24, 1997.

CHAPTER 388
(H.B. No. 400)

AN ACT

APPROPRIATING MONEYS TO THE SECRETARY OF STATE FOR FISCAL YEAR 1998; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Secretary of State, the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	$ 373,100	$106,600			$ 479,700
B. COMMERCIAL AFFAIRS:					
FROM:					
Commercial Affairs Fund	$ 933,600	$356,000	$124,300		$1,413,900
C. COMMISSION ON UNIFORM LAWS:					
FROM:					
General Fund		$ 16,700			$ 16,700
D. IDAHO COMMISSION ON THE ARTS:					
FROM:					
General Fund	$ 255,700	$210,300	$ 17,000	$351,300	$ 834,300
Federal Grant Fund	186,500	113,700		171,200	471,400
Miscellaneous Revenue Fund		106,300		15,800	122,100
TOTAL	$ 442,200	$430,300	$ 17,000	$538,300	$1,427,800
GRAND TOTAL	$1,748,900	$909,600	$141,300	$538,300	$3,338,100

SECTION 2. It is legislative intent that an amount not to exceed $1,000 of the amounts appropriated in Section 1, may be used at the discretion of the Secretary of State to assist in defraying expenses relating to or resulting from the discharge of the Secretary of State's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section

67-3516, Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Office of the Secretary of State is authorized no more than forty-two (42) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, 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 24, 1997.

CHAPTER 389
(H.B. No. 401)

AN ACT

APPROPRIATING MONEYS FROM THE PERMANENT BUILDING FUND TO THE DIVISION OF PUBLIC WORKS FOR THE PURPOSES SPECIFIED; APPROPRIATING MONEYS FROM THE PUBLIC BUILDING FUND TO THE DIVISION OF PUBLIC WORKS FOR THE PROJECTS SPECIFIED; 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; AUTHORIZING THE USE OF TAX ANTICIPATION NOTES; AND DECLARING AN EMERGENCY.

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 Account 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:	$15,304,000
(1) Alterations and Repairs	
(2) Asbestos Abatement	
(3) Underground Storage Tank Program	
(4) Statewide ADA Compliance	
(5) Capitol Mall Maintenance	
B. DEPARTMENT OF CORRECTION:	
(1) Boise Community Work Center	$ 1,400,000
(2) ISCI Maintenance Building	207,000
TOTAL	$ 1,607,000
C. DEPARTMENT OF JUVENILE CORRECTIONS:	
(1) Owyhee Multipurpose Complex	$ 150,000

D. STATE BOARD OF EDUCATION:	
(1) University of Idaho - Agricultural Biotechnology Facilities Project	$ 3,300,000
(2) Idaho State University - Physical Science Laboratory and Classroom	500,000
(3) Lewis-Clark State College - Physical Education Building Planning	230,000
TOTAL	$ 4,030,000
E. DEPARTMENT OF ADMINISTRATION:	
State Communications Center	$ 105,000
GRAND TOTAL	$21,196,000

SECTION 2. There is hereby appropriated to the Division of Public Works the following amounts for the designated projects from the listed fund:

FOR:	
A. Legislative Library Remodel	$10,000
B. JFAC Room Acoustics Projects	20,000
TOTAL	$30,000
FROM:	
Public Building Fund	$30,000

SECTION 3. It is the express intention 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 Building Fund Advisory Council is granted to make application for such moneys in each instance. It is further the intention of the Legislature that this authority be effective from the effective date of this act.

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 63-3205, 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.

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 24, 1997.

CHAPTER 390
(H.B. No. 402)

AN ACT
APPROPRIATING MONEYS TO THE REGULATORY BOARDS FOR FISCAL YEAR 1998; 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 regulatory boards in the Department of Self-Governing Agencies the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. STATE ATHLETIC COMMISSION:					
FROM:					
State Regulatory Fund	$ 2,800	$ 15,000			$ 17,800
B. BOARD OF PHARMACY:					
FROM:					
State Regulatory Fund	$ 355,900	$ 198,400	$ 300		$ 554,600
C. BOARD OF ACCOUNTANCY:					
FROM:					
State Regulatory Fund	$ 193,300	$ 199,000	$ 500		$ 392,800
D. BOARD OF DENTISTRY:					
FROM:					
State Regulatory Fund	$ 109,700	$ 73,200	$ 2,500		$ 185,400
E. BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS:					
FROM:					
State Regulatory Fund	$ 154,800	$ 164,700	$ 5,000		$ 324,500
F. BOARD OF MEDICINE:					
FROM:					
State Regulatory Fund	$ 358,300	$ 335,400	$ 3,300		$ 697,000
G. BOARD OF NURSING:					
FROM:					
State Regulatory Fund	$ 290,500	$ 196,000	$24,900		$ 511,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
H. BUREAU OF OCCUPATIONAL LICENSES:					
FROM:					
State Regulatory Fund	$ 505,500	$ 429,500		$ 50,000	$ 985,000
I. PUBLIC WORKS CONTRACTORS STATE LICENSING BOARD:					
FROM:					
State Regulatory Fund	$ 197,700	$ 94,800	$ 3,000		$ 295,500
J. IDAHO REAL ESTATE COMMISSION:					
FROM:					
State Regulatory Fund	$ 622,400	$ 281,800	$18,000		$ 922,200
K. PROFESSIONAL GEOLOGISTS BOARD:					
FROM:					
State Regulatory Fund	$ 23,700	$ 16,000			$ 39,700
L. BOARD OF OPTOMETRY:					
FROM:					
State Regulatory Fund	$ 2,500	$ 43,400			$ 45,900
M. IDAHO CERTIFIED SHORTHAND REPORTERS BOARD:					
FROM:					
State Regulatory Fund	$ 9,600	$ 10,400			$ 20,000
N. OUTFITTERS AND GUIDES BOARD:					
FROM:					
State Regulatory Fund	$ 192,100	$ 175,400	$ 2,100		$ 369,600
O. BOARD OF VETERINARY MEDICINE:					
FROM:					
State Regulatory Fund	$ 68,400	$ 88,200	$ 3,400		$ 160,000
P. COMMISSION ON HISPANIC AFFAIRS:					
FROM:					
General Fund	$ 72,900	$ 27,300	$ 6,700		$ 106,900
Federal Grant Fund	51,100	47,500		$15,000	113,600
Miscellaneous Revenue Fund	75,000	81,000			156,000
TOTAL	$ 199,000	$ 155,800	$ 6,700	$15,000	$ 376,500
GRAND TOTAL	$3,286,200	$2,477,000	$69,700	$65,000	$5,897,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, each regulatory board in the Department of Self-Governing Agencies is authorized no more than the number of full-time equivalent positions

listed below at any point during the period July 1, 1997, through June 30, 1998, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

State Athletic Commission ..... Zero (0)
Board of Pharmacy ..... Eight and seventy-five hundredths (8.75)
Board of Accountancy ..... Six (6)
Board of Dentistry ..... Two (2)
Board of Professional Engineers and Land Surveyors ..... Three (3)
Board of Medicine ..... Nine (9)
Board of Nursing ..... Seven (7)
Bureau of Occupational Licenses ..... Fourteen (14)
Public Works Contractors State Licensing Board ..... Five (5)
Idaho Real Estate Commission ..... Sixteen (16)
Professional Geologists Board ..... Sixty-two hundredths (.62)
Board of Optometry ..... Zero (0)
Idaho Certified Shorthand Reporters
Board ..... Twenty-five hundredths (.25)
Outfitters and Guides Board ..... Four (4)
Board of Veterinary Medicine ..... One (1)
Commission on Hispanic Affairs ..... Four (4)

Approved March 24, 1997.

CHAPTER 391
(H.B. No. 403)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT FOR FISCAL YEAR 1998; AND AUTHORIZING AN INCREASE IN 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 Law Enforcement the following amounts, to be expended for the Police Services Program according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
General Fund	$52,600	$ 22,300		$ 74,900
Federal Grant Fund		156,300	$68,700	225,000
TOTAL	$52,600	$178,600	$68,700	$299,900

SECTION 2. In addition to the full-time equivalent positions authorized in Section 2, House Bill No. 392, as enacted by the First

Regular Session of the Fifty-fourth Idaho Legislature, the Department of Law Enforcement is authorized two (2) additional full-time equivalent positions and no more than four hundred ninety-three and eight-tenths (493.8) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 24, 1997.

CHAPTER 392
(H.B. No. 231, As Amended)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-959, IDAHO CODE, TO PROHIBIT ANY REFRIGERANT IN MOTOR VEHICLE AIR-CONDITIONING EQUIPMENT WHICH IS FLAMMABLE AT OR BELOW ONE THOUSAND DEGREES FAHRENHEIT.

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

SECTION 1. That Section 49-959, Idaho Code, be, and the same is hereby amended to read as follows:

49-959. AIR-CONDITIONING EQUIPMENT. (1) Air-conditioning equipment shall be manufactured, installed and maintained with due regard for the safety of the occupants of the vehicle and the public and shall not contain any refrigerant which is toxic to persons or which is flammable <u>at or below one thousand degrees (1000°) Fahrenheit.</u>

(2) No person shall have for sale, offer for sale, sell or equip any motor vehicle with any air-conditioning equipment unless it complies with the requirements of this section.

(3) No person shall operate on any highway any motor vehicle equipped with any air-conditioning equipment unless the equipment complies with the requirements of this section.

Law Without Signature.

CHAPTER 393
(S.B. No. 1228)

AN ACT

RELATING TO CAMPAIGNS AND CAMPAIGN FINANCE; AMENDING SECTION 67-6602, IDAHO CODE, TO PROVIDE A DEFINITION OF "INDEPENDENT EXPENDITURE" AND "EXPRESSLY ADVOCATING" AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6605, IDAHO CODE, TO PROVIDE LAWFUL MEANS THAT A POLITICAL COMMITTEE MAY OBTAIN CONTRIBUTIONS AND TO PROVIDE PENALTIES FOR VIOLATION; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY

THE ADDITION OF A NEW SECTION 67-6610A, IDAHO CODE, TO PROVIDE FOR LIMITATIONS ON CAMPAIGN CONTRIBUTIONS FOR PRIMARY ELECTIONS AND FOR GENERAL ELECTIONS FOR VARIOUS OFFICES, TO DEFINE TERMS, TO PROVIDE FOR CONTRIBUTIONS OTHER THAN MONEY AND TO PROVIDE APPLICATION TO CITY, COUNTY AND JUDICIAL DISTRICT OFFICES; REPEALING SECTION 67-6611, IDAHO CODE; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6611, IDAHO CODE, TO PROVIDE PROCEDURES FOR REPORTING INDEPENDENT EXPENDITURES; AMENDING SECTION 67-6625, IDAHO CODE, TO PROVIDE PENALTIES FOR VIOLATION OF AN ADDED CODE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6610C, IDAHO CODE, TO PROVIDE FOR THE USE OF CONTRIBUTIONS RECEIVED BY A CANDIDATE FOR OR HOLDER OF PUBLIC OFFICE IN THIS STATE, OTHER THAN A FEDERAL OFFICE AND TO PROHIBIT CONVERSION OF SUCH FUNDS TO ANY PERSONAL USE; AND PROVIDING AN EFFECTIVE DATE, PROVIDING APPLICATION TO CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE AND TO PROVIDE THAT A CANDIDATE'S FUND BALANCE CARRIED OVER TO ANOTHER ELECTION SHALL NOT COUNT AS A CONTRIBUTION.

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

SECTION 1. That Section 67-6602, Idaho Code, be, and the same is hereby amended to read as follows:

67-6602. DEFINITIONS. As used in this act, the following terms have the following meanings:

(a) "Candidate" means an individual who has taken affirmative action to seek nomination or election to public office. An individual shall be deemed to have taken affirmative action to seek such nomination or election to public office when he first:

(1) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his candidacy for office; or

(2) Announces publicly or files for office.

(b) "Compensation" includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to do any of the foregoing, for services rendered or to be rendered, but does not include reimbursement of expenses if such reimbursement does not exceed the amount actually expended for such expenses and is substantiated by an itemization of such expenses.

(c) "Contribution" includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, subscription or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee or measure. Such term also includes personal funds or other property of a candidate or members of his household expended or transferred to cover expenditures incurred in support of such candidate but does not include personal funds used to pay the candidate filing fee. Such term also includes the rendering of personal and professional services for less than full consideration,

but does not include ordinary home hospitality or the rendering of "part-time" personal services of the sort commonly performed by volunteer campaign workers or advisors or incidental expenses not in excess of twenty-five dollars ($25.00) personally paid for by any volunteer campaign worker. "Part-time" services for the purposes of this definition, means services in addition to regular full-time employment, or, in the case of an unemployed person or persons engaged in part-time employment, services rendered without compensation or reimbursement of expenses from any source other than the candidate or political committee for whom such services are rendered. For the purposes of this act, contributions, other than money or its equivalents shall be deemed to have a money value equivalent to the fair market value of the contribution.

(d) "Election" means any general, special or primary election.

(e) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a measure.

(f) "Expenditure" includes any payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

(g) "Independent expenditure" means any expenditure by a person for a communication expressly advocating the election, passage or defeat of a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the consent of, or in consultation with, or at the request of a suggestion of, a candidate or any agent or authorized committee of the candidate or political committee supporting or opposing a measure. As used in this subsection, "expressly advocating" means any communication containing a message advocating election, passage or defeat including, but not limited to, the name of the candidate or measure, or expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat" or "reject."

(h) "Lobby" and "lobbying" each means attempting through contacts with, or causing others to make contact with, members of the legislature or legislative committees, to influence the approval, modification or rejection of any legislation by the legislature of the state of Idaho or any committee thereof.

(~~h~~i) "Lobbyist" includes any person who lobbies.

(~~i~~j) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed, directly or indirectly, and all persons by whom he is compensated for acting as a lobbyist.

(~~j~~k) "Measure" means any proposal, to be voted statewide, submitted to the people for their approval or rejection at an election, including any initiative, referendum or revision of or amendment to the state constitution. An initiative or referendum proposal shall be deemed a measure when the attorney general reviews it and gives it a ballot title.

(~~k~~l) "Nonbusiness entity" means any group (of two (2) or more individuals), corporation, association, firm, partnership, committee, club or other organization which:

(1) Does not have as its principal purpose the conduct of business activities for profit; and

(2) Received during the preceding calendar year contributions, gifts or membership fees, which in the aggregate exceeded ten per cent (10%) of its total receipts for such year.

(~~l~~m) "Person" means an individual, corporation, association, firm, partnership, committee, political party, club or other organization or group of persons.

(~~m~~n) "Political committee" means:

(1) Any person specifically designated to support or oppose any candidate or measure; or

(2) Any person who receives contributions and makes expenditures in an amount exceeding five hundred dollars ($500) in any calendar year for the purpose of supporting or opposing one (1) or more candidates or measures. Any entity registered with the federal election commission shall not be considered a political committee for purposes of this chapter.

(~~n~~o) "Political treasurer" means an individual appointed by a candidate or political committee as provided in section 67-6603, Idaho Code.

(~~o~~p) "Public office" means any state office or position, including state senator, state representative, and judge of the district court that is filled by election.

SECTION 2. That Chapter 66, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6605, Idaho Code, and to read as follows:

67-6605. CONTRIBUTIONS OBTAINED BY A POLITICAL COMMITTEE. Contributions shall not be obtained for a political committee by use of coercion or physical force, by making a contribution a condition of employment or membership, or by using or threatening to use job discrimination or financial reprisals. A political committee may solicit or obtain contributions on an automatic basis including, but not limited to, a payroll deduction plan only if the person who is contributing to the political committee affirmatively consents in writing to the contribution at least once every calendar year. A violation of the provisions of this section shall be punished as provided in subsection (b) of section 67-6625, Idaho Code.

SECTION 3. That Chapter 66, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6610A, Idaho Code, and 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 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.

SECTION 4. That Section 67-6611, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Chapter 66, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6611, Idaho Code, and 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 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.

SECTION 6. That Section 67-6625, Idaho Code, be, and the same is hereby amended to read as follows:

67-6625. VIOLATIONS -- CIVIL FINE -- MISDEMEANOR PENALTY -- PROSECUTION -- LIMITATION -- VENUE (a) Any person who violates the provisions of section 67-6603 -- through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a) or 67-6624, Idaho Code, shall be liable for a civil fine not to exceed two hundred fifty dollars ($250) if an individual, and not more than two thousand five hundred dollars ($2,500) if a person other than an individual. The burden of proof for such civil liability shall be met by showing a preponderance of the evidence.

(b) Any person who violates section 67-6605 or 67-6621(b), Idaho Code, and any person who knowingly and willfully violates sections 67-6603 -- through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a) or 67-6624, Idaho Code, is guilty of a misdemeanor and, upon conviction, in addition to the fines set forth in subsection (a) of this section, may be imprisoned for not more than six (6) months or be both fined and imprisoned.

(c) The attorney general or the appropriate prosecuting attorney may prosecute any violations of this act.

(d) Prosecution for violation of this act must be commenced within two (2) years after the date on which the violation occurred.

(e) Venue for prosecution under the provisions of this chapter shall be in the county of residence of the defendant.

SECTION 7. That Chapter 66, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6610C, Idaho Code, and to read as follows:

67-6610C. USE OF CONTRIBUTIONS FOR CERTAIN PURPOSES BY CANDIDATE OR OFFICEHOLDER. Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of sup-

porting his activities as a holder of any state, county, city, school district or other public office in this state other than a federal office, may be used by the candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his duties as such officeholder, or may be used for any other lawful purpose, including transfers without limitation to any national, state or local committee of any political party or to an organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the internal revenue code and is exempt from income taxation under title 63, Idaho Code, as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad, or as a nonprofit volunteer educational booster group, parent-teacher organization or association; except that no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his duties as such officeholder.

SECTION 8. This act shall be in full force and effect on and after July 1, 1997. If an individual or other recognized legal entity has exceeded the legal contribution limits prescribed in Section 3 of this act prior to the effective date of this act, no penalty shall apply as long as the individual or other recognized legal entity makes no further contributions to the candidate or political committee for the primary election or for the general election. Candidates shall be allowed to carry fund balances from one election to another and not have them count as a contribution as provided in Section 3 of this act.

Approved March 24, 1997.

CHAPTER 394
(S.B. No. 1286)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR THE MANAGEMENT OF RECREATIONAL FACILITIES AT CASCADE RESERVOIR FOR FISCAL YEAR 1997; AUTHORIZING ADDITIONAL FULL-TIME EQUIVALENT POSITIONS FOR FISCAL YEAR 1997; EXPRESSING LEGISLATIVE INTENT; 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 280, Laws of 1996, there is hereby appropriated to the Department of Parks and Recreation the following amounts to be expended for the designated program according to the designated standard classifications from the listed funds for the period July 1, 1996, through June 30, 1997:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
PARK OPERATIONS:			
FROM:			
Parks and Recreation Fund	$ 37,000	$33,000	$ 70,000
Miscellaneous Revenue Fund	181,800	47,000	228,800
TOTAL	$218,800	$80,000	$298,800

SECTION 2. In addition to the full-time equivalent positions authorized in Section 2, Chapter 280, Laws of 1996, there is hereby authorized four and seventy-five hundredths (4.75) additional full-time equivalent positions for the purposes of Section 1 of this act.

SECTION 3. Whereas the Idaho Legislature recognizes the importance of maintaining public access to the recreational facilities surrounding Cascade Reservoir in Valley County, it is legislative intent that the Idaho Parks and Recreation Board negotiate a two-year agreement with the Bureau of Reclamation whereby the state of Idaho will manage and maintain those facilities on a two-year trial basis before entering into any long-term agreement. Further, it is legislative intent that the Idaho Parks and Recreation Board report back to the Idaho Legislature upon completion of the two-year trial management phase, and provide the board's recommendation on the feasibility, conditions and costs of continuing state management of the facilities on a long-term basis.

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 24, 1997.

CHAPTER 395
(S.B. No. 1242)

AN ACT

RELATING TO THE IDAHO HALL OF FAME ADVISORY BOARD; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 85, TITLE 67, IDAHO CODE, TO PROVIDE LEGISLATIVE PURPOSE, TO PROVIDE FOR THE CREATION AND COMPOSITION OF THE IDAHO HALL OF FAME ADVISORY BOARD, TO PROVIDE DUTIES AND RESPONSIBILITIES OF THE HALL OF FAME ADVISORY BOARD AND TO CREATE THE IDAHO HALL OF FAME ADVISORY BOARD FUND.

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

SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 85, Title 67, Idaho Code, and to read as follows:

CHAPTER 85
IDAHO HALL OF FAME ADVISORY BOARD

67-8501. PURPOSE. The purpose of this act is to provide initial funding for and create an Idaho hall of fame building advisory board to oversee the development of a permanent facility in which to locate the Idaho hall of fame.

67-8502. CREATION -- COMPOSITION. There is hereby created the Idaho hall of fame building advisory board to oversee the development of a permanent facility in which to locate the Idaho hall of fame. The advisory board shall consist of:

Three (3) individuals appointed by the board of trustees of the Idaho state historical society;

Three (3) members of the legislature to be appointed by the president pro tempore of the senate and the speaker of the house of representatives with one (1) member to be from legislative districts 1 through 9, with one (1) member to be from legislative districts 10 through 24 and with one (1) member to be from legislative districts 25 through 35;

Three (3) individuals appointed by the board of directors of the Idaho hall of fame; and

Three (3) individuals to be appointed by the above nine (9) members of the advisory board and to represent citizens at large who bring additional and appropriate professional expertise to the board. Members shall be compensated as provided by section 59-509(b), Idaho Code, from funds available.

67-8503. DUTIES AND RESPONSIBILITIES. The board of advisors shall have the following powers and duties:

(1) Formalizing an agreement on a permanent site for location of a facility to house the Idaho hall of fame;

(2) Coordinating work necessary to design a permanent facility that would include a replica of the original Idaho exhibit building constructed at Chicago, Illinois at the Columbian Exposition of 1893;

(3) Soliciting donations and contributions adequate to construct the Idaho hall of fame building;

(4) Conducting studies necessary and appropriate to assure adequate use of the building as home to the Idaho hall of fame and for other uses deemed to be compatible with its use in the public interest and for the preservation of the heritage of Idaho;

(5) Collecting historical material and information to be used for creation of appropriate exhibits in the Idaho hall of fame building;

(6) Finalizing necessary arrangements of a legal, administrative and funding nature as it relates to construction and permanent operation of the Idaho hall of fame building;

(7) Make reports annually, to the governor, the state historical society and both houses of the legislature regarding the advisory board's progress and accomplishments during that year.

67-8504. IDAHO HALL OF FAME BUILDING ADVISORY BOARD FUND. There is hereby created the Idaho hall of fame building advisory board fund in the state treasury. Moneys in the fund may consist of donations,

ticket sales, contributions, appropriations, grants, gifts, bequests or other sources and shall be utilized in support of the advisory board which include, but are not limited to, correspondence, telephone conference calls, mailings, production of minutes, production of publications and brochures, fiscal recordkeeping and other needs related directly to creation and construction of the Idaho hall of fame building and its contents.

Law Without Signature.

CHAPTER 396
(H.B. No. 349)

AN ACT

RELATING TO EXEMPTIONS TO THE SALES AND USE TAX; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3622LL, IDAHO CODE, TO PROVIDE THAT THE SALE OR PURCHASE OF ANY TELEVISION MEASUREMENT SERVICE, RADIO MEASUREMENT SERVICE, NEWSPAPER MEASUREMENT SERVICE OR OTHER MEDIA MEASUREMENT SERVICE SHALL BE EXEMPT FROM THE SALES AND USE TAX.

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

SECTION 1. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3622LL, Idaho Code, and to read as follows:

63-3622LL. MEDIA MEASUREMENT SERVICES EXEMPTION. There is hereby exempted from the taxes imposed by this chapter the sale or purchase of any television measurement service, radio measurement service, newspaper measurement service or other media measurement service.

Law Without Signature.

CHAPTER 397
(H.B. No. 85, As Amended in the Senate)

AN ACT

RELATING TO LICENSURE OF ELECTRICAL CONTRACTORS AND JOURNEYMAN; AMENDING SECTION 54-1002, IDAHO CODE, TO CLARIFY THE AUTHORITY TO ISSUE LICENSES FOR ELECTRICAL CONTRACTORS AND JOURNEYMAN ELECTRICIANS BY THE STATE OF IDAHO, TO PROVIDE FOR ENFORCEMENT, TO AUTHORIZE STRICTER RULES BY A CITY OR COUNTY AND TO PROVIDE CORRECT NOMENCLATURE; AND AMENDING SECTION 54-1003, IDAHO CODE, TO PROVIDE EXCLUSIVE AUTHORITY IN THE ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY FOR THE STATE OF IDAHO TO ISSUE LICENSES AND TO PROVIDE CORRECT NOMENCLATURE.

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

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

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

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

(3) Licensure of electrical contractors and journeyman electricians shall be within the exclusive jurisdiction of the state pursuant to this chapter and no local jurisdiction shall have the authority to require additional licensure or to issue licenses to persons licensed under this chapter which are inconsistent with the provisions of this chapter or rules promulgated by the division of building safety. The state shall investigate all local infractions and state violations of this chapter and prosecute the same. The local jurisdictions will assist the state by requesting investigations within their jurisdictions. Nothing in this chapter shall restrict a city or county from imposing stricter public safety rules, notwithstanding any provision of Idaho Code.

SECTION 2. That Section 54-1003, Idaho Code, be, and the same is hereby amended to read as follows:

54-1003. ADMINISTRATOR AUTHORIZED TO ISSUE LICENSE. Only t~~T~~he administrator of the division of building safety of the state of Idaho is ~~hereby~~ authorized and empowered to conduct examinations and to pass upon the qualifications of applicants, and to grant and issue licenses to such applicants as are found to be qualified to engage in the trade, business or calling of a journeyman electrician or electrical contractor or master journeyman electrician in the manner and upon the terms and conditions hereinafter provided. ~~All~~ No licenses granted hereunder shall ~~not~~ be transferable. Licenses shall be issued upon the condition that the holder thereof shall comply with all provisions of this ~~act~~ chapter.

Approved March 24, 1997.

CHAPTER 398
(H.B. No. 289, As Amended in the Senate)

AN ACT

RELATING TO REVENUES ACCRUING TO THE IDAHO PETROLEUM CLEAN WATER TRUST FUND; AMENDING SECTION 41-4909, IDAHO CODE, TO PROVIDE FOR DISTRIBUTION OF TRANSFER FEES ACCRUING TO THE IDAHO PETROLEUM CLEAN WATER TRUST FUND BEFORE AND AFTER AUGUST 3, 1995; AMENDING CHAPTER 49, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-4909A, IDAHO CODE, TO PROVIDE FOR APPORTIONMENT OF MONEYS TRANSFERRED TO THE STATE HIGHWAY ACCOUNT FROM THE IDAHO PETROLEUM CLEAN WATER TRUST FUND SUSPENSE ACCOUNT ON APRIL 1, 1997 FOR USE AS THE STATE AND LOCAL MATCH FOR FEDERAL MONEYS TO HELP REBUILD ROADS AND BRIDGES DAMAGED BY THE FLOODING IN 1996 AND 1997; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 41-4909, Idaho Code, be, and the same is hereby amended to read as follows:

41-4909. DISTRIBUTION OF APPLICATION FEES AND TRANSFER FEES. (1) The application fees and the transfer fees collected as provided in this chapter shall be promptly remitted to the state treasurer for deposit in the Idaho petroleum clean water trust fund. The transfer fees and accumulated interest which accrued to the fund prior to August 3, 1995, shall remain in the fund. The transfer fees and accumulated interest, which have been held in a separate suspense account since August 3, 1995, shall be distributed as provided in subsection (4) of this section. The transfer fees and accumulated interest which accrue to the Idaho petroleum clean water trust fund subsequent to April 1, 1997 shall be distributed monthly thereafter as provided in subsection (5) of this section.

(2) An amount of money equal to the actual cost of collecting, administering and enforcing the transfer fee by the commission, as determined by it, shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collection, administering and enforcing the transfer fee requirements by the commission at the end of each fiscal year shall be remitted to the state treasurer for deposit into the Idaho petroleum clean water trust fund.

(3) From the receipts of the transfer fee, an amount of money shall be distributed to the state refund account established under section 63-3067, Idaho Code, sufficient to reimburse that account for all current refund claims under this chapter paid from that account. Any refunds due and owing from the commission under this chapter shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(4) For the distribution on April 1, 1997, the balance of the transfer fees and accumulated interest accruing to the separate suspense account established for such fees on August 3, 1995, which

remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

(a) Twenty percent (20%) to the Idaho petroleum clean water trust fund established in section 41-4904, Idaho Code;

(b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (e), subsection (1) of section 63-2412, Idaho Code; and

(c) The remainder shall be distributed:

(i) Six million dollars ($6,000,000) to the state highway account for administration by the Idaho transportation department as provided in section 41-4909A, Idaho Code; and

(ii) The balance remaining to the restricted highway fund established in section 40-701A, Idaho Code.

(5) For the distribution at the end of fiscal year 1997 and monthly thereafter, the balance of the transfer fees and accumulated interest accruing to the Idaho petroleum clean water trust fund which remain after distributing the amounts specified in subsections (2) and (3) of this section, shall be distributed as follows:

(a) Seventy-seven percent (77%) to the restricted highway fund established in section 40-701A, Idaho Code; and

(b) Three percent (3%) to the Idaho department of parks and recreation in accordance with subparagraphs 1., 2., and 3. of paragraph (e), subsection (1) of section 63-2412, Idaho Code.

SECTION 2. That Chapter 49, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-4909A, Idaho Code, and to read as follows:

41-4909A. APPORTIONMENT OF MONEYS TRANSFERRED TO THE STATE HIGHWAY ACCOUNT FROM THE IDAHO PETROLEUM CLEAN WATER TRUST FUND SUSPENSE ACCOUNT ON APRIL 1, 1997. (1) Of the moneys transferred to the state highway account pursuant to the distribution in section 41-4909(4)(c)(i), Idaho Code, an amount not to exceed three million dollars ($3,000,000) shall be administered by the Idaho transportation department for use as the state and local match for federal highway administration (FHWA) and federal emergency management agency (FEMA) road and bridge projects. Such moneys shall be used exclusively for repair and restoration of local and state roads and bridges damaged by the 1997 flooding in the counties of Adams, Benewah, Boise, Bonner, Boundary, Clearwater, Elmore, Gem, Idaho, Kootenai, Latah, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington. When apportionment of moneys under this subsection is sufficient to meet the purposes for which the moneys are designated, but not to exceed three million dollars ($3,000,000), any remaining amounts shall be returned to the restricted highway fund established in section 40-701A, Idaho Code.

(2) As extensive and severe flooding has occurred in the state in both fiscal years 1996 and 1997 and a high potential exists for additional flooding to occur due to the heavy snow pack levels accumulated in 1997, an amount not to exceed three million dollars ($3,000,000) shall be administered by the Idaho transportation department for use as the state and local match for federal highway administration (FHWA) and federal emergency management agency (FEMA) road and bridge proj-

ects. Such moneys shall be used exclusively for repair and restoration of any local and state roads and bridges damaged by any flooding in the state. When apportionment of moneys under this subsection is sufficient to meet the purposes for which the moneys are designated, but not to exceed three million dollars ($3,000,000), any remaining amounts, or any amounts remaining after January 1, 1998, shall be returned to the restricted highway fund established in section 40-701A, Idaho Code.

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

Approved March 24, 1997.

CHAPTER 399
(H.B. No. 321, As Amended)

AN ACT

RELATING TO UNCLAIMED PROPERTY; AMENDING SECTION 14-501, IDAHO CODE, TO FURTHER DEFINE INTANGIBLE PROPERTY; REPEALING SECTION 14-501A, IDAHO CODE; AMENDING SECTION 14-502, IDAHO CODE, TO EXCLUDE CERTAIN GIFT CERTIFICATES AND CERTAIN TYPES OF PROPERTY FROM THE DEFINITION OF ABANDONED PROPERTY; AMENDING SECTION 14-504, IDAHO CODE, TO PROVIDE RETROACTIVE APPLICATION OF THIS SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 14-508, IDAHO CODE, TO CLARIFY THE OBLIGATIONS OF UTILITIES TO REPORT AND DELIVER UNCLAIMED PROPERTY; AMENDING SECTION 14-512, IDAHO CODE, TO ELIMINATE ANY PREEMPTION ISSUES WITH DEFINED BENEFIT PLANS; AMENDING SECTION 14-514, IDAHO CODE, TO EXCLUDE CERTAIN GIFT CERTIFICATES FROM THE DEFINITION OF UNCLAIMED PROPERTY; AMENDING SECTION 14-517, IDAHO CODE, TO CLARIFY THE PROCESS FOR REBUTTING A PRESUMPTION OF ABANDONMENT, TO CORRECT REFERENCES TO PROPERTY PRESUMED ABANDONED AND THE VALUE OF UNCLAIMED FUNDS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 14-518, IDAHO CODE, TO ADD TO EXISTING NOTICE REQUIREMENTS; AMENDING SECTION 14-519, IDAHO CODE, TO CLARIFY THE OBLIGATION TO DELIVER ABANDONED PROPERTY TO THE ADMINISTRATOR; AMENDING SECTION 14-523, IDAHO CODE, TO PROVIDE FOR THE ESCHEAT OF UNCLAIMED PROPERTY TO THE STATE; AMENDING SECTION 14-524, IDAHO CODE, RELATING TO CLAIMS FILED FOR PROPERTY DELIVERED BY UTILITIES; AMENDING SECTION 14-529, IDAHO CODE, TO REVISE THE PERIODS OF LIMITATION FOR COMMENCEMENT OF ENFORCEMENT ACTIONS; AMENDING SECTION 14-530, IDAHO CODE, TO ELIMINATE PRIOR EFFECTIVE DATE OF THE UNCLAIMED PROPERTY ACT; AMENDING SECTION 14-531, IDAHO CODE, TO REVISE THE PERIOD FOR RECORDS RETENTION; AMENDING SECTION 14-533, IDAHO CODE, TO CLARIFY THE APPLICABLE PENALTIES FOR A FAILURE TO COMPLY WITH THIS UNCLAIMED PROPERTY ACT AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 14-538, IDAHO CODE; AMENDING CHAPTER 5, TITLE 14, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 14-543, IDAHO CODE, TO LIMIT SUCCESSOR LIABILITY; PROVIDING AN EFFECTIVE DATE AND PROVIDING RETROACTIVE

APPLICATION WITH LIMITATIONS.

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

SECTION 1. That Section 14-501, Idaho Code, be, and the same is hereby amended to read as follows:

14-501. DEFINITIONS AND USE OF TERMS. As used in this chapter:

(1) "Administrator" means the state tax commission or its duly authorized agents or employees.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state.

(4) "Banking organization" means a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, limited liability company, joint stock company, investment company, business trust, partnership, or association for business purposes of two (2) or more individuals, whether or not for profit, including, but not limited to, a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, investment company, or credit union.

(8) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

(9) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life, including endowments and annuities, malpractice, marine, mortgage, surety, and wage protection insurance.

(10) "Intangible property" includes:

(a) Monies, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(c) Stocks and other intangible ownership interests in business associations;

(d) Amounts paid for tickets, passes or vouchers to gain entrance to a scheduled event where the scheduled event was cancelled and

not rescheduled, and the owner of the tickets, passes or vouchers is entitled to a refund in cash, services or merchandise;

(e) Monies deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(~~e~~f) Amounts due and payable under the terms of insurance policies;

(~~f~~g) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits; and

(~~g~~h) Any interest created by a judgment entered in any court of competent jurisdiction in favor of persons who are members of a class of persons defined by the court entering the judgment.

(11) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(12) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this act or his legal representative.

(13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(14) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(15) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

SECTION 2. That Section 14-501A, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section 14-502, Idaho Code, be, and the same is hereby amended to read as follows:

14-502. PROPERTY PRESUMED ABANDONED -- GENERAL RULE. (1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than five (5) years after it became payable or distributable is presumed abandoned.

(2) Notwithstanding subsection (1) of this section, the following items shall not constitute abandoned property for the purposes of this act:

(a) Amounts withheld by a business association as a penalty or forfeiture or as damages in the event a person who has reserved the services of the business association fails to make use of and pay for the service;

(b) Gift certificates with an expiration date prominently displayed on their face;
(c) Nonrefundable airline tickets;
(d) Any certificate, pass, voucher or other evidence of a right or privilege which is nonrefundable or which is nonredeemable due to the passage of time;
(e) Any intangible property as defined in section 14-501, Idaho Code, with a value of fifty dollars ($50.00) or less.

(3) Property is payable or distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

SECTION 4. That Section 14-504, Idaho Code, be, and the same is hereby amended to read as follows:

14-504. TRAVELERS CHECKS AND MONEY ORDERS. (1) Subject to subsection (4) of this section, any sum payable on a travelers check that has been outstanding for more than fifteen (15) years after its issuance is presumed abandoned unless the owner, within fifteen (15) years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record ~~in~~ on file prepared by an employee of the issuer.

(2) Subject to subsection (4) of this section, any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than seven (7) years after its issuance is presumed abandoned unless the owner, within seven (7) years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(3) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) No sum payable on a travelers check, money order, or similar written instrument, other than a third-party bank check, described in subsections (1) and (2) of this section may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this state;
(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or
(c) The issuer has its principal place of business in this state, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

~~(5)--Notwithstanding--any-other-provision-of-this-chapter,-subsection-(4)-of-this-section-applies-to-sums-payable-on-travelers--checks,-money-orders,-and-similar-written-instruments-presumed-abandoned-on-or after-February-1,-1965,-except-to-the-extent-that-those-sums-have-been paid-over-to-a-state-prior-to-January-1,-1974.~~

SECTION 5. That Section 14-508, Idaho Code, be, and the same is hereby amended to read as follows:

14-508. DEPOSITS HELD BY UTILITIES. (1) A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one (1) year after termination of services for which the deposit or advance payment was made is presumed abandoned.

(2) The public utilities commission may certify that a utility is participating in a financial assistance program which assists the utility's low income and disadvantaged customers with their utility bills. Upon certification to the administrator, the utility shall pay the funds which would have been presumed to be abandoned under subsection (1) of this section to the financial assistance program certified by the public utilities commission. The utility shall remain obligated to file its report of such abandoned property as required by section 14-517, Idaho Code.

SECTION 6. That Section 14-512, Idaho Code, be, and the same is hereby amended to read as follows:

14-512. PROPERTY HELD BY AGENTS AND FIDUCIARIES. (1) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within seven (7) years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, or communicated concerning the property.

(2) ~~Funds-in-an-individual-retirement--account--or--a--retirement plan--for--self-employed-individuals-or-similar-account-or-plan-established-pursuant-to-the-Internal-Revenue-laws-of-the-United-States--are not--payable--or-distributable-within-the-meaning-of-subsection-(1)-of this-section-unless,-under-the-terms-of-the-account-or-plan,-distribution-of-all-or-part-of-the-funds-would-then-be-mandatory.~~ Amounts due and payable from property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, is presumed abandoned three (3) years after the earlier of the date of the required distribution as stated in the documents governing the account or plan, or the date, if determinable by the holder, specified in the income tax law of the United States by which distribution of the property must begin in order to avoid a tax penalty, but excluding property in any such account or plan if the documents governing the account or plan provide a method for the treatment of the account balance of an account holder or plan participant or beneficiary who cannot be located.

(3) For the purposes of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

SECTION 7. That Section 14-514, Idaho Code, be, and the same is hereby amended to read as follows:

14-514. GIFT CERTIFICATES AND CREDIT MEMOS. (1) A gift certificate without an expiration date prominently displayed on its face or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than five (5) years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate without an expiration date prominently displayed on its face, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

SECTION 8. 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 travelers 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 ~~of the value of twenty five dollars ($25.00) or more~~ presumed abandoned under this chapter;

(b) In the case of unclaimed funds of ~~twenty five~~ fifty dollars (~~$25~~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~~; but items of value under twenty five dollars ($25.00) each may be~~

~~reported in the aggregate;~~

(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 November 1 of each year as of June 30 next preceding, but the report of any insurance company must be filed before May 1 of each year as of December 31 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~~:~~

~~(a) T~~the holder has in its records ~~and~~ an address for the apparent owner which the holder's records do not disclose to be inaccurate~~; or~~

~~(b) The property has a value of fifty dollars ($50.00) or more.~~

(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 property 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 9. 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; ~~and~~

(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.

(3) The administrator is not required to publish in the notice any items of less than fifty dollars ($50.00) unless the administrator considers their publication to be in the public interest.

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

SECTION 10. That Section 14-519, Idaho Code, be, and the same is hereby amended to read as follows:

14-519. PAYMENT OR DELIVERY OF ABANDONED PROPERTY. (1) Except as otherwise provided in ~~subsections (2) and (3) of~~ this section, and subsection (2) of section 14-508, Idaho Code, a person who is required to file a report under section 14-517, Idaho Code, shall pay or

deliver to the administrator all abandoned property together with the report required under section 14-517, Idaho Code.

(2) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the administrator, and the property will no longer be presumed abandoned.

(3) The holder of an interest under section 14-510, Idaho Code, shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the administrator. Upon delivery of a duplicate certificate to the administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provisions of section 14-520, Idaho Code, to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the administrator, for any losses or damages resulting to any person by the issuance and delivery to the administrator of the duplicate certificate.

SECTION 11. 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 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 12. That Section 14-524, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

must be repaid to the holder by the administrator in the same manner as the principal.

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

SECTION 13. That Section 14-529, Idaho Code, be, and the same is hereby amended to read as follows:

14-529. PERIODS OF LIMITATION. (1) The expiration, before or after the effective date of this act, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required in this chapter except as provided in subsection (2) of this section.

(2) ~~No--action--or--proceeding-may-be-commenced-by~~ Where a holder has filed a report as required by section 14-517, Idaho Code, the administrator may commence any action or proceeding with respect to any duty of a holder to report and deliver unclaimed property under this act ~~more-than-ten~~ within three (~~10~~3) years after the ~~duty-arises~~ time for the filing of a report concerning the property as required by section 14-517, Idaho Code.

(3) Where a holder violates section 14-517, Idaho Code, by failing to file a report, the administrator may commence any action or proceeding with respect to any duty of a holder to report and deliver unclaimed property under this act within seven (7) years after the time for the filing of a report concerning the property as required by section 14-517, Idaho Code.

SECTION 14. That Section 14-530, Idaho Code, be, and the same is hereby amended to read as follows:

14-530. REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS. (1) The administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this chapter. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under the provisions of this chapter.

(3) If a person is treated under section 14-512, Idaho Code, as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, pursuant to subsection (2) of this section, may examine the records of

the person if the administrator has given the notice required by subsection (2) to both the person and the business association at least ninety (90) days before the examination.

(4) If a holder fails ~~after the effective date [July 1, 1983] of this act~~ to maintain the records required by section 14-531, Idaho Code, and the records of the holder available for the periods subject to this chapter and insufficient to permit the preparation of a report, the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

SECTION 15. That Section 14-531, Idaho Code, be, and the same is hereby amended to read as follows:

14-531. RETENTION OF RECORDS. (1) Every holder ~~required to file a report~~ of unclaimed property under ~~section 14-517, Idaho Code,~~ this chapter as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for ~~ten~~ seven (~~10~~7) years after the year in which the property becomes ~~reportable~~ unclaimed, except to the extent that a shorter time as provided in subsection (2) of this section or by rule of the administrator.

(2) Any business association that sells in this state its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three (3) years after the ~~date~~ year in which the property ~~is reportable~~ becomes unclaimed.

SECTION 16. That Section 14-533, Idaho Code, be, and the same is hereby amended to read as follows:

14-533. INTEREST AND PENALTIES. (1) Upon the administrator's showing by a preponderance of evidence that a~~A~~ holder ~~who fails~~ has failed to pay or deliver property within the time prescribed in this chapter shall pay to the administrator interest at the annual rate of twelve percent (12%) on the property or value thereof from the date the property should have been paid or delivered until actual delivery is made.

(2) Upon the administrator's showing by a preponderance of evidence that a~~A~~ holder ~~who~~ has negligently ~~fails~~ failed to pay or deliver property within the time prescribed in this chapter shall pay to the administrator a penalty at the annual rate of five percent (5%) on the property or value thereof from the date the property should have been paid or delivered until actual delivery is made unless the holder demonstrates to the satisfaction of the administrator that the failure was due to reasonable cause and not neglect.

(3) A holder who willfully refuses after written demand by the administrator to pay or deliver property as required under this chapter shall be guilty of a misdemeanor and upon conviction may be punished by a fine of not less than three hundred dollars ($300) nor by

more than three thousand dollars ($3,000).

SECTION 17. That Section 14-538, Idaho Code, be, and the same is hereby repealed.

SECTION 18. That Chapter 5, Title 14, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 14-543, Idaho Code, and 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 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 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.

SECTION 19. This act shall be in full force and effect on and after its passage and approval, and shall be effective July 1, 1997, except that this act shall have retroactive application to January 1, 1981, for the purposes of any audits or similar adjustments proposed by the administrator to ascertain compliance with the provisions of chapter 5, title 14, Idaho Code, in effect from January 1, 1981, to July 1, 1997. No person who has paid unclaimed property to the administrator between January 1, 1981, and July 1, 1997, shall have any right or claim to a refund or repayment of such unclaimed property or the value thereof solely because of the limited retroactive application of this act.

Approved March 24, 1997.

CHAPTER 400
(H.B. No. 404)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT THROUGH FISCAL YEAR 1999; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 1997; APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 1998; AUTHORIZING AN INCREASE IN THE NUMBER OF 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 appropriations made in Section 1, Chapter 99, Laws of 1996, and Section 2, Chapter 356, Laws of 1996, and Section 1, Chapter 12, Laws of 1997, there is hereby appropriated to the Idaho Transportation Department the following amounts to be expended for the listed programs, in conformance with Section 41-4909A, Idaho Code, from the listed fund sources for the period from the effective date of this act, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR LUMP SUM	TOTAL
HIGHWAYS:					
FROM:					
State Highway Fund (Restricted Disaster)				$3,300,000	$ 3,300,000
State Highway Fund (Federal)	$478,200	$6,427,400			6,905,600
TOTAL	$478,200	$6,427,400		$3,300,000	$10,205,600
B. CONTRACT CONSTRUCTION AND RIGHT-OF-WAY ACQUISITION:					
FROM:					
State Highway Fund (Restricted Disaster)				$2,700,000	$ 2,700,000
State Highway Fund (Federal)			$3,179,800		3,179,800
TOTAL			$3,179,800	$2,700,000	$ 5,879,800
GRAND TOTAL	$478,200	$6,427,400	$3,179,800	$6,000,000	$16,085,400

SECTION 2. In addition to the appropriation made in Section 1, Chapter 280, Laws of 1996, there is hereby appropriated to the Department of Parks and Recreation, the following amount, to be expended for the designated programs according to the designated standard classifications from the listed fund for the period from the effective date of this act, through June 30, 1998:

	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. PARK DEVELOPMENT:			
FROM:			
Recreational Fuels Fund	$222,000		$222,000
B. RECREATIONAL RESOURCES:			
FROM:			
Recreational Fuels Fund		$443,000	$443,000
GRAND TOTAL	$222,000	$443,000	$665,000

SECTION 3. In addition to the appropriation made in Section 1, House Bill 373, as enacted by the First Regular Session of the Fifty-fourth Idaho Legislature, there is hereby appropriated to the Idaho Transportation Department, the following amount, to be expended for the designated programs according to the designated standard classifications from the listed fund sources for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. MOTOR VEHICLES:				
FROM:				
State Highway Fund (Dedicated)	$180,000	$ 88,800	$ 16,400	$ 285,200
B. HIGHWAYS:				
FROM:				
State Highway Fund (Restricted)		$309,200		$ 309,200
C. CONTRACT CONSTRUCTION AND RIGHT-OF-WAY ACQUISITION:				
FROM:				
State Highway Fund (Restricted)			$7,421,500	$7,421,500
GRAND TOTAL	$180,000	$398,000	$7,437,900	$8,015,900

SECTION 4. In addition to the full-time equivalent positions authorized in Section 3, House Bill 373, as enacted by the First Regular Session of the Fifty-fourth Idaho Legislature, the Idaho Transportation Department is authorized an additional one (1) full-time equivalent position and no more than one thousand seven hundred forty-five (1,745) full-time equivalent positions at any point during the period July 1, 1997, through June 30, 1998.

SECTION 5. 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 its passage and approval.

Approved March 24, 1997.

CHAPTER 401
(S.B. No. 1192, As Amended)

AN ACT

RELATING TO IRRIGATION DISTRICTS AND WATER; AMENDING SECTION 43-335, IDAHO CODE, TO AUTHORIZE CERTAIN IRRIGATION DISTRICTS TO LEASE CERTAIN WATER RIGHTS TO ANOTHER ENTITY WHICH FURNISHES WATER SERVICES TO LANDS WITHIN THE DISTRICTS AND TO DEFINE TERMS; AMENDING SECTION 43-337, IDAHO CODE, TO PROVIDE THAT A LANDOWNER'S ELECTION NOT TO RECEIVE WATER FROM THE DISTRICT SHALL REMAIN IN EFFECT SO LONG AS THE LEASE OF WATER RIGHTS BY THE DISTRICT PURSUANT TO A CERTAIN STATUTE HAS NOT BEEN TERMINATED AND TO PROVIDE THAT A SIGNATURE BY EACH SURVIVING SPOUSE SHALL BE REQUIRED FOR A VALID ELECTION AS TO LAND WHICH IS COMMUNITY PROPERTY; AND AMENDING SECTION 43-338, IDAHO CODE, TO PROVIDE PROCEDURES FOR LEASING OF WATER RIGHTS INSIDE THE DISTRICT BY AN IRRIGATION DISTRICT WHERE THE LANDOWNER CANNOT RECEIVE WATER THROUGH THE DISTRICT'S IRRIGATION SYSTEM.

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

SECTION 1. That Section 43-335, Idaho Code, be, and the same is hereby amended to read as follows:

43-335. LEASING OF WATER RIGHTS BY IRRIGATION DISTRICT WITHIN THE DISTRICT BY DISTRICT'S WHERE LANDOWNER CAN RECEIVE WATER THROUGH THE DISTRICT'S IRRIGATION SYSTEM. Any irrigation district which has within its boundaries residential, commercial or industrial lands, or any combination of those lands, and which holds water rights for those lands, shall have the right to lease, to any municipality, municipal provider, public utility, or domestic water users organization which furnishes water service to those lands, or to any other entity for the distribution of water to those lands for uses other than culinary purposes, those water rights which are held for any residential, commercial or industrial lands for which the owner has elected not to receive his proportionate share of the irrigation district's water through the irrigation system of the district; provided, however, that no water right under which water is delivered through a community ditch shall be leased without the written consent of the ditch users who do not elect not to receive water from the district. For purposes of this chapter, the terms "municipality" and municipal provider" shall be defined as provided in section 42-202B, Idaho Code; "culinary purposes" shall mean the use of water for direct human consumption, cooking, sanitary purposes, and other such uses. Nothing in this chapter shall be construed as amending or affecting the laws of Idaho pertaining to the control and regulation of public utilities, municipal providers or water corporations.

SECTION 2. That Section 43-337, Idaho Code, be, and the same is hereby amended to read as follows:

43-337. REQUIREMENTS OF ELECTION FOR LANDOWNERS. The election

under section 43-335, Idaho Code, not to receive water shall be made in writing and shall state:

(a) The name and address of the landowner;

(b) The legal description of the land as to which the election is made;

(c) The date of the notification from the district pursuant to which the election is made;

(d) That the owner elects not to receive water from the irrigation system of the district under the water right held for the land described in the notification of election;

(e) That this landowner's election not to receive water from the district shall remain in effect so long as the lease under section 43-335, Idaho Code, has not been terminated.

The written notification of election shall be signed by the landowner and shall be delivered to the district at its office. Signature by ~~either~~ each surviving spouse shall be ~~sufficient~~ required for a valid election as to land which is community property.

SECTION 3. That Section 43-338, Idaho Code, be, and the same is hereby amended to read as follows:

43-338. LEASING OF WATER RIGHTS ~~TO ENTITIES FURNISHING WATER SERVICE~~ INSIDE THE DISTRICT BY AN IRRIGATION DISTRICT WHERE THE LANDOWNER CANNOT RECEIVE WATER THROUGH THE IRRIGATION SYSTEM. An irrigation district shall have the right to lease, to any municipality, municipal provider, public utility or domestic water users organization which furnishes water service to lands lying within the district, or to any other entity providing water service for uses other than culinary purposes those water rights which ~~are held for any lands which are not receiving water for the time being from~~ the landowner does not receive through the irrigation system of the district because the landowner has no ditch, pipeline or other transmission facility for carrying water from the district's system to his land.

Approved March 25, 1997.

CHAPTER 402
(S.B. No. 1193)

AN ACT

RELATING TO IRRIGATION DISTRICTS AND WATER; AMENDING SECTION 43-730, IDAHO CODE, TO PROVIDE FOR CONTRACTS WITH OTHER ENTITIES WHOSE BOUNDARIES OR SERVICE AREA IS SITUATED WITHIN THE BOUNDARIES OF CERTAIN IRRIGATION DISTRICTS; AND AMENDING SECTION 43-731, IDAHO CODE, TO PROVIDE THAT BEFORE ENTERING INTO CERTAIN CONTRACTS, THE CITY, IRRIGATION LATERAL DISTRICT OR OTHER ENTITY OBLIGATED TO MAKE PAYMENTS SHALL HOLD THE WATER IN TRUST FOR THE PURPOSE WHICH IT WAS, OR SHALL BE PURCHASED OR FURNISHED.

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

SECTION 1. That Section 43-730, Idaho Code, be, and the same is hereby amended to read as follows:

43-730. CONTRACTS WITH CITIES, ~~AND~~ IRRIGATION LATERAL DISTRICTS OR OTHER ENTITIES IN LIEU OF CHARGES, LEVIES AND ASSESSMENTS. The board of directors of an irrigation district shall have the power to enter into a contract in writing with any city, ~~or~~ irrigation lateral district~~,~~ or other entity whose boundaries or service area is situated within the boundaries of any irrigation district where water has been purchased, or is being furnished, or shall be furnished, for lands, property or use within the boundaries or service area of such city, ~~or~~ irrigation lateral district or other entity by an irrigation district, whereby such city, ~~or~~ irrigation lateral district or other entity shall become obligated to pay charges, levies and assessments now provided to be made pursuant to chapter 7, title 43, sections 43-701 through 43-729, Idaho Code, and amendments thereto in lieu of the officers of the irrigation district making said charges, levies and assessments.

SECTION 2. That Section 43-731, Idaho Code, be, and the same is hereby amended to read as follows:

43-731. WATER ~~AND WATER RIGHTS~~ HELD IN TRUST. Upon entering into any such contract, the city, ~~town or village~~ irrigation lateral district or other entity obligated to make the payments as aforesaid shall hold said water ~~and water rights~~ in trust for the purpose for which the same was, or shall be, purchased or furnished.

Approved March 25, 1997.

CHAPTER 403
(H.B. No. 399)

AN ACT

RELATING TO PUBLIC UTILITIES OR OTHER ENTITIES SUPPLYING ELECTRIC ENERGY; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-338, IDAHO CODE, TO PROVIDE REPORTING OF CUSTOMER COST INFORMATION BY CERTAIN ELECTRIC UTILITIES TO THE PUBLIC UTILITIES COMMISSION; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-339, IDAHO CODE, TO PROVIDE REPORTING OF CUSTOMER COST INFORMATION BY COOPERATIVES AND MUNICIPALITIES TO THE PUBLIC UTILITIES COMMISSION WITH EXCEPTIONS; DECLARING AN EMERGENCY AND PROVIDING A SUNSET CLAUSE.

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

SECTION 1. (1) The Legislature finds:

(a) That it is necessary and appropriate for the Legislature to analyze the many impacts upon the citizens of the state of Idaho of restructuring electrical services within Idaho;

(b) That such an analysis by the Legislature cannot be completed without first obtaining information concerning the relevant costs of providing electrical distribution, generation and transmission service;

(c) That the Legislature has determined that it is necessary and appropriate to obtain from the various investor and consumer owned electrical utilities serving the state such information.

(2) Therefore, it is hereby declared that the purposes of this act are:

(a) To provide an efficient and timely process to identify and collect the relevant costs of providing electrical distribution, generation and transmission service for inclusion in the analysis to be conducted by the legislature concerning the potential restructuring of the electrical services industry within the state;

(b) To provide the citizens of Idaho with information concerning the costs of electrical services.

SECTION 2. 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 61-338, Idaho Code, and to read as follows:

61-338. CUSTOMER COST INFORMATION. On or before July 1, 1997, the commission shall commence proceedings so that each electric utility with one thousand (1,000) customers or more under its jurisdiction shall begin providing information concerning its costs of supplying electric energy to its customers. Cost information shall be separated among utility functions, consisting at a minimum of generation, transmission services, distribution services and other categories as the commission may deem relevant. The commission shall issue periodic reports to the governor, and both houses of the legislature about the progress it is making in implementing the provisions of this section.

SECTION 3. 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 61-339, Idaho Code, and to read as follows:

61-339. COOPERATIVE AND MUNICIPAL CORPORATIONS FURNISHING ELECTRICAL SERVICE -- CUSTOMER COST INFORMATION. On or before July 1, 1997, 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 in the state of Idaho and also serves consumers in other states) shall commence the process of providing information concerning its costs of supplying electric energy to its customers. Each cooperative and municipality shall separate costs among utility functions, consisting at a minimum of generation, transmission services, distribution services and other categories of service. Each cooperative and municipality shall separate its costs consistent with the utility functions and cost information categories as determined by the commission pursuant to section 61-338, Idaho Code, for utilities regulated by the commis-

sion. Each cooperative and municipality shall submit to the commission its cost information in the form and manner requested by the commission. The commission shall incorporate such information into its report to the governor and legislature as provided for in section 61-338, Idaho Code. Nothing contained in this section shall be construed to grant the commission jurisdiction over cooperatives and municipalities except to implement the provisions of this section.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and shall be null, void and of no force and effect on and after January 1, 1999.

Approved March 27, 1997.

CHAPTER 404
(H.B. No. 320, As Amended, As Amended in the Senate)

AN ACT

RELATING TO CHILDREN'S MENTAL HEALTH SERVICES; AMENDING TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 24, TITLE 16, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO STATE LEGISLATIVE PURPOSES, TO DEFINE TERMS, TO ESTABLISH THE LEAD AGENCY AND DIRECT INTERAGENCY COLLABORATION, TO AUTHORIZE CHARGES TO PARENTS, TO PROVIDE ACCESS TO SERVICES, TO GOVERN VOLUNTARY ADMISSION TO A HOSPITAL OR RESIDENTIAL TREATMENT FACILITY, TO PROVIDE A DISCHARGE OR PETITION FOR TREATMENT ORDER, TO GOVERN CONVERSION FROM INVOLUNTARY TO VOLUNTARY STATUS, TO PROVIDE REVIEW OF VOLUNTARY ADMISSION, TO GOVERN EMERGENCY MENTAL HEALTH RESPONSE AND EVALUATION AND TEMPORARY DETENTION BY A PEACE OFFICER, TO GOVERN EMERGENCY TREATMENT UPON CERTIFICATION BY A DESIGNATED EXAMINER, TO GOVERN DETERMINATION FOR EMERGENCY ADMISSION AND TREATMENT, TO GOVERN AN ORDER FOR EMERGENCY EVALUATION, TO SPECIFY DISPOSITIONAL AUTHORITY, TO GOVERN INVOLUNTARY TREATMENT ORDER, TO REQUIRE A HEARING FOR INVOLUNTARY TREATMENT ORDER, TO PROVIDE CRITERIA TO GOVERN INVOLUNTARY TREATMENT ORDER, TO SPECIFY THE EFFECT OF AN INVOLUNTARY TREATMENT ORDER ON PARENTAL RIGHTS AND CUSTODY, TO AUTHORIZE SUCCESSIVE PERIODS OF INVOLUNTARY TREATMENT, TO AUTHORIZE WAIVER OF THE RIGHT TO BE PRESENT AT HEARINGS, TO REQUIRE INFORMED CONSENT TO MEDICATION AND OTHER TREATMENT FOR PERSONS UNDER VOLUNTARY TREATMENT, TO GOVERN INFORMED CONSENT TO MEDICATION AND OTHER TREATMENT FOR PERSONS SUBJECT TO INVOLUNTARY OR EMERGENCY TREATMENT, TO PROVIDE FOR TREATMENT, TO SPECIFY RIGHTS OF CHILDREN, TO SPECIFY NOTIFICATION RIGHTS, TO PROVIDE FOR DISCHARGE, TO SPECIFY CONFIDENTIALITY AND GOVERN DISCLOSURE OF INFORMATION, TO PROVIDE RIGHT TO REPRESENTATION, TO GOVERN TRANSPORTATION REQUIREMENTS, TO PROVIDE FOR COSTS FOR INVOLUNTARY TREATMENT PROCEEDINGS, TO PROVIDE PENALTIES FOR FALSE STATEMENTS, TO AUTHORIZE RULES, AND TO PROVIDE CONSTRUCTION OF THE ACT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 24, Title 16, Idaho Code, and to read as follows:

CHAPTER 24
CHILDREN'S MENTAL HEALTH SERVICES

16-2401. SHORT TITLE. This chapter governing the access to the continuum of services for children with serious emotional disturbance may be cited as the "Children's Mental Health Services Act."

16-2402. LEGISLATIVE PURPOSES. (1) It is the policy of the legislature and the state of Idaho that services for children with serious emotional disturbance should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home to maintain individual safety and well-being, community resources shall be provided to minimize the need for institutional or other residential placement. The legislature finds that family involvement and participation in the child's treatment planning and implementation is vital to successful intervention for children with serious emotional disturbance.

(2) Services to address mental health needs are one part of a broad array of services which should be available to Idaho's children with special needs. Such services shall maximize the preservation of the family, by coordination and collaboration of services with schools and community. The department of health and welfare, the department of education, the department of juvenile corrections, school districts, counties and any other appropriate entities, shall cooperate and collaborate in planning, developing and providing services, and shall consult with counties and private providers of mental health services.

(3) Services shall be individually planned to meet the unique needs of each child and family. Such planning shall include the parent, guardian or surrogate parent(s) of each child. The continuum of services shall include, but not be limited to, individual and family counseling, crisis intervention services, day treatment, respite care, therapeutic foster homes, family support services, residential treatment and inpatient services. These services shall be available to meet the needs of Idaho's children with serious emotional disturbance or mental illness and their families. Services shall be provided without requiring that parents relinquish custody of the child.

(4) This chapter is intended to achieve, and shall be construed to promote, these legislative purposes:

(a) To empower families of children with serious emotional disturbance to determine their own needs and to make decisions and choices, concerning them;

(b) To give families of children with serious emotional disturbance the support they need, to maintain a stable, nurturing home environment for the children, and to respond to the needs of the entire family, without requiring families to accept services that they do not desire or seek;

(c) To utilize out-of-home placement only after families are provided supportive services and those services are inadequate to

provide a reasonable level of safety and well-being for the child and family, or when an emergency exists which requires immediate intervention. Any placement of a child out of home shall follow the principles of least restrictive alternative placement as defined in this chapter and shall be for the shortest period of time necessary to provide for the safety and well-being of the child and family;

(d) To plan, develop, deliver, and evaluate services for children with serious emotional disturbance in an efficient, coordinated and collaborative statewide system, of individualized services;

(e) To provide services in settings that are close to the patterns and norms of society and sensitive to the regional, cultural, and ethnic characteristics of Idaho's families and communities;

(f) To provide services for families as close to their home communities as possible and to promote integration of families into their communities;

(g) To make use of the capacities of local communities to complement existing public and private community resources, including natural and informal supports provided by family and friends;

(h) To give priority to planning, developing, implementing, and evaluating children's mental health services to prevent, ameliorate, or reduce the impact of serious emotional disturbance on families;

(i) To assist all state and local public and private agencies and service providers to provide appropriate, flexible, and cost-effective home and community-based services for families;

(j) All state agencies providing services to children with serious emotional disturbances prior to the passage of this chapter shall maintain their existing level of services to this population.

(5) All department and private providers acting under this chapter shall:

(a) Identify and coordinate all available resources, both formal and informal, public and private, so that the needs of families can be met and their strengths can be applied;

(b) Include participation of families with children with serious emotional disturbance in all phases of planning, developing, implementing, and evaluating the programs that affect them;

(c) Be flexible, so that families will have power to decide what services to use, how to use them, and how often to use them;

(d) Apply a family centered approach in working with families;

(e) Respect a family's method of problem solving and their preferred methods of communication;

(f) Be sensitive to families' social, economic, physical and other environments;

(g) Disseminate information so that eligible families will know of the availability of services;

(h) Provide services in a manner to ensure uninterrupted and consistent availability of services between children's and adult services when the child reaches the age of majority;

(i) Refrain from any discrimination on the basis of race, gender, religion, ethnicity, national origin, or disabling condition in

the employment of individuals, and in providing services.

16-2403. DEFINITIONS. As used in this chapter:

(1) "Child" means an individual less than eighteen (18) years of age and not emancipated by either marriage or legal proceeding.

(2) "Consistent with the least restrictive alternative principle" means that services are delivered in the setting which places the fewest restrictions on the personal liberty of the child, and provides the greatest integration with individuals who do not have disabilities, in typical and age appropriate, school, community and family environments, which is consistent with safe, effective and cost-effective treatment for the child and family.

(3) "Department" means the department of health and welfare.

(4) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare.

(5) "Director" means the director of the state department of health and welfare.

(6) "Emergency" means a situation in which the child's condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child's condition which cannot be eliminated by the use of supportive services or intervention by the child's parents, or mental health professionals, and treatment in the community while the child remains in his family home.

(7) "Informed consent to treatment" means a knowing and voluntary decision to undergo a specific course of treatment, evidenced in writing, and made by an emancipated child, or a child's parent, or guardian, who has the capacity to make an informed decision, after the staff of the facility or other provider of treatment have explained the nature and effects of the proposed treatment.

(8) "Involuntary treatment" means treatment, services and placement of children provided without consent of the parent of a child, under the authority of a court order obtained pursuant to this chapter, as directed by an order of disposition issued by a designated employee of the department of health and welfare under section 16-2415, Idaho Code.

(9) "Lacks capacity to make an informed decision concerning treatment" means that the parent is unable to understand the nature and effects of hospitalization or treatment, or is unable to engage in a rational decision-making process regarding such hospitalization or treatment, as evidenced by an inability to weigh the risks and benefits, despite conscientious efforts to explain them in terms that the parent can understand.

(10) "Likely to cause harm to himself or to suffer substantial mental or physical deterioration" means that, as evidenced by recent behavior, the child:

(a) Is likely in the near future to inflict substantial physical injury upon himself; or

(b) Is likely to suffer significant deprivation of basic needs such as food, clothing, shelter, health or safety; or

(c) Will suffer a substantial increase or persistence of symptoms of mental illness or serious emotional disturbance which is likely to result in an inability to function in the community without risk to his safety or well-being or the safety or well-being of others, and which cannot be treated adequately with available home and community-based outpatient services.

(11) "Likely to cause harm to others" means that, as evidenced by recent behavior causing, attempting, or threatening such harm with the apparent ability to complete the act, a child is likely to cause physical injury or physical abuse to another person.

(12) "Protection and advocacy system" means the agency designated by the governor as the state protection and advocacy system pursuant to 42 U.S.C. 6042 and 42 U.S.C. 10801 et seq.

(13) "Serious emotional disturbance" means an emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the child's functioning to be impaired in thought, perception, affect or behavior. A disorder shall be considered to "result in a serious disability" if it causes substantial impairment of functioning in family, school or community. A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may coexist with serious emotional disturbance.

(14) "Special therapy" means any treatment modality used to treat children with serious emotional disturbances which is subject to restrictions or special conditions imposed by the department of health and welfare rules.

(15) "Surrogate parent" means any person appointed to act in the place of the parent of a child for purposes of developing an individual education program under the authority of the individuals with disabilities education act, 20 U.S.C. 1400 et seq., as amended.

(16) "Treatment facility" means a facility or program meeting applicable licensing standards, that has been approved for the provisions of services under this chapter by the department of health and welfare.

16-2404. COMMUNITY SERVICES AND SUPPORTS AND INTERAGENCY COLLABORATION. (1) Lead agency. The department of health and welfare shall be the lead agency in establishing and coordinating community supports, services and treatment for children with serious emotional disturbance and their families, utilizing public and private resources available in the child's community. Such resources shall be utilized to provide services consistent with the least restrictive alternative principle, to assist the child's family to care for the child in his home and community whenever possible. The state department of education shall be the lead agency for educational services.

(2) Planning. The department of health and welfare, the state department of education, the department of juvenile corrections, counties, and local school districts shall collaborate and cooperate in planning and developing comprehensive mental health services and individual treatment and service plans for children with serious emotional disturbance making the best use of public and private resources to provide or obtain needed services and treatment.

16-2405. CHARGES TO PARENTS. Parents may be charged for services provided to their children by the department according to the sliding fee scale authorized by section 16-2433, Idaho Code, provided that all services which are part of the child's free appropriate public education as defined in the individuals with disabilities education act, 20 U.S.C. 1400 et seq., as amended, shall be provided to the child at no cost to the parents.

16-2406. ACCESS TO SERVICES. Access to services for children with serious emotional disturbance and their families shall be voluntary whenever informed consent can be obtained. Involuntary treatment or commitment to the department's custody shall not be required as a condition for obtaining, providing, or paying for treatment by the department. The department's assistance with paying for a child's treatment and other services under this act shall be based upon the rules adopted by the department and by the sliding fee scale developed under section 16-2433, Idaho Code. Department payments to service providers are only made pursuant to a written agreement between the department and the service provider. The agreement must reflect cost-effective services for the child.

(1) The family and the department may enter into a services agreement if:

(a) The child meets the department's eligibility criteria for treatment or services; and

(b) The child and his parents request mental health services from the department; or

(c) The family requests full or partial payment for services by the department (other than payment through medical assistance, title XIX of the social security act, as amended); or

(d) The youth is involuntarily placed by the department under this chapter.

(2) For purposes of this chapter, a services agreement is a written agreement, binding on the parties, which specifies at a minimum:

(a) The legal status of the child; and

(b) The rights and obligations of the parents or guardians, the child and the department while the child is in the out-of-home placement.

(3) When a child is placed out of his home pursuant to a services agreement, the department shall have the responsibility for the child's placement and care. The financial obligation of the family will be determined after consideration of all available payment and funding sources including title XIX of the social security act, as amended, all available third party sources, and parent resources according to any order for child support under chapter 10, title 32, Idaho Code. Services shall not be conditioned on transfer of custody or parental rights.

16-2407. VOLUNTARY ADMISSION TO HOSPITAL OR RESIDENTIAL TREATMENT FACILITY. When the department provides services under this chapter, such services shall be provided on a voluntary basis whenever informed consent can be obtained, and the department shall ensure that services made available to children subject to involuntary treatment orders are also available on a comparable basis to children seeking

services on a voluntary basis.

(1) Admission of children. A treatment facility may admit a child after examining the child and interviewing the family, if a clinician with authority to admit patients to the facility determines that the child is seriously emotionally disturbed and is in need of hospitalization or residential services and, the child's parent, custodian or guardian give such consent to treatment. Prior to such admission, the child and his parent, custodian or guardian shall be advised orally and given a written statement of his rights under this chapter as provided in section 16-2426, Idaho Code, provided that, if the condition of the child is such that notice and advice of his rights would be ineffective, and this determination is recorded in the child's record, such advice to the child may be deferred until the child's mental and emotional condition permits, but for no more than forty-eight (48) hours. Each child and parent shall be asked to sign an acknowledgment that they have been so advised, and this acknowledgment shall be kept in the child's record.

(2) A child shall not be voluntarily admitted to a facility operated by the department unless evaluated and referred by a person on the staff of the regional family and children's services program.

(3) When a child is in a voluntary, out-of-home placement which is funded in whole or in part by state or federal funds, the department may have the propriety of the placement reviewed by the district court of the county in which the child is placed or the county of the child's residence every one hundred eighty (180) days after placement or as required by statutes which govern federal funding for children who are placed out of their homes.

16-2408. DISCHARGE OR PETITION FOR ONE HUNDRED TWENTY DAY TREATMENT ORDER. Any child who is voluntarily admitted to a treatment facility upon the consent of his parents or guardian shall be discharged within three (3) business days of a written request for discharge by the consenting person unless such request is withdrawn in writing or there is other legal authority to hold the child at the facility.

16-2409. CONVERSION FROM INVOLUNTARY TO VOLUNTARY STATUS. A child who is subject to involuntary hospitalization under this chapter may at any time convert to a voluntary status if informed consent to treatment can be obtained from his parent or guardian.

16-2410. REVIEW OF VOLUNTARY ADMISSION. A child admitted on the consent of his parents, shall have his admission reviewed at the end of a thirty (30) day period from the initial date of admission to the program. The review shall be accomplished by having the child's treating clinician review the child's treatment and determine whether continued out-of-home treatment at the facility is still necessary and consistent with the least restrictive alternative principle. If the clinician decides that it is, he or she shall record the findings on a form to be filed in the child's record. The facility shall notify the child and his parents at least seven (7) days prior to the thirty (30) day review and give them an opportunity to comment on the need, if any, for continued inpatient or residential treatment. The facility

shall ensure that the child and his parents are aware of the right to request discharge as set forth above.

If the facility staff determines that the parent of the child understands these rights and the parent of the child desires to continue treatment, then the facility staff shall so certify on a form designated by the department. These forms shall be kept in the child's patient record, and sent to the child's parent, guardian or custodian. This procedure shall take place every thirty (30) days from the date of the last admission.

16-2411. EMERGENCY MENTAL HEALTH RESPONSE AND EVALUATION -- TEMPORARY DETENTION BY A PEACE OFFICER. (1) A peace officer may take a child into protective custody and immediately transport the child to a treatment facility for emergency mental health evaluation in the absence of a court order if and only if the officer determines that an emergency situation exists as defined in this chapter, and the officer has probable cause to believe, based on personal observation and investigation, representation of the child's parents or the recommendation of a mental health professional, that the child is suffering from serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others.

(2) The officer shall immediately transport any child taken into protective custody under this section, to a treatment facility or mental health program, such as a regional mental health center, a mobile crisis intervention program, or a therapeutic foster care facility, provided such center's program or facility has been approved by the regional office of the department for that purpose. The department shall make a list of approved facilities available to law enforcement agencies.

(3) Upon taking the child into protective custody, the officer shall take reasonable precautions to safeguard and preserve the personal property of the person unless a parent or guardian or responsible relative is able to do so. Upon presenting a child to a treatment facility the officer shall inform the staff in writing of the facts that caused him to detain the person, and shall specifically state whether the person is otherwise subject to being held for juvenile or criminal offenses.

(4) If the child who is being detained is not released to the child's parent, guardian or custodian, the law enforcement agency shall contact the child's parent, guardian or custodian as soon as possible, and in no case later than twenty-four (24) hours, and shall notify the child's parent, guardian or custodian of his status, location and the reasons for the detention of the child. If the parents cannot be located or contacted, efforts to comply with this section and the reasons for failure to make contact shall be documented in the child's record.

16-2412. EMERGENCY TREATMENT UPON CERTIFICATION BY DESIGNATED EXAMINER. A child may be taken into protective custody by a peace officer, or accepted by an ambulance service, and transported and pre-

sented to a treatment facility for emergency evaluation and treatment when a designated examiner certifies in writing that he has examined the child within the last seventy-two (72) hours and that on such basis he has probable cause to believe that such child is suffering from serious emotional disturbance as a result of which he is likely to:

(1) Harm himself or others; or

(2) Suffer substantial mental or physical deterioration; and

(3) Require immediate treatment to prevent such harm; and

(4) Less restrictive alternatives have been considered and the detention and treatment proposed is consistent with the least restrictive alternative principle.

16-2413. EMERGENCY ADMISSION AND TREATMENT FACILITY DETERMINATION. Upon the presentation of a child to a treatment facility pursuant to section 16-2411, Idaho Code, the facility shall accept the child and shall promptly examine him to determine whether he meets the criteria for emergency evaluation and treatment set forth below.

(1) The child shall be admitted for emergency evaluation and treatment only if a clinician with authority to admit the child determines that there is probable cause to believe that such child is suffering from serious emotional disturbance as a result of which he is likely to:

(a) Harm himself or others; or

(b) Suffer substantial mental or physical deterioration; or

(c) Cause harm to others and immediate treatment is necessary to prevent such harm; and

(d) Less restrictive alternatives have been considered and the placement and treatment proposed is consistent with the least restrictive alternative principle.

(2) If the examining physician determines that there is not probable cause to believe that the child meets the criteria for emergency evaluation and treatment, the child shall be released to his parents who shall arrange transportation. If the child was presented to the treatment facility by a law enforcement officer and was otherwise subject to detention for a juvenile or criminal offense, he shall remain under the protective custody of the law enforcement officer. The treatment facility shall notify the law enforcement officer and detain the child until law enforcement responds to transport the child to detention.

(3) The treatment facility shall advise any child admitted for emergency evaluation and treatment of the purposes and possible duration of emergency evaluation and of his rights under this chapter as soon after admission as his medical condition permits in the manner prescribed in section 16-2426, Idaho Code.

16-2414. ORDER FOR EMERGENCY EVALUATION. Each child who is admitted to a treatment facility under section 16-2413, Idaho Code, shall, within twenty-four (24) hours of being taken into protective custody, be released to his parent or guardian, unless a court order authorizing emergency evaluation has been obtained.

(1) The evidence supporting the claim that an emergency exists with respect to the child shall be submitted to a court of competent

jurisdiction. If the court finds that an emergency situation exists, it shall issue an order for emergency evaluation, which shall authorize the treatment facility to hold the child for up to forty-eight (48) hours at which time he shall be released to his parent or guardian, unless valid consent to voluntary treatment has been obtained under section 16-2407, Idaho Code, or other legal authority is sought to hold the child.

(2) Each child and parent shall also be informed orally and in writing by the evaluation facility of the purposes and the possible consequences of the proceedings, the allegations in the petition, the child's right to communicate with an attorney, and the right to receive necessary and appropriate treatment.

(3) At all stages of the proceeding the court shall consider whether treatment may be voluntarily obtained by the child and his family. If the treatment can be voluntarily obtained, the petition shall be dismissed.

(4) The court may also order that the prosecuting attorney of the county review the appropriateness of the case for filing a petition under the child protective act or the juvenile corrections act.

(5) A child shall not be admitted under this section to a facility operated by the department unless evaluated and authorized by a staff of the regional family and children's services program.

16-2415. DISPOSITIONAL AUTHORITY. (1) Whenever the involuntary treatment of the child requires payment from public funds, other than medicaid funds, the department, or other funding agency shall have the authority to determine the placement for the child and to make decisions concerning the purchase and provision of mental health services.

(2) When the cost of the child's treatment can be paid from private sources or by medicaid, the parent shall have the authority to determine the child's placement and services.

(3) All expenditures under the medicaid program shall be governed by the laws and rules applicable to that program.

(4) The department shall issue a disposition order within two (2) days of the order for involuntary treatment.

16-2416. ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT ORDER. (1) Children may be treated involuntarily for a period of up to one hundred twenty (120) days upon a petition filed by the treatment facility or by the parent, guardian, prosecuting attorney or other interested party. The petition shall set forth the facts supporting the allegations and, in the case of petitions filed by a treatment facility, shall describe why the child requires treatment, a detailed description of the symptoms or behaviors of the child that support the allegations in the petition, a list of the names and addresses of any witnesses the petitioner intends to call at the involuntary treatment hearing. The petition shall also contain a statement of the alternatives to court-ordered involuntary treatment that have been considered and the reasons for rejecting the alternatives. The petition shall be filed with the court and copies shall be served upon the person and upon a parent, the next of kin, guardian or custodian and the person's attorney. The copies of the petition shall be accompanied by a notice advising of the child's rights concerning the proceeding.

(2) Upon filing of a petition for involuntary treatment of a child who is not currently under emergency evaluation or voluntary admission, the court shall issue a summons to the child to submit to an examination by two (2) designated examiners. Each designated examiner shall promptly prepare a report on his examination and file it with the court. Copies shall be promptly served upon the child, parent, custodian, guardian and the child's attorney.

16-2417. HEARING ON THE ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT ORDER. (1) Every child for whom a petition for involuntary treatment has been filed, shall be notified by the court sufficiently in advance to be able to prepare for the hearing and shall receive a prompt hearing. For children confined for emergency psychiatric evaluation or currently under voluntary admission, this hearing shall take place within three (3) business days of the filing of the petition.

(2) The child shall be present at the hearing unless the court finds:

(a) That he has knowingly and voluntarily waived such a right after consulting with counsel, and his counsel shall submit a verified written statement to the court explaining the attorney's understanding of the child's intent; or

(b) That because his behavior at the hearing is so disruptive, it cannot reasonably continue in his presence.

Hearings may be held in the treatment facility whenever the child is an inpatient at the time of the hearing.

(3) Any child who is unable to pay for counsel shall have the right to be provided with counsel at public expense to prepare for and represent him at the hearings.

(4) The prosecuting attorney shall represent the interests of the state at the hearing.

(5) The Idaho rules of evidence and the Idaho rules of civil procedure shall be applied so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties.

(6) The child shall have the right:

(a) To be represented by counsel;

(b) To present evidence, including testimony of a mental health professional of his own choosing;

(c) To cross-examine witnesses;

(d) To a complete record of the proceedings;

(e) To an expeditious appeal of an adverse ruling.

(7) At the conclusion of the hearing, or within one (1) business day thereafter, the court shall make its findings.

(8) The court shall enter an order discharging the child unless it finds by clear and convincing evidence that the child satisfies all criteria for involuntary treatment in section 16-2418, Idaho Code, in which event it shall enter an involuntary treatment order as provided in section 16-2416, Idaho Code, for evaluation and treatment for a period of no longer than one hundred twenty (120) days.

(9) If at any time during a one hundred twenty (120) day (or any subsequent) period of involuntary treatment, a child is absent without permission, the involuntary treatment order constitutes a continuing authorization and responsibility to the treatment facility and to any

law enforcement officer to procure his return.

16-2418. CRITERIA FOR ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT ORDER. A child may be treated involuntarily, and placed at a facility, according to the disposition of the department under section 16-2415, Idaho Code, for a period of up to one hundred twenty (120) days if, after the hearing provided in section 16-2417, Idaho Code, the court determines on the basis of clear and convincing evidence that:

(1) The child is suffering from severe emotional disturbance; and

(2) There is reasonable prospect that his illness is treatable by a facility or program operated by the department or other facility available to the department for treatment of children with serious emotional disturbance; and

(3) A child's parent or guardian refuses or is unable to consent; and

(4) As the result of serious emotional disturbance, the child is:

(a) likely to cause harm to himself or suffer substantial mental or physical deterioration, or

(b) likely to cause harm to others; and

(5) There is an individualized plan of treatment which includes:

(a) a proposed placement and projections for aftercare upon completion of treatment,

(b) specific behavioral goals by which the success of the treatment can be measured,

(c) evidence of attempts to involve the patient and the patient's family in the development of the plan has been presented to the court by the department or the petitioner; and

(6) The plan for involuntary treatment is consistent with the least restrictive alternative principle.

16-2419. EFFECT OF INVOLUNTARY TREATMENT ORDERS ON PARENTAL RIGHTS AND CUSTODY. If an order for involuntary treatment is issued, the parents, guardian or custodian of the child will retain all parental rights, including legal custody of the child, or the orders for involuntary treatment and disposition. The department of health and welfare shall acquire physical custody of the child and the right to determine the disposition and placement of the child whenever the placement requires the expenditure of public funds as provided in section 16-2415, Idaho Code.

16-2420. SUCCESSIVE PERIODS OF INVOLUNTARY TREATMENT. Any order for involuntary treatment pursuant to section 16-2416, Idaho Code, may be renewed. At the time of expiration of a one hundred twenty (120) day involuntary treatment order, authority for continued involuntary treatment may be extended for periods of up to one hundred eighty (180) days upon a petition filed with the court by the treatment facility or by the child's parent, or guardian, or other interested party.

(1) The petition shall include a statement why the child still meets the criteria for involuntary treatment, what treatment has been provided and what progress has been made, why a further period of involuntary treatment is warranted, and the identity of any person who has knowledge concerning the case. The petition shall be promptly

served upon the child, the child's parent, custodian, or guardian, and the child's attorney.

(2) The child shall be entitled to a hearing before the court on the petition on or before the first business day following expiration of the operative period of involuntary treatment and shall have the same rights to which he was entitled at the initial hearing on involuntary treatment in section 16-2417, Idaho Code.

(3) The court shall order that the child be discharged unless it determines by clear and convincing evidence that:

(a) The child still satisfies the criteria for involuntary treatment; and

(b) That there is a reasonable prospect that a substantial therapeutic purpose would be served by a further period of involuntary treatment.

(4) Additional involuntary treatment orders for periods up to one hundred eighty (180) days each may be ordered in accordance with this section.

16-2421. WAIVER OF RIGHT TO BE PRESENT AT HEARINGS. A child may waive the right to be present at any hearing to which he is entitled under this section by filing a written waiver that the court finds is knowingly and voluntarily executed by the child. The child's attorney shall consult with him and determine whether the child understands his rights and desires to waive his right to be present at the hearing. The attorney shall then submit a verified written statement to the court explaining the attorney's understanding of the child's intent. By waiving the right to be present at the hearing, the child waives no other rights.

16-2422. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT -- PERSONS UNDER VOLUNTARY TREATMENT. (1) A facility may not administer any treatments or medications to a child admitted to the facility as a voluntary patient under section 16-2407, Idaho Code, unless the parent, guardian or custodian of the child has given informed consent to the treatment, except that emergency or medically necessary treatments may be given without informed consent, if delay in treatment may cause harm to the child, and the parent, guardian, or custodian of the child is not available.

(2) After informed consent has been given, the parent, guardian or custodian of a child may revoke such consent at any time, by clearly communicating such revocation to facility staff. When consent has been revoked, the facility shall promptly discontinue the treatment, provided that a course of treatment may be concluded or phased out where necessary to avoid the harmful effects of abrupt withdrawal. The facility may require the parent, guardian, or custodian to sign a written revocation of consent before discontinuing the treatment.

(3) Except in an emergency situation, the parents of a child being treated voluntarily shall have the right to refuse any and all medications or other treatments. If appropriate medications or treatments are refused, and the facility is unable to care for the child without such treatments, the facility may then discharge the child, with due care for his safety. Neither the facility nor providers shall be held liable. If the child appears to meet the criteria for involun-

tary treatment as specified in section 16-2418, Idaho Code, the facility may file a petition for involuntary treatment.

16-2423. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT -- PERSONS SUBJECT TO INVOLUNTARY OR EMERGENCY TREATMENT. (1) During an emergency evaluation under section 16-2413, Idaho Code, the treatment facility may administer necessary medications or other treatments, except for electroconvulsive treatments, to a child, consistent with good medical practice without the informed consent of the parent of the child, if it is not possible to obtain such consent.

(2) Notwithstanding subsection (1) of this section, a treatment facility shall not administer experimental treatment or any other special therapy except as provided by law or in rules promulgated by the department.

(3) No psychosurgery or electroconvulsive treatment shall be performed on a child, except by order of a court upon a finding that the treatment is necessary to prevent serious harm to the child. Consent of the parent of a child to this treatment without a court order shall be invalid and shall not be a defense against any legal action that might be brought against the provider of the treatment.

(4) Consent for other medical/surgical treatments not intended primarily to treat a child's serious emotional disturbance shall be obtained in accordance with the applicable law.

16-2424. PROVISION OF TREATMENT. (1) Every child subject to an involuntary treatment order under this chapter shall be provided with appropriate treatment in accordance with the least restrictive alternative principle that offers him a realistic prospect of improvement. Children shall be afforded treatment in facilities that conform to the applicable rules of the department, and that are able to adequately care for and treat the persons they serve.

(2) A written individual treatment plan shall be prepared, with the participation of the child (to the extent he is able), his family and any other persons of his choice, during voluntary admission or emergency psychiatric evaluation or, within seven (7) days of the signing of an order for involuntary treatment. The individual treatment plan shall be approved by the responsible physician, and the course of treatment actually administered shall conform to the plan.

(3) The child's progress in attaining the objectives in the treatment plan shall be noted in his records, and the revisions to the plan shall be made as necessary. The child and the child's parent, custodian, or guardian shall be afforded an opportunity to participate in any substantial revision of the treatment plan.

(4) A copy of the individual treatment plan shall be given to the child, his parents and to any other person designated by him, provided that the responsible physician may preclude disclosure of the individual treatment plan to the child if he states in writing why disclosure would be harmful to the child.

16-2425. RIGHTS OF CHILDREN IN TREATMENT FACILITIES. (1) Competence. No right of any child shall be denied or reduced solely by the reason of his having been evaluated, or treated under this chapter. A finding of lack of capacity to make an informed decision under this

chapter shall not by itself establish lack of competence for any other purpose.

(2) Right to treatment. Children subject to an involuntary treatment order under this chapter shall have the right to treatment to the extent provided in section 16-2424, Idaho Code.

(3) Healthful and humane environment. Every child shall have the right to a healthful and humane environment. Every facility shall provide a clean, safe and comfortable environment in a structure that complies with applicable licensing requirements governing physical facilities, nutrition, health and safety, and medical services, and for aspects of care for which there are no mandatory requirements, consistent with the generally accepted professional standards in Idaho. In addition, every child shall have the right to a humane psychological environment that protects him from harm or abuse, provides reasonable privacy, promotes personal dignity, and provides opportunity for improved functioning.

(4) Leaves of absence. Leaves of absence may be granted in appropriate cases at the discretion of the treatment facility. Police officers are authorized to and shall, at the request of a treatment facility, take into protective custody and return to the treatment facility any child who is subject to an order for involuntary treatment and placed by the department and any child placed by the authority of his parents who leaves without proper authorization or does not return at the end of an authorized leave of absence. The child's parent or guardian shall be notified before any leave of absence occurs and in the event that a child is away without authorization, they shall be notified immediately.

(5) Restraints and seclusion. Every child shall have the right to be free from unnecessary or inappropriate restraints or seclusion consistent with the least restrictive alternative principle. Restraints and seclusion shall be administered only in conformity with rules adopted by the department.

(6) Corporal punishment. Every child shall have the right to be free from corporal punishment.

(7) Nutrition. Every child shall have the right to a nutritionally sound and medically appropriate diet.

(8) Exercise and recreation. Every child shall have reasonable opportunities for physical and outdoor exercise and access to recreational equipment. Reasonable limitations may be set by general rules or, for clinical reasons, in particular cases.

(9) Visitors. Every child shall have the right to receive visitors with reasonable privacy as is consistent with the treatment plan.

(a) Hours during which visitors may be received shall be limited only in the interest of effective treatment and efficiency of the facility and shall be sufficiently flexible to accommodate the individual needs of the child and his visitors.

(b) Notwithstanding the above, each resident has the right to receive visits from his physician, psychologist, clergyman or social worker in private, irrespective of visiting hours, provided that the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(c) A facility may impose conditions on visits and privacy of visits if there is reason to believe that a visitor poses a sub-

stantial risk of harm to the child, or others.

(10) Communications. (a) Every child shall have the right to send and receive mail. Reasonable rules governing inspection (but not reading) of incoming mail may be established, provided that they are necessary for substantial health care purposes and that they preserve the child's rights of privacy to the extent compatible with his clinical status.

(b) Every child shall have the right to reasonably private access to telephones, including the right to make long-distance calls to the extent he can arrange for payment for such calls.

(c) A treatment facility shall provide reasonable assistance to children in exercising their communication rights. Reasonable limitations on the use of the mail and telephones may be set by general rules. In cases of personal emergencies when other means of communication are not satisfactory, the child shall be afforded reasonable use of long-distance calls. A child who is indigent shall be furnished writing, postage and telephone facilities without charge.

(11) Practice of religion. Every child shall have the right to practice or refrain from practice of a religion. No child shall be subjected to pressure, rewards or punishments based on his decision to practice or refrain from practice of religion or of any particular religion. The treatment facility is not required to provide special assistance to persons so that they may practice a religion.

(12) Personal possessions. Every child shall have the right to keep, use and store personal possessions and to maintain and use bank accounts and other sources of personal funds, unless precluded from doing so by order of the court. Reasonable limitations may be set by general rules or, for clinical reasons, in particular cases.

(13) Nonretaliation. No child shall be subjected to retaliation or to any adverse change of conditions or treatment because of having asserted his rights.

(14) Access to counsel. A child may at any time have a telephone conversation with or be visited by his lawyer or any employee of his attorney's firm, or a representative of the state protection and advocacy system.

(15) Medication. Each child has the right to be free from unnecessary or excessive medication.

(16) Right to education. A child who is in a treatment facility shall be provided education and training as necessary to encourage and stimulate developmental progress and achievement and as required by state and federal law. In no event shall a child be allowed to remain in a treatment facility for more than ten (10) days without receiving educational services.

16-2426. NOTIFICATION OF RIGHTS. At the time of admission to a facility, whether the admission is voluntary or involuntary, the facility shall insure that the child is fully informed of his rights in terms that he can understand. This information shall be provided both orally and in writing. Copies of the written explanation of the child's rights and a written, signed acknowledgement by the child and his parent that he has read and understands the rights, shall be kept in the child's records and made available for inspection by represen-

tatives of the child and employees of the state protection and advocacy system. A statement of rights shall be posted in a common area of the facility available to residents and plainly visible.

16-2427. DISCHARGE. (1) The responsible physician shall review periodically whether a child meets the criteria for involuntary treatment, and if he concludes that the person does not meet such criteria, he shall undertake discharge procedures.

(2) Discharge of any child may be delayed for a reasonable period of time in order to arrange transportation or lodging for the child, or for other good cause to protect the safety or well-being of the child.

(3) Involuntary treatment after discharge. A child who has been discharged from emergency evaluation, one hundred twenty (120) day involuntary treatment or a subsequent period of involuntary treatment may be subjected to further involuntary treatment only pursuant to the procedures provided in this chapter and upon a showing of new circumstances warranting such involuntary treatment which were not known at the time of discharge.

(4) Release to outpatient treatment. The responsible physician may, as part of an individual treatment plan for a child who is subject to involuntary treatment, release such child to outpatient treatment upon the condition that, if the child fails to follow through with, or respond acceptably to, such outpatient treatment, he may be returned to inpatient treatment without a court hearing during the effective period of the order, or until he meets the criteria for voluntary treatment or discharge. Within seventy-two (72) hours of his return to the facility, there must be an administrative review to determine if inpatient treatment is necessary. The review hearing must be conducted by the facility director or his designee, a physician, a social worker, psychologist, or nurse. The child and his parent, or guardian shall be given an opportunity to be represented by counsel and to present evidence and testimony.

(5) Habeas corpus. Nothing in this chapter shall limit other legal rights or remedies concerning discharge which a person may have pursuant to law, rule, regulation or policy, including the right to petition for a writ of habeas corpus.

16-2428. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. All certificates, applications, records, and reports directly or indirectly identifying a patient or former patient or an individual whose involuntary treatment has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except with the consent of the person identified or his legal guardian, if any, or as disclosure may be necessary to carry out any of the provisions of this chapter, or as a court may direct upon its determination that disclosure is necessary and that failure to make such disclosure would be contrary to public interest.

(1) No person in possession of confidential statements made by a child over the age of fourteen (14) years in the course of treatment may disclose such information to the child's parent or others without the written permission of the child, unless such disclosure is necessary to obtain insurance coverage, to carry out the treatment plan or

prevent harm to the child or others, or, unless authorized to disclose such information by order of a court.

(2) The child has the right of access to information regarding his treatment and has the right to have copies of information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with his treatment record.

(3) Nothing in this section shall prohibit the denial of access to records, by a child when a physician or other mental health professional believes and notes in the child's medical records that the disclosure would be damaging to the child. In any case, the child has the right to petition the court for an order granting access.

(4) Access to records by the state protection and advocacy system shall be governed by 42 U.S.C. 10108 et seq., as amended.

16-2429. RIGHT TO REPRESENTATION. (1) Every child has the right to counsel to represent him at all proceedings under this chapter and to obtain the advice of an attorney at any time regarding his status under this chapter, at his or his parents' expense. When a child has not retained an attorney and is unable to do so, or the child and his parents are unable to afford one, and proceedings under this chapter have been initiated in court, the court shall appoint an attorney to represent him in court proceedings.

(2) Every treatment facility shall establish a fair procedure for the assertion, resolution, and redress of grievances, and attempt to resolve problems and protect the rights of people treated by the facility. The child shall have the right to have a representative present at these proceedings, but not at public expense.

16-2430. TRANSPORTATION. Following disposition by the department, it is the responsibility of the county sheriff to transport the person to the treatment facility. The department must notify the sheriff of the designated treatment facility within twenty-four (24) hours of the entry of the department's disposition order. The county and the department shall allow for transportation by a family member or a member of the family and children's services regional program staff whenever possible and determined to be in the best interests of the child.

16-2431. COST OF INVOLUNTARY TREATMENT PROCEEDINGS. All costs associated with the involuntary treatment proceedings, including usual and customary fees of designated examiners, transportation costs and all medical, psychiatric and hospital costs, shall be the responsibility of the parents of the child according to their ability to pay, based on the sliding fee scale established under section 16-2433, Idaho Code, or, if indigent, the county of such child's residence after all personal, family and third party resources including medical assistance as authorized by title XIX of the social security act, as amended, are considered. The department shall assume responsibility for usual and customary treatment costs when the order for involuntary treatment is signed until the involuntary person is discharged and after all personal, family and third party resources are considered in accordance with section 66-354, Idaho Code. For the purposes of this section, "usual and customary treatment costs" includes room and board; support services rendered at a facility of the department;

routine physical, medical, psychological and psychiatric examination and testing; and group and individual therapy, psychiatric treatment, medication and medical care which can be provided at a facility of the department or approved by the department. The term "usual and customary treatment costs" shall not include witness fees and expenses for court appearances. Counties shall have no responsibility for costs of voluntary treatment of children under this chapter. Counties shall have no responsibility to pay for the cost of involuntary treatment of children after the court order is signed. This section does not affect the right of any child to receive free mental health or developmental disability services under any publicly supported program or the right of any parent to reimbursement from, or payment on the child's behalf by, any publicly supported program or private insurer.

16-2432. FALSE STATEMENTS -- PENALTIES. (1) Any person who knowingly and willfully gives false information or takes other wrongful action for the purpose of distorting, corrupting or interfering with the process provided in this chapter shall be subject to a civil fine, and shall be liable for injunctive relief and money damages, in addition to any other liability under law.

(2) Nothing in this chapter shall be construed as diminishing or relieving any person from their duty to report instances of child neglect or abuse under chapter 16, title 16, Idaho Code, or any liability associated with failure to make such reports.

16-2433. DEPARTMENT RULES. The director is authorized to promulgate rules necessary to implement this chapter that are consistent with its provisions including the development of a schedule of fees to be charged to parents by the department for services, based on the cost of services and the ability of parents to pay.

16-2434. CONSTRUCTION. (1) As used in this chapter, pronouns refer to both male and female persons equally, and articles refer to singular and plural persons and things.

(2) If any provision of this chapter or its application to any person or circumstance is held invalid, it is the legislative intent that such invalidity not affect other provisions or applications which can be given effect apart from that which is invalidated, and to this end the provisions of this chapter shall be deemed severable.

(3) This chapter is intended as a unified, general chapter covering its subject matter, and accordingly none of its provisions shall be deemed to be repealed by implication by subsequent legislation if such a construction can reasonably be avoided.

SECTION 2. This act shall be in full force and effect on and after July 1, 1998.

Approved March 28, 1997.

SENATE JOINT RESOLUTIONS

(S.J.R. No. 101)

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO SECTION 17, ARTICLE V, AND SECTION 27, ARTICLE V, OF THE CONSTITUTION OF THE STATE OF IDAHO, RELATING TO THE SALARIES OF JUSTICES AND JUDGES AND CHANGE IN COMPENSATION OF OFFICERS, TO DELETE OBSOLETE LANGUAGE, TO PROVIDE THAT THE SALARIES OF JUSTICES AND JUDGES SHALL BE AS PROVIDED BY STATUTE, TO CLARIFY THAT JUDGES OF THE COURT OF APPEALS AND MAGISTRATE JUDGES SHALL SUBSCRIBE AN OATH REGARDING A THIRTY DAY DISPOSITION OF CASES SUBMITTED TO THEM AND TO CLARIFY THAT THE LEGISLATURE MAY INCREASE OR DIMINISH THE COMPENSATION OF JUDGES OF THE COURT OF APPEALS AND MAGISTRATE JUDGES; STATING THE QUESTION TO BE SUBMITTED TO THE ELECTORATE; DIRECTING THE LEGISLATIVE COUNCIL TO PREPARE THE STATEMENTS REQUIRED BY LAW; AND DIRECTING THE SECRETARY OF STATE TO PUBLISH THE AMENDMENT AND ARGUMENTS AS REQUIRED BY LAW.

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

SECTION 1. That Section 17, Article V, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 17. SALARIES OF JUSTICES AND JUDGES. The salary of the justices of the Supreme Court, ~~until otherwise provided by the legislature, shall be three thousand dollars ($3,000) each per annum, and~~ the salary of judges of the court of appeals, the salary of the judges of the district court~~, until otherwise provided by the legislature, shall be three thousand dollars ($3,000) each per annum~~ and the salary of magistrate judges shall be as provided by statute, and no justice of the Supreme Court, ~~or~~ judge of the court of appeals, judge of the district court or magistrate judge, shall be paid his salary, or any part thereof, unless he shall have first taken and subscribed an oath that there is not in his hands any matter in controversy not decided by him which had been finally submitted for his consideration and determination, thirty ~~(30)~~ days prior to the taking and subscribing such oath.

SECTION 2. That Section 27, Article V, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 27. CHANGE IN COMPENSATION OF OFFICERS. The

legislature may by law diminish or increase the compensation of any or all of the following officers, to wit: governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, superintendent of public instruction, ~~commissioner of immigration and labor,~~ justices of the Supreme Court, ~~and~~ judges of the court of appeals and district courts and ~~district attorney~~ magistrate judges; but no diminution or increase shall affect the compensation of the officer then in office during his term, provided, however, that the legislature may provide for the payment of actual and necessary expenses of these officers incurred while in performance of official duty.

SECTION 3. The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows:

"Shall Section 17, Article V, and Section 27, Article V, of the Constitution of the State of Idaho be amended to delete obsolete language and to provide that the salaries of justices and judges shall be as provided by statute, to clarify that judges of the Court of Appeals and magistrate judges shall subscribe an oath regarding a thirty day disposition of cases submitted to them and to clarify that the legislature may increase or diminish the compensation of judges of the Court of Appeals and magistrate judges?".

SECTION 4. The Legislative Council is directed to prepare the statements required by Section 67-453, Idaho Code, and file the same.

SECTION 5. The Secretary of State is hereby directed to publish this proposed constitutional amendment and arguments as required by law.

Adopted by the Senate February 20, 1997
Adopted by the House March 6, 1997

(S.J.R. No. 102)

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF IDAHO, RELATING TO SALARIES AND FEES OF OFFICERS OF THE EXECUTIVE DEPARTMENT, TO DELETE OBSOLETE LANGUAGE AND AMOUNTS BY REPEALING SECTION 19, ARTICLE IV; STATING THE QUESTION TO BE SUBMITTED TO THE ELECTORATE; DIRECTING THE LEGISLATIVE COUNCIL TO PREPARE THE STATEMENTS REQUIRED BY LAW; AND DIRECTING THE SECRETARY OF STATE TO PUBLISH THE AMENDMENT AND ARGUMENTS AS REQUIRED BY LAW.

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

SECTION 1. That Section 19, Article IV, of the Constitution of the State of Idaho, be, and the same is hereby repealed.

SECTION 2. The question to be submitted to the electors of the

State of Idaho at the next general election shall be as follows:

"Shall Section 19, Article IV, of the Constitution of the State of Idaho, relating to salaries and fees of the officers of the executive department be repealed?".

SECTION 3. The Legislative Council is directed to prepare the statements required by Section 67-453, Idaho Code, and file the same.

SECTION 4. The Secretary of State is hereby directed to publish this proposed constitutional amendment and arguments as required by law.

Adopted by the Senate February 20, 1997
Adopted by the House March 6, 1997

SENATE JOINT MEMORIALS

(S.J.M. No. 102)

A JOINT MEMORIAL
TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-fourth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the annual federal budget has not been balanced since 1969, and the federal public debt is now more than five trillion dollars, or twenty thousand dollars for every man, woman and child in America; and

WHEREAS, continued deficit spending demonstrates an unwillingness or inability of both the federal executive and legislative branches to spend no more than available revenues; and

WHEREAS, fiscal irresponsibility at the federal level is lowering our standard of living, destroying jobs, and endangering economic opportunity now and for the next generation; and

WHEREAS, the federal government's unlimited ability to borrow raises questions about fundamental principles and responsibilities of government, with potentially profound consequences for the nation and its people, making it an appropriate subject for limitation by the Constitution of the United States; and

WHEREAS, the Constitution of the United States vests the ultimate responsibility to approve or disapprove constitutional amendments with the people, as represented by their elected state legislatures; and opposition by a small minority repeatedly has thwarted the will of the people that a Balanced Budget Amendment to the Constitution should be submitted to the states for ratification.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Congress of the United States expeditiously pass, and propose to the legislatures of the several states for ratification, an amendment to the Constitution of the United States requiring, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of

Representatives of Congress, the congressional delegation representing the state of Idaho in the Congress of the United States, and to the Secretary of State and the presiding officers of both houses of the Legislatures of each of the other states in the Union.

Adopted by the Senate January 30, 1997
Adopted by the House February 13, 1997

(S.J.M. No. 103)

A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the First Regular Session of the Fifty-fourth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, under the Internal Revenue Code gain or loss from the sale or exchange of a capital asset is characterized as either short-term or long-term depending on how long the asset was held by the taxpayer and the maximum tax rate on the net capital gain (i.e. the taxpayer's long-term capital gain less short-term capital loss, if any) of individuals, estates and trusts is 28%; and

WHEREAS, the economy of Idaho and the United States is based on private capital investment; and

WHEREAS, much of that capital investment in Idaho is held in small businesses, farms and other entrepreneurial investment vehicles; and

WHEREAS, Idaho and the United States would benefit economically from more rapid turnover of such capital investments; and

WHEREAS, the current capital gains tax rate inhibits many investors from selling their assets; and

WHEREAS, the capital gains tax rate acts as a deterrent to full economic development.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we hereby petition Congress and the President of the United States to amend the Internal Revenue Code so that the maximum tax rate on long-term capital gains be lowered to 14%.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate February 13, 1997
Adopted by the House March 17, 1997

HOUSE JOINT MEMORIALS

(H.J.M. No. 2)

A JOINT MEMORIAL

TO THE SECRETARY OF THE UNITED STATES DEPARTMENT OF INTERIOR, TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-fourth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, during the settlement of what is now the state of Idaho and the years immediately following, grizzly bear and human interaction occurred to the extent that it became necessary to reduce the populations of grizzly bear in the interests of personal safety and the protection of private property; and

WHEREAS, the natural result of these efforts over time, has been the establishment of a de facto and maximum acceptable ratio of bears to humans in areas where their populations remain; and

WHEREAS, the reintroduction of grizzly bears to Idaho will disrupt this bear-to-human ratio to the detriment of humans resulting in injury, death, and loss of personal freedoms to the citizens of Idaho; and

WHEREAS, our neighboring state of Montana has experienced unnecessary loss of human life, unacceptable land use restrictions and legal denial of the right to protect private property, which current reintroduction proposals for Idaho also threaten and echo; and

WHEREAS, the state of Idaho is unequivocally opposed to the reintroduction of the grizzly bear into the Selway-Bitterroot ecosystem and we request the Secretary of Interior to withdraw the Federal Notice of Intent (January 9, 1995, Federal Register Vol. 60, No. 5 pp. 2399-2400) dealing with the proposed reintroduction; and

WHEREAS, while we realize that reintroduction of grizzly bears may be desirable in terms of speeding recovery, we know of no scientific data to demonstrate that it is necessary and we have strong concerns about the fiscal impact to the state and to the landowners and other users in the area; and

WHEREAS, the cumulative impacts of the reintroduction programs cause us grave concern as we already have had wolves reintroduced into Idaho contrary to the state's wishes and the Idaho Department of Fish and Game is being requested to assist in the handling of nuisance wolves, and if grizzly bears are reintroduced it will in all probability evolve into a major effort of time and expenditures for the Idaho

Department of Fish and Game which is already fiscally challenged; and

WHEREAS, if grizzly bears are reintroduced, the practical effect upon the people of the state is a large unanswered question and the potential for conflict with campers, hikers, and other users of the public lands is very real, as is the potential for restrictions on the use of the public lands.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we are in full support of Governor Batt's request for immediate suspension of the Bitterroot Grizzly Bear Environmental Impact Statement by the withdrawal of the Federal Notice of Intent regarding the reintroduction of grizzly bears.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the Secretary of the United States Department of Interior, to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House February 6, 1997
Adopted by the Senate March 14, 1997

(H.J.M. No. 5)

A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-fourth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, improving patient access to quality health care is a paramount national goal; and

WHEREAS, the key to improved health care, especially for persons with serious unmet medical needs, is the rapid approval of safe and effective new drugs, biological products, and medical devices; and

WHEREAS, minimizing the delay between discovery and eventual approval of a new drug, biological product, or medical device derived from research conducted by innovative pharmaceutical and biotechnology companies could improve the lives of millions of Americans; and

WHEREAS, current limitations on the dissemination of information about pharmaceutical products reduce the availability of information to physicians, other health care professionals, and patients, and unfairly limit the right of free speech guaranteed by the First Amendment to the United States Constitution; and

WHEREAS, the current rules and practices governing the review of new drugs, biological products, and medical devices by the United

States Food and Drug Administration can delay approvals and are unnecessarily expensive.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Congress of the United States address this important issue by enacting comprehensive legislation to facilitate the rapid review and approval of innovative new drugs, biological products, and medical devices, without compromising patient safety or product effectiveness.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House February 18, 1997
Adopted by the Senate March 4, 1997

(H.J.M. No. 6)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-fourth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, without sanction of the Idaho Legislature, Canadian wolves have been introduced within the boundaries of the State of Idaho; and

WHEREAS, these wolves are breeding and proliferating in increasing numbers; and

WHEREAS, a need now exists to manage problem wolves in various areas of this state and monitor and mitigate their adverse impact on livestock and game populations, the property of this state, and its citizens; and

WHEREAS, the agencies within this state possessing the ability and expertise to accomplish these tasks are mainly funded by sportsman's and livestock operator's funds not authorized for these purposes; and

WHEREAS, our neighboring states of Montana and Wyoming are encountering similar adverse effects from the federally mandated "Wolf Recovery" Program.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urgently request the Congress of the United States to take action to provide adequate funding to this state for the specific purpose of conducting the wolf-related activities described in this memorial and any other costs

related to those activities.

BE IT FURTHER RESOLVED that we urge the State of Idaho to participate in a tri-state effort with Montana and Wyoming to identify potential areas for cooperative efforts to secure federal funding and recognition regarding the needs of the states created by the federally mandated Wolf Recovery Program.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States and the Governor of the State of Idaho.

Adopted by the House March 3, 1997
Adopted by the Senate March 14, 1997

(H.J.M. No. 7)

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-fourth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, implementation of the new national ambient air quality $PM_{2.5}$ and ozone standards would hinder conformance in progress under the existing PM_{10} standards in Idaho, and the federal Environmental Protection Agency (EPA) still has PM_{10} responsibilities to the states to complete before it should mandate further workloads; and

WHEREAS, implementation of the revised standards for ozone could require extensive and unjustifiable regulations for large, sparsely-populated states like Idaho, where transportation factors are a key issue; and

WHEREAS, EPA has not yet committed to full support for the entire range of monitoring activities for $PM_{2.5}$; and

WHEREAS, the difficulties states have encountered in implementing the PM_{10} standard could be repeated with the new standards, and EPA should provide documented guidance, models, resources, tools and control strategies, and, if not available, grant specific flexibility to the states for prevention and resolution; and

WHEREAS, controls on causal pollutants must be targeted, and population exposure criteria must be identified more clearly in order to maximize the health benefits of stricter standards; and

WHEREAS, regional alliances between states and the federal government, while desirable, should not be mandated to solve PM problems; and

WHEREAS, air quality problems in Idaho are not solved autonomously by the state, but through state partnerships with our communities; and

WHEREAS, EPA has failed to identify how coordination of the adoption of the proposed standards with regional haze, prevention of significant deterioration, and new source review requirements, consistent with state implementation plans will occur; and

WHEREAS, the federal government must be consistent in its applications of policies, such as use of prescribed fire for ecosystem management, and must consider their relationships to the new PM standard and visibility requirements.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we express our objection to the Environmental Protection Agency regarding the new air quality standards as proposed, and request that EPA justify and fund its mandates, provide flexibility and reasonable assistance to the states, and base its dictates upon a foundation of sound reason, consistency with other federal requirements and sensible requirements individualized for state demographics before it attempts to implement these standards.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the House March 11, 1997
Adopted by the Senate March 17, 1997

SENATE CONCURRENT RESOLUTIONS

(S.C.R. No. 101)

A CONCURRENT RESOLUTION
PROPOSING A NEW JOINT RULE 20 TO THE JOINT RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.

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

WHEREAS, the members of the Legislature do believe that a new Joint Rule 20 should be added to the Joint Rules of the Senate and the House of Representatives regarding proposed constitutional amendments.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Joint Rules of the Senate and the House of Representatives be amended by the addition thereto of a new Joint Rule 20 to read as follows:

Joint Rule 20

Constitutional Amendments.--A Joint Resolution proposing an amendment to the Constitution of the State of Idaho must be introduced on or before the thirty-sixth day of the Regular Legislative Session and must be transmitted from the house of origin to the other house prior to the fifty-fifth day of the Regular Legislative Session. The provisions of this rule may be waived by the presiding officer of either house upon presentment of a signed petition by the majority or minority leadership of the house. Requests for a proposed amendment to the Constitution of the State of Idaho shall be in the Office of Legislative Services for drafting at least seven calendar days prior to its intended introduction date.

Adopted by the Senate January 16, 1997
Adopted by the House February 5, 1997

(S.C.R. No. 102)

A CONCURRENT RESOLUTION
RECOGNIZING ACCOMPLISHMENTS AND NEEDS FOR ADULT LITERACY PROGRAMS AND DECLARING NOVEMBER 1997 TO BE IDAHO LITERACY MONTH WITH THE THEME "BUILDING FAMILIES OF LEARNERS."

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

WHEREAS, expansion of adult basic education capacity in Idaho is critical in order to ensure that every adult is literate and possesses the skills necessary for success in today's increasingly sophisticated society and workplace; and

WHEREAS, stressing intergenerational literacy is particularly effective because raising the literacy levels of Idaho parents enhances their children's success in school and society; and

WHEREAS, building lifelong learning skills empowers adults to continue training and retraining to maintain competitive skills and employment in today's rapidly changing workplace; and

WHEREAS, adult literacy programs for non-English speaking adults ensure they are successful in society and the workplace and language development at home contributes to the success of their children; and

WHEREAS, community education is critical in order to inform key decision-makers about the broad cross section of individuals in Idaho who need and can benefit from increased literacy services; and

WHEREAS, support is critical in order to provide high quality training, materials and technology to staff and volunteers in Idaho's literacy programs; and

WHEREAS, on behalf of the people of Idaho, the Legislature has in the past recognized literacy programs and continues this commitment by designation of Idaho Literacy Month to focus on issues of family and workplace literacy.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that November 1997 be declared "Idaho Literacy Month" for the purpose of focusing public awareness on issues of family and workplace literacy with the theme, "BUILDING FAMILIES OF LEARNERS."

Adopted by the Senate January 24, 1997
Adopted by the House February 6, 1997

(S.C.R. No. 104)

A CONCURRENT RESOLUTION

STATING FINDINGS BY THE LEGISLATURE AND AUTHORIZING THE LEGISLATIVE COUNCIL TO ESTABLISH AN INTERIM STUDY COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF MENTAL HEALTH SERVICES.

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

WHEREAS, mental illness in Idaho is a serious problem with great consequences to families and society as a whole when not appropriately treated; and

WHEREAS, Idaho ranks near the bottom of all states in the delivery of public mental health services and spending on mental health care and has one of the highest suicide rates in the country; and

WHEREAS, the continued increase in the need for mental health services has surpassed the current resources to provide even basic services for the mentally ill; and

WHEREAS, the state's failure to provide adequate public mental health services as required by state law has resulted in the county medically indigent program, and therefore property taxpayers, paying for some of these services; and

WHEREAS, when these services are not covered by the county, then Idaho's mental health professionals and hospitals end up providing mental health services without reimbursement, resulting in a hardship for providers and a cost shift to paying patients and their employers.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Legislative Council is authorized to appoint a committee of not more than eight members to undertake and complete a study of the public mental health system in Idaho including determining the need for public supported mental health services, identifying problem areas and exploring alternatives for improving access to appropriate and cost-effective mental health services.

BE IT FURTHER RESOLVED that the committee be comprised of legislators from the Senate and House of Representatives Health and Welfare Committees. The Legislative Council is also authorized to appoint nonlegislative members to sit with the committee who shall be nonvoting members and who shall attend and participate at their own expense. Nonlegislative members shall include representatives of: mental health professionals including physicians, psychologists, counselors and social workers; mental health facilities including institutes of mental disease and other hospitals; primary care providers; advocates for the mentally ill; counties; school districts; law enforcement; and the Department of Health and Welfare.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations and proposed legislation, if any, to the Second Regular Session of the Fifty-fourth Idaho Legislature.

Adopted by the Senate February 6, 1997
Adopted by the House March 18, 1997

(S.C.R. No. 111)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE OF THE INDUSTRIAL COMMISSION CONCERNING FIRST AID AND PERSONAL PROTECTION EQUIPMENT.

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

WHEREAS, the Legislature is vested with authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Industrial Commission concerning first aid and personal protection equipment is not consistent with legislative intent and should be

rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 17.08.16.011.19, a rule of the Industrial Commission concerning first aid and personal protection equipment, promulgated as a pending rule under docket number 17-0816-9601, be, and the same is hereby rejected, and declared null and void and of no force and effect.

Adopted by the Senate February 18, 1997
Adopted by the House March 18, 1997

(S.C.R. No. 112)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE INDUSTRIAL COMMISSION CONCERNING GENERAL SAFETY AND HEALTH STANDARDS.

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

WHEREAS, the Legislature is vested with authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Industrial Commission concerning general safety and health standards are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 17.10.01 through IDAPA 17.10.30, concerning general safety and health standards, promulgated as pending rules under Docket numbers 17-1001-9601 through 17-1030-9601, be, and the same are hereby rejected, and declared null and void and of no force and effect.

Adopted by the Senate February 18, 1997
Adopted by the House March 18, 1997

(S.C.R. No. 113)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE DIVISION OF BUILDING SAFETY DEALING WITH ELECTRICAL SPECIALTY LICENSING AND SPECIALTY EXPERIENCE REQUIREMENTS.

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

WHEREAS, the Legislature is vested with authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Building Safety Division dealing with electrical specialty licensing and specialty experience requirements are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 07.01.04.014, a rule of the Division of Building Safety dealing with electrical specialty licensing, promulgated as a pending rule under Docket number 07-0104-9601, and IDAPA 07.01.07.013, a rule of the Division of Building Safety dealing with specialty experience requirements, promulgated as a pending rule under Docket number 07-0104-9602, be, and the same are hereby rejected, and declared null and void and of no force and effect.

Adopted by the Senate February 18, 1997
Adopted by the House March 17, 1997

(S.C.R. No. 114)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE CONCERNING THE ABILITY TO READ AND DIRECTING THE STATE BOARD OF EDUCATION AND THE DEPARTMENT OF EDUCATION TO PROVIDE A REPORT TO THE LEGISLATURE ON READING EDUCATION IN IDAHO.

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

WHEREAS, the state of Idaho recognizes that reading is fundamental to a student's ability to achieve his or her full potential; and

WHEREAS, well-read citizens are vital to the health of a democratic society; and

WHEREAS, a literate workforce is the cornerstone of our modern economy; and

WHEREAS, the failure to learn to read in the primary grades is directly correlated with the risk of dropout and has been identified as a lifelong deterrent to successful and productive citizenship; and

WHEREAS, studies show that those who cannot read by the end of third grade are at high risk of dropping out of school, being unemployed and engaging in criminal activity; and

WHEREAS, the investment required to teach a child to read will reduce greatly the costs of welfare, unemployment or prisons; and

WHEREAS, Idaho's public school educators and administrators are charged with ensuring that every student learns to read capably and thoughtfully.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the

House of Representatives concurring therein, that we direct the State Board of Education, in cooperation with the State Department of Education, to conduct a study of the status of reading education in Idaho and report its findings to the Legislature on or before January 31, 1998, together with recommendations designed to ensure that every Idaho capable child is able to read at the appropriate level by the end of the third grade.

Adopted by the Senate February 19, 1997
Adopted by the House March 6, 1997

(S.C.R. No. 116)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE FINDINGS AND APPROVING ADMINISTRATIVE RULES OF THE DIVISION OF ENVIRONMENTAL QUALITY OF THE DEPARTMENT OF HEALTH AND WELFARE AND OF THE DEPARTMENT OF PARKS AND RECREATION THAT IMPOSE A FEE OR CHARGE.

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

WHEREAS, the Legislature by statute must approve, amend or modify certain administrative rules that impose a fee or charge by adoption of a Concurrent Resolution before the rules become effective; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the fee provisions of the Land Remediation Rules of the Division of Environmental Quality of the Department of Health and Welfare contained in IDAPA 16.01.18 and the fee provisions of rules of the Department of Parks and Recreation contained in IDAPA 26.01.20, be, and the same are hereby approved. Other rule provisions imposing fees or charges that were not submitted through the Office of the Rules Coordinator for legislative review or that otherwise are not included in this Concurrent Resolution shall be null, void and of no force and effect unless amended, modified or approved by adoption of a separate Concurrent Resolution by both houses of the Legislature.

Adopted by the Senate February 26, 1997
Adopted by the House March 13, 1997

(S.C.R. No. 117)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE FINDINGS AND APPROVING AND EXTENDING TEMPORARY RULES REVIEWED BY THE LEGISLATURE, WITH EXCEPTIONS.

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

WHEREAS, the Legislature by statute must approve temporary rules by adoption of a Concurrent Resolution approving, amending or modifying the rule if the temporary rule is to remain in effect beyond the end of the current legislative session; and

WHEREAS, the expiration of temporary rules would occasion additional expense to state agencies in readopting and republishing temporary rules needed to conduct state business; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that all temporary rules adopted by state agencies pursuant to the Administrative Procedure Act and submitted to the Legislature at the Legislature's request through the Office of Rules Coordinator by January 7, 1997, and all temporary rules previously approved and extended by Concurrent Resolution adopted in a prior regular session of the Idaho Legislature, be, and the same are approved, with the exception of the following enumerated temporary rule sections:

(1) IDAPA 39.03.60.300.03.h, (Docket number 39-0360-9701) rule of the Idaho Transportation Board, concerning outdoor advertising and spacing of advertising displays.

(2) IDAPA 05.01.01.412.01, (Docket number 05-0101-9601) rule of the Department of Juvenile Corrections, mandating staffing ratios.

(3) IDAPA 05.01.01.455.01, (Docket number 05-0101-9601) rule of the Department of Juvenile Corrections, regarding written policy and procedures.

(4) IDAPA 05.01.01.475.13, (Docket number 05-0101-9601) rule of the Department of Juvenile Corrections, referring to outdoor exercise space and the amount of time allowed for daily outdoor exercise.

(5) IDAPA 07.01.04.014, (Docket number 07-0104-9601) rule of the Division of Building Safety, dealing with electrical specialty licensing.

A temporary rule or partial temporary rule approved by this Concurrent Resolution shall remain in effect until it expires by its own terms or by operation of law or until it is replaced by a final rule, but in no event shall a temporary rule remain in effect beyond the conclusion of the Second Regular Session of the Fifty-fourth Idaho Legislature unless it is further extended, approved, amended or modified by adoption of a Concurrent Resolution by both houses of the Legislature. Temporary rules or sections of temporary rules which are excepted from approval hereunder or which were not submitted to the Legislature for review by January 7, 1997, shall expire by operation of statute upon adjournment of the First Regular Session of the Fifty-fourth Idaho Legislature, unless approved by adoption of a separate Concurrent Resolution by both houses of the Legislature.

Adopted by the Senate February 26, 1997
Adopted by the House March 18, 1997

(S.C.R. No. 118)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE FINDINGS AND APPROVING ADMINISTRATIVE RULES THAT IMPOSE A FEE OR CHARGE.

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

WHEREAS, the Legislature by statute must approve, amend or modify certain administrative rules that impose a fee or charge by adoption of a Concurrent Resolution before the rules become effective; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that all pending administrative rules or portions of pending administrative rules adopted by state agencies pursuant to the Administrative Procedure Act during the prior calendar year, and submitted through the Office of Rules Coordinator by January 7, 1997, to the Legislature for review during the 1997 legislative session, which impose a fee or charge, be, and the same are approved. Rule provisions imposing fees or charges that were not submitted through the Office of Rules Coordinator for legislative review or that otherwise are not included in this Concurrent Resolution shall be null, void and of no force and effect unless amended, modified or approved by adoption of a separate Concurrent Resolution by both houses of the Legislature.

Adopted by the Senate February 26, 1997
Adopted by the House March 18, 1997

(S.C.R. No. 119)

A CONCURRENT RESOLUTION
STATING THE SENSE OF THE LEGISLATURE AND SUPPORTING THE EFFORTS OF GOVERNOR BATT TO PRESERVE THE LOW COST OF HYDROELECTRICITY BEING GENERATED IN IDAHO FOR IDAHO RATEPAYERS.

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

WHEREAS, Idaho's river system has, since statehood, proved to be a vital factor in the state's growth and economy; and

WHEREAS, Idaho enjoys among the lowest rates for electrical energy in the nation; and

WHEREAS, the nation is being hit with a wave of electric utility deregulation particularly in states with high electricity rates; and

WHEREAS, there needs to be a way to preserve Idaho's hydroelectric and river resources for the benefit of the residents and businesses of the state; and

WHEREAS, it is in the state's best interests to explore the possi-

bilities of preserving the low cost hydroelectricity for the ratepayers of Idaho.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we support the efforts by Governor Batt to keep all or a substantial portion of the low cost hydroelectric energy produced in Idaho for the use of Idaho ratepayers.

BE IT FURTHER RESOLVED that we support the effort of the Governor to appoint a committee to assist him in his endeavor which may include the Attorney General or his designee, the Director of the Department of Water Resources or his designee, the Public Utilities Commissioners, members of the Legislature and other interested citizens.

Adopted by the Senate March 5, 1997
Adopted by the House March 12, 1997

(S.C.R. No. 120)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND ENCOURAGING THE GOVERNOR TO APPOINT A COMMITTEE TO STUDY GAMING IN THE STATE OF IDAHO.

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

WHEREAS, in 1992 at an Extraordinary Legislative Session the Legislature of the State of Idaho overwhelmingly adopted and the voters approved H.J.R. No. 4 at the general election that year; and

WHEREAS, H.J.R. No. 4 amended Section 20, Article III, of the Constitution of the State of Idaho and clarified that gambling is contrary to public policy in Idaho and is expressly prohibited except for a state lottery which is authorized by the state of Idaho, pari-mutuel betting and bingo and raffle games authorized by qualified charitable organizations; and

WHEREAS, H.J.R. No. 4 also prohibited the employment of any game that is typical of casino gambling including, but not limited to, blackjack, craps, roulette, poker, baccarat, keno and slot machines and prohibited the employment of any electronic or electromechanical imitation or simulation of any form of casino gambling; and

WHEREAS, the federal Indian Gaming Regulatory Act makes illegal those Class III games which are not legal in a state; and

WHEREAS, there are games of chance operated off Indian reservations which may be in conflict with the state's law and constitution regarding gambling; and

WHEREAS, certain games of chance are being operated on Idaho Indian reservations or trust lands and are the subject of dispute as to whether they are Class III games or Class II games pursuant to the Indian Gaming Regulatory Act; and

WHEREAS, the Legislature and the Governor are committed to increasing economic development upon Indian reservations in compliance with Idaho statutes and the Constitution of the State of Idaho; and

WHEREAS, there appear to be many complex legal and technical issues that need to be considered to enable the state's policymakers to make a reasoned and informed decision.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we reaffirm our opposition to casino-style gambling, video lottery or video pull-tab games or any interactive or electromechanical imitations or simulations of any form of gambling.

BE IT FURTHER RESOLVED that we encourage the Governor to appoint a committee to study gaming in the state of Idaho.

Adopted by the Senate March 12, 1997
Adopted by the House March 18, 1997

HOUSE CONCURRENT RESOLUTIONS

(H.C.R. No. 1)

A CONCURRENT RESOLUTION
AUTHORIZING THE IDAHO PARK AND RECREATION BOARD TO ENTER INTO AN AGREEMENT WITH THE CITY OF BOISE FOR THE OPERATION, MANAGEMENT, MAINTENANCE AND CONTROL OF IDAHO VETERANS MEMORIAL PARK.

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

WHEREAS, the Idaho Department of Parks and Recreation owns, operates, manages and maintains Idaho Veterans Memorial Park within the Boise City limits; and

WHEREAS, the State of Idaho and the City of Boise recognize the significance of the park honoring Idaho's veterans; and

WHEREAS, the size, location, and type of use of the Idaho Veterans Memorial Park is more in keeping with a municipal park than a state park; and

WHEREAS, the operation of Idaho Veterans Memorial Park by the City of Boise would provide a type of management more appropriate to the nature of use the park receives and consistent with that of other municipal parks within the City; and

WHEREAS, the Idaho Veterans Memorial Park has been identified by the City of Boise as a facility which should be managed by the City; and

WHEREAS, increasing fiscal pressures necessitate that the Idaho Department of Parks and Recreation identify and implement permanent program reductions; and

WHEREAS, Section 67-4230, Idaho Code, provides that "The Idaho Veterans Memorial Park shall be maintained as a state park for the use of all the people, and no part, parcel or interest therein shall be alienated without the consent of the legislature...".

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Idaho Park and Recreation Board is authorized to enter into a long-term arrangement with the City of Boise for the operation, management and maintenance of Idaho Veterans Memorial Park.

BE IT FURTHER RESOLVED that any agreement with the City of Boise shall provide that fee title to the property and improvements shall remain with the Idaho Department of Parks and Recreation by and through the Idaho Park and Recreation Board, and that the Idaho Veterans Memorial Park continue to be managed for the use and benefit of all the people of the state in honor of Idaho Veterans.

Adopted by the House February 11, 1997
Adopted by the Senate March 11, 1997

(H.C.R. No. 2)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE FINDINGS AND AUTHORIZING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO STUDY ELECTRIC UTILITY RESTRUCTURING.

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

WHEREAS, there were numerous bills introduced in Congress in 1996 which would have provided for the restructuring of the electric utility industry in this country; and

WHEREAS, there are aggregators who are aggressively trying to find customers to purchase electric energy from them; and

WHEREAS, Idaho currently enjoys low electric rates compared to the rest of the nation, mainly because of our hydropower base; and

WHEREAS, some states, including California, have passed legislation to restructure the electric utility industry in those states; and

WHEREAS, there are some benefits to a competitive electric utility industry, there may be some large unintended consequences to the ratepayers and the citizens of the state if such a move is not carefully thought out and planned; and

WHEREAS, it is not the intent of the Legislature to have big winners and big losers as far as classes of electric customers go if the electric utility industry is restructured; and

WHEREAS, there have been many worthwhile social programs included in an electric utility's rate base such as fish mitigation, weatherization and low-income assistance programs, and the Legislature would not like to see those lost by a restructuring; and

WHEREAS, Idaho's water rights system is a complex system of management, and electric utility restructuring could affect demand loads and river flows and have some large unintended consequences if not managed properly.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized to appoint a Committee to undertake and review the potential restructuring of the electric utility industry from both the statewide perspective and the national perspective. The Committee is directed to involve representatives of industry, agricultural groups, small businesses, consumers of electricity and conservation interests. The Committee is also authorized to retain the services of a consultant, within appropriated moneys, who is familiar with the electric utility industry and who can provide necessary economic or other research that can assist the Committee and the Legislature in making an informed decision on this most important topic.

BE IT FURTHER RESOLVED that the Committee shall make a progress report to the Second Regular Session of the Fifty-fourth Idaho Legislature and shall make a report detailing its findings, recommendations and proposed legislation, if any, to the First Regular Session of the Fifty-fifth Idaho Legislature.

Adopted by the House January 28, 1997
Adopted by the Senate February 25, 1997

(H.C.R. No. 3)

A CONCURRENT RESOLUTION

PROVIDING FOR A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE FIRST REGULAR SESSION OF THE FIFTY-FOURTH IDAHO LEGISLATURE FOR THE PURPOSE OF HEARING A MESSAGE FROM THE GOVERNOR.

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

WHEREAS, the Governor has informed the House of Representatives and the Senate that he desires to deliver a message to a Joint Session of the House of Representatives and the Senate of the First Regular Session of the Fifty-fourth Idaho Legislature in the Chamber of the House of Representatives at 1 p.m. on Monday, January 6, 1997.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the House of Representatives and the Senate meet in Joint Session on Monday, January 6, 1997, at 1 p.m. for the purpose of hearing the message from the Governor.

Adopted by the House January 6, 1997
Adopted by the Senate January 6, 1997

(H.C.R. No. 4)

A CONCURRENT RESOLUTION

PROVIDING FOR A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE FIRST REGULAR SESSION OF THE FIFTY-FOURTH IDAHO LEGISLATURE FOR THE PURPOSE OF HEARING A MESSAGE FROM THE GOVERNOR.

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

WHEREAS, the Governor has informed the House of Representatives and the Senate that he desires to deliver a message to a Joint Session of the House of Representatives and the Senate of the First Regular Session of the Fifty-fourth Idaho Legislature in the Chamber of the House of Representatives at 10 a.m. on Wednesday, January 8, 1997.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the House of Representatives and the Senate meet in Joint Session on Wednesday, January 8, 1997, at 10 a.m. for the purpose of hearing the message from the Governor.

Adopted by the House January 8, 1997
Adopted by the Senate January 8, 1997

(H.C.R. No. 5)

A CONCURRENT RESOLUTION
PROVIDING FOR OFFSET PRINTING OF HOUSE AND SENATE BILLS, RESOLUTIONS, MEMORIALS AND AMENDMENTS, AND FIXING THE PRICE FOR PRINTING THE SAME.

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

WHEREAS, the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee have, according to law, made provisions for the offset printing of the House and Senate bills, resolutions, memorials and amendments;

NOW, THEREFORE, in accordance with a written contract duly made and entered into by the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee;

BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the contract for the offset printing of the House and Senate bills, resolutions, memorials and amendments, in accordance with the provisions of law and in accordance with the written contract between the Joint Committee as party of the first part, and BEST IMPRESSION PRINTING, Boise, Idaho, as party of the second part, be, and the same is hereby ratified and concurred in, and is incorporated herein, and made a part of this resolution in words and figures following, to wit:

PRINTING AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of January, 1997, by and between the HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE and the SENATE JUDICIARY AND RULES COMMITTEE of the First Regular Session of the Fifty-fourth Idaho Legislature, hereinafter referred to as the Joint Committee, and BEST IMPRESSION PRINTING, hereinafter referred to as Best Impression.

WITNESSETH:

That pursuant to written bids submitted to and considered by the Joint Committee, a contract for legislative printing is hereby awarded to Best Impression per your letter response of December 4, 1996, for the First and Second Regular Sessions and any Extraordinary Sessions of the Fifty-fourth Idaho Legislature upon the following additional terms and conditions:

1. That Best Impression will utilize an offset process from "Camera Ready" copies, as these terms are used and recognized in the trade, to print House and Senate Bills, Resolutions and Memorials.

2. That Best Impression concurrently with the execution of this contract, deliver to the Joint Committee good and sufficient surety bond or other collateral, if and when requested, in the manner and form, and with a surety acceptable to the Joint Committee, in the sum of five thousand dollars ($5,000), guaranteeing the satisfactory and faithful performance by Best Impression of all the terms and conditions of this contract.

3. That Best Impression will maintain at all times a high standard of workmanship to the end that all printing will be neat, clean, legible and with adequate contrast between print and paper to be easily read.

4. That Best Impression will insure that all bills, resolutions and memorials will have neat and proper underlining, strikeovers and deletions and that the paper used will be properly punched and sized.

5. That for the purposes of this contract, all printing will be received from and delivered to the presiding officer of each house or his designee.

6. That Best Impression will deliver all standard lot printed material conforming to the above requirements by 9 a.m. the next morning after receipt of copy, unless prior arrangements have been made.

7. Upon failure to deliver such bills in the manner and within the time herein specified, this contract may be deemed terminated forthwith at the option of the Joint Committee and recourse had against Best Impression's bond.

8. That a standard lot of printed material will be seven hundred (700) copies or less of individual bills, resolutions or memorials at a cost of seventeen dollars and fifty cents ($17.50) per printed page which shall also provide for more or less copies in units of one hundred (100) at the same rate per page.

9. That Best Impression will pick up "Camera Ready" copy at least twice daily of each day that the Legislature is in session.

10. That Best Impression shall make copies available for sale to the public at the base per page rate, provided the order for such is received prior to the time the bill is printed.

11. That the Joint Committee reserves to itself the sole and exclusive decision as to the proper fulfillment of the terms and conditions of this agreement by Best Impression, and that the Joint Committee may terminate this agreement upon twenty-four (24) hours notice to Best Impression, with no liability accruing to the Joint Committee or the State except for printing already completed and delivered. The Joint Committee reserves the right to review and revise this contract prior to the First Regular Session of the Fifty-fourth Idaho Legislature.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands as of the day and year first above written.

By /s/ Michael Simpson
MICHAEL SIMPSON, Speaker of the House

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

By /s/ Celia R. Gould
CELIA R. GOULD, Chairman

By /s/ Jerry T. Twiggs
JERRY T. TWIGGS, President Pro Tempore

SENATE JUDICIARY AND RULES COMMITTEE

By /s/ Denton Darrington
DENTON DARRINGTON, Chairman

BEST IMPRESSION PRINTING

By /s/ Richard W. Flintzer
RICHARD W. FLINTZER, Owner

Adopted by the House January 15, 1997
Adopted by the Senate January 22, 1997

(H.C.R. No. 6)

A CONCURRENT RESOLUTION
PROVIDING FOR PRINTING THE HOUSE AND SENATE LEGISLATIVE JOURNALS AND FIXING THE PRICE FOR PRINTING THE SAME.

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

WHEREAS, Section 67-509, Idaho Code, has made provisions for the printing of the House and Senate Legislative Journals;

NOW, THEREFORE, in accordance with a written contract duly made and entered into by the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee;

BE IT RESOLVED, by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, that the contract for the printing of the House and Senate Legislative Journals in accordance with the provisions of law and in accordance with the written contract between the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee, as party of the first part, and Catlin Printing Inc., of Boise, Idaho, as party of the second part, be, and the same is hereby ratified and confirmed, and is incorporated herein and made a part of this resolution, in words and figures following, to wit:

PRINTING AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of January, 1997, by and between the HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE and the SENATE JUDICIARY AND RULES COMMITTEE of the First Regular Session of the Fifty-fourth Idaho Legislature, hereinafter mentioned as party of the first part, and CATLIN PRINTING, INC., Boise, Idaho, hereinafter mentioned as party of the second part;

WITNESSETH:

That pursuant to a resolution of said party of the first part and written quotation submitted by party of the second part, a contract for legislative printing is hereby awarded to the said Catlin Printing, as follows:

HOUSE AND SENATE DAILY JOURNAL
FIRST REGULAR SESSION

350 copies of House Journal
350 copies of Senate Journal
700 total copies ..... $24.00 per page
100 additional copies ..... $10.00 per page

PERMANENT JOURNAL
FIRST REGULAR SESSION

250 copies of House Permanent Journal, including 5 hard-bound gold lettered volumes
250 copies of Senate Permanent Journal, including 5 hard-bound gold lettered volumes
510 total copies ..... $18.50 per page
Additional hard-bound gold lettered volumes ..... $40.00 per volume

HOUSE AND SENATE DAILY JOURNAL
SECOND REGULAR SESSION

350 copies of House Journal
350 copies of Senate Journal
700 total copies ..... $24.00 per page
100 additional copies ..... $10.00 per page

PERMANENT JOURNAL
SECOND REGULAR SESSION

250 copies of House Permanent Journal, including 5 hard-bound gold lettered volumes
250 copies of Senate Permanent Journal, including 5 hard-bound gold lettered volumes
510 total copies ..... $18.50 per page
Additional hard-bound gold lettered volumes ..... $40.00 per volume

IT IS AGREED by the parties hereto that all of said printing shall be done in the form and manner and upon such suitable material as was included in the bid specifications and is now required by the statutes of the State of Idaho; where not otherwise herein provided, such statutes shall be controlling, and particularly as to the printing of Legislative Journals, the same shall be printed in conformity with Section 67-509, Idaho Code, which section is hereby referred to and by reference made a part of this contract as though set forth herein at length; that the number of copies to be supplied under this contract may from time to time be determined by the party of the first part; and that all other terms of the specifications for the Journals of the party of the first part shall be complied with as though set forth herein at length.

IT IS AGREED that in the printing of the Journal the same shall be delivered daily on the desk of the Chief Clerk of the House, and on the desk of the Secretary of the Senate not later than the hour of 9 a.m. on each day; provided, that the party of the second part shall not be responsible in this respect, in cases of unreasonable delay in furnishing copy for such printing to the party of the second part.

IT IS FURTHER AGREED, that the permanent printed Journal shall be delivered to the Chief Clerk of the House not later than thirty (30)

working days from date of receipt of final House copy, and to the Secretary of the Senate not later than thirty (30) working days from date of receipt of final Senate copy, and that for each day's failure to so deliver, there shall be deducted from the contract price for printing said Journal the sum of Fifty Dollars ($50.00) per day for each day's delay.

The party of the second part further covenants and agrees to deliver to the party of the first part good and sufficient surety bond or other collateral, if and when requested, in the manner and form, and with a surety acceptable to party of the first part, in the sum of Five Thousand Dollars ($5,000), guaranteeing the satisfactory and faithful performance by the party of the second part of all the conditions and covenants of this contract.

IN WITNESS WHEREOF, the party of the second part has caused these presents to be executed by its proper official and the party of the first part, by Concurrent Resolution, has caused these presents to be executed by its proper officials.

Party of the First Part

By /s/ Michael Simpson
MICHAEL SIMPSON, Speaker of the House

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

By /s/ Celia R. Gould
CELIA R. GOULD, Chairman

By /s/ Jerry T. Twiggs
JERRY T. TWIGGS, President Pro Tempore

SENATE JUDICIARY AND RULES COMMITTEE

By /s/ Denton Darrington
DENTON DARRINGTON, Chairman

Party of the Second Part

CATLIN PRINTING, INC.

By /s/ John Catlin
JOHN CATLIN, Owner

Adopted by the House January 15, 1997
Adopted by the Senate January 22, 1997

(H.C.R. No. 7)

A CONCURRENT RESOLUTION

PROVIDING FOR PRINTING THE SESSION LAWS, FIXING THE PRICE FOR PRINTING THE SAME, AND THE PRICE WHICH THE PUBLIC SHALL BE CHARGED FOR COPIES OF THE SESSION LAWS.

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

WHEREAS, Section 67-904, Idaho Code, has made provisions for the printing of the Session Laws;

NOW, THEREFORE, in accordance with a written contract duly made and entered into by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee of the Legislature of the State of Idaho hereinafter referred to as the Joint Committee;

BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the contract for the printing of the Session Laws of the First and Second Regular Sessions, Fifty-fourth Idaho Legislature, and the Session Laws of any Extraordinary Session, Fifty-fourth Idaho Legislature, in accordance with the provisions of law and in accordance with the written contract between the Speaker of the House of Representatives and the President Pro Tempore of the Senate and the Joint Committee as party of the first part, and THE CAXTON PRINTERS, LTD., of Caldwell, Idaho, as party of the second part, be, and the same is hereby ratified, confirmed and concurred in, and is incorporated herein and made a part of this resolution, in words and figures following, to wit:

PRINTING CONTRACT

THIS AGREEMENT, made and entered into this 6th day of January, 1997, by and between the Speaker of the House of Representatives, Michael Simpson, and the President Pro Tempore of the Senate, Jerry T. Twiggs, the Joint Committee of the House Judiciary, Rules and Administration Committee and the Senate Judiciary and Rules Committee of the Legislature of the State of Idaho, hereinafter mentioned as party of the first part, and THE CAXTON PRINTERS, LTD., of Caldwell, Idaho, hereinafter mentioned as party of the second part;

WITNESSETH:

That pursuant to a resolution of said party of the first part and written bid submitted to the said party of the first part by the party of the second part, contract for legislative printing is hereby awarded to said THE CAXTON PRINTERS, LTD., as follows:

SESSION LAWS

For printing and binding one thousand two hundred (1,200) copies of the Session Laws of the First Regular Session of the Fifty-fourth Idaho Legislature and for printing and binding one thousand two hundred (1,200) copies of the Session Laws of the Second Regular Session of the Fifty-fourth Idaho Legislature and the Session Laws of any Extraordinary Session of the Fifty-fourth Idaho Legislature: Twenty-five dollars and seventy-five cents ($25.75) per page, f.o.b. Boise, Idaho, if produced by offset lithography with camera-ready copy being furnished party of the second part, plus five dollars and fifty cents ($5.50) per volume for binding. For pages requiring reduction shots, an additional seven dollars ($7.00) per page charge. Each volume to be Smythe sewed, rounded and backed with suitable headbands and Roxite Library Buckram over a 15 point Red Label Davey Board. The party of

the second part shall provide an additional quantity to be made available to the general public at thirty-five dollars ($35.00) per single volume, and forty-two dollars ($42.00) per set of two volumes, if a second volume is required. The Session Laws of any Extraordinary Session adjourned prior to June 1, 1997, shall be included in the Session Laws of the First Regular Session, or if adjourned prior to June 1, 1998, shall be included in the Session Laws of the Second Regular Session. No charge shall be made by the party of the second part for proofreading or blank pages.

IT IS AGREED between the parties hereto that all of said printing shall be done in the form and manner as submitted in written bid dated October 30, 1996, by party of the second part, and in compliance with the statutes of the State of Idaho where not otherwise provided, such statutes shall be controlling.

IT IS FURTHER AGREED that said Session Laws shall be printed, delivered to and be ready for distribution by the Secretary of State in conformity with the provisions of Section 67-904, Idaho Code, which section is hereby referred to and by such reference made a part of this contract as though set forth at length herein, and particularly as follows:

The Session Laws shall be printed and made available for distribution within sixty (60) days after the last day on which the Governor may sign or approve bills following adjournment of the session of the legislature which enacted or passed the measures included in the Session Laws, or within thirty (30) days after the delivery to the party of the second part of the proper title pages, certificate pages, tables of laws and statutes amended and repealed and a proper index of the contents of the Session Laws, whichever date is first in time.

Such printing and delivery of said Session Laws to the Secretary of State are to be made as provided by law; that for each day's failure to so deliver volumes of such Session Laws as herein provided, there shall be deducted from the contract price for printing said Session Laws the sum of fifty dollars ($50.00) per day for each day's delay; provided, however, that the party of the second part shall not be held responsible for delay occasioned by failure to furnish copy for such printing to the party of the second part and such delay shall, to the same extent, extend the time for the performance of this agreement.

IN WITNESS WHEREOF, the party of the second part has caused these presents to be executed by its proper officials, and the party of the first part, by Concurrent Resolution has caused these presents to be executed by its proper officials.

Party of the First Part

By /s/ Michael Simpson
MICHAEL SIMPSON, SPEAKER OF THE HOUSE

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

By /s/ Celia R. Gould
CELIA R. GOULD, CHAIRMAN

By /s/ Jerry T. Twiggs
JERRY T. TWIGGS, PRESIDENT PRO TEMPORE

SENATE JUDICIARY AND RULES COMMITTEE

By /s/ Denton Darrington
DENTON DARRINGTON, CHAIRMAN

Party of the Second Part

THE CAXTON PRINTERS, LTD.

By /s/ Dave Gipson
DAVE GIPSON, VICE PRESIDENT

Adopted by the House January 15, 1997
Adopted by the Senate January 22, 1997

(H.C.R. No. 8)

A CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF HEALTH AND WELFARE TO AMEND THE GROUND WATER QUALITY RULES TO RECOGNIZE THE UNIQUENESS OF MINING AND TO ELIMINATE THE CONCEPT OF SENSITIVE ECOLOGICAL SYSTEMS.

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

WHEREAS, the Legislature adopted the Idaho Ground Water Quality Plan in 1992; and

WHEREAS, Section 39-124, Idaho Code, provides that the Ground Water Quality Plan shall have the force and effect of law upon adoption; and

WHEREAS, the Ground Water Quality Plan recognizes the uniqueness of mining among land use activities which impact ground water; and

WHEREAS, the Ground Water Quality Plan does not include the concept of sensitive ecological systems; and

WHEREAS, the Department of Health and Welfare has adopted ground water quality rules to implement the Ground Water Quality Plan.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Represen-

tatives and the Senate concurring therein, that the director of the Department of Health and Welfare is requested to adjust, amend or revise the ground water quality rules to specifically recognize the uniqueness of mining when implementing those particular rules.

BE IT FURTHER RESOLVED that we request the director adjust, amend or revise the ground water quality rules to eliminate the concept of sensitive ecological systems from those particular rules and submit a report to the President Pro Tempore and the Speaker of the House of Representatives regarding this issue.

Adopted by the House February 12, 1997
Adopted by the Senate February 14, 1997

(H.C.R. No. 10)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE CONCERNING THE NEED TO PROVIDE THE BEST EDUCATION POSSIBLE FOR THE CHILDREN OF THIS STATE AND AUTHORIZING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO STUDY THE CHARTER SCHOOL CONCEPT.

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

WHEREAS, providing excellence in the education of its children is a primary goal of Idaho's citizenry; and

WHEREAS, a student's performance in school is affected by a variety of factors ranging from school policies for attendance, dress, discipline, and parental involvement to methods of teaching, curriculum and measurement of progress; and

WHEREAS, innovation in public education is becoming increasingly important if the needs of all students are to be addressed; and

WHEREAS, alternative forms of public schooling allow for the pursuit of innovation to improve student learning and create new professional opportunities for teachers; and

WHEREAS, charter schools provide an alternative form of public education; and

WHEREAS, many states now have considerable experience with charter schools which allows for objective evaluation of both the concept in general and of the various forms which have been adopted; and

WHEREAS, every effort should be made to ensure that the education of Idaho's children is the best it can be.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized and directed to appoint a committee to study the charter school concept and to evaluate the experiences of states which have enacted charter school laws.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations, and proposed legislation to the Second Regular Session of the Fifty-fourth Idaho Legislature.

Adopted by the House February 14, 1997
Adopted by the Senate March 17, 1997

(H.C.R. No. 11)

A CONCURRENT RESOLUTION
DIRECTING THE IDAHO DEPARTMENT OF HEALTH AND WELFARE TO SELECT THE OPTION TO INCLUDE INSTITUTIONS OF MENTAL DISEASE AS AUTHORIZED PROVIDERS OF PSYCHIATRIC TREATMENT FOR MEDICAID-ELIGIBLE CHILDREN AGES TWELVE AND UNDER FOR ONE YEAR AS A PILOT PROJECT.

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

WHEREAS, the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services defines Institutions of Mental Disease (IMDs) as hospitals in which more than fifty percent of inpatient days are psychiatric; and

WHEREAS, the Idaho Department of Health and Welfare has opted voluntarily to exclude IMDs from participating in Idaho's Medicaid program; and

WHEREAS, inpatient psychiatric care for children ages twelve and under is provided by only three Idaho hospitals, located in Idaho Falls, Coeur d'Alene and Boise; and

WHEREAS, only one of these Idaho hospitals is not an IMD and, therefore, not excluded by the Idaho Department of Health and Welfare from the provision of inpatient psychiatric services for Medicaid-eligible children ages twelve and under; and

WHEREAS, Medicaid-eligible children ages twelve and under who live in southwest Idaho are directed to inpatient psychiatric treatment at facilities in either Idaho Falls or Salt Lake City, Utah, and those who live in northern Idaho are directed to inpatient psychiatric treatment in Spokane, Washington; and

WHEREAS, the Idaho Department of Health and Welfare should ensure that Idaho's Medicaid-eligible children ages twelve and under who live in all regions of the state have access to qualified and licensed inpatient psychiatric services available within the state of Idaho in the regions where they reside.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Idaho Department of Health and Welfare be directed to select the option to include rather than exclude Institutions of Mental Disease as authorized providers of psychiatric treatment for Medicaid-eligible children ages twelve and under, effective July 1, 1997, through June 30, 1998, as a pilot project subject to future extension by the Legislature.

Adopted by the House February 27, 1997
Adopted by the Senate March 6, 1997

(H.C.R. No. 12)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND DECLARING APRIL 21ST THROUGH 27TH IDAHO ORGAN AND TISSUE DONOR AWARENESS WEEK.

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

WHEREAS, today, there are more than 50,000 individuals throughout the United States who are waiting on organ donor lists and hoping for a second chance at life through the donation of an organ or organs; and

WHEREAS, every eighteen minutes another new name is added to the list of people waiting and it is estimated that every day, eight people die because an organ donor does not become available; and

WHEREAS, over 100,000 people also wait for the precious gift of sight and mobility that tissue donations make possible; and

WHEREAS, organ donation is a generous, caring act, performed at the time of death, by donors and their families who see beyond their loss by giving others a tomorrow through the gift of life; and

WHEREAS, a major impediment to increasing the number of donations is the lack of public awareness of the great need for donations; and

WHEREAS, the Congress of the United States and many of our sister states have acted to designate April 21 through 27 as "Organ and Tissue Donor Awareness Week," and it would be in the interests of the many Idahoans who are waiting for organs, and many other Idahoans who may be involved in an opportunity to make this life-giving choice, to designate this week in Idaho and thereby raise the awareness of our citizens to this important issue.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that April 21 through 27 shall be recognized in Idaho as "Organ and Tissue Donor Awareness Week" and that we urge all Idahoans to make an informed decision about organ and tissue donation and to discuss that decision with their families.

Adopted by the House February 27, 1997
Adopted by the Senate March 6, 1997

(H.C.R. No. 13)

A CONCURRENT RESOLUTION
AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO ESTABLISH A COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF THE LEGAL RESPONSIBILITIES AND RELATIONSHIPS AMONG THE PARTICIPANTS IN THE CRIMINAL JUSTICE PROCESS INCLUDING THE ATTORNEY GENERAL'S OFFICE, COUNTY PROSECUTORS' OFFICES, PUBLIC DEFENSE AGENCIES, COUNTY GOVERNMENTS AND THE STATE OF IDAHO, AND TO STUDY THE FUNDING MECHANISM FOR PROSECUTION AND DEFENSE AT PUBLIC EXPENSE AND THE FISCAL RESPONSI-

BILITY OF EACH PARTICIPANT IN THE CRIMINAL JUSTICE PROCESS.

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

WHEREAS, Idaho has experienced an increase in population and an increase in incidents of high profile and capital crimes; and

WHEREAS, a number of recent high profile and capital crimes have raised the issue of the proper relationship among the participants in the criminal justice process, including the Attorney General's office, county prosecutors' offices, public defense agencies, county governments and the state of Idaho; and

WHEREAS, the public interest and criminal justice administration are best served by proper case prosecution and defense at public expense; and

WHEREAS, the Attorney General's office, county prosecutors' offices and public defense agencies have difficulty obtaining the necessary equipment and attracting, training and retaining experienced staff; and

WHEREAS, judges may engage in activities which improve the law, the legal system and the administration of justice and may also participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their official duties.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized to appoint a committee to undertake and complete a study of the legal responsibilities and relationships among the participants in the criminal justice process, including the Attorney General's office, county prosecutors' offices, public defense agencies, county governments and the state of Idaho and to study the funding mechanism for prosecution and defense at public expense and the fiscal responsibilities of each participant in the criminal justice process and to draft statutory methods and mechanisms to properly address the issues.

BE IT FURTHER RESOLVED that the committee shall be composed of members of the House of Representatives, the Senate and representatives from the judiciary, Attorney General's office, Idaho Prosecuting Attorneys Association, Idaho Association of Counties and active public defenders.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations, and recommended legislation, if any, to the Second Regular Session of the Fifty-fourth Idaho Legislature.

Adopted by the House February 25, 1997
Adopted by the Senate March 17, 1997

(H.C.R. No. 15)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE OF

THE IDAHO HUMAN RIGHTS COMMISSION REGARDING THE CONTENTS OF A COMPLAINT TO THE HUMAN RIGHTS COMMISSION.

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

WHEREAS, the Legislature is vested with authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Idaho Human Rights Commission regarding the contents of a complaint to the Human Rights Commission is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 45.01.01.300.03, rule of the Idaho Human Rights Commission regarding the contents of a complaint to the Human Rights Commission, promulgated as a pending rule under Docket number 45-0101-9601, be, and the same is hereby rejected, and declared null and void and of no force and effect.

Adopted by the House March 3, 1997
Adopted by the Senate March 18, 1997

(H.C.R. No. 17)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A RULE OF THE IDAHO TRANSPORTATION BOARD RELATING TO DRIVERS LICENSE VIOLATION POINT COUNT SYSTEM.

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

WHEREAS, the Legislature is vested with authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event the Legislature finds that the rules were not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Idaho Transportation Board relating to drivers license point count system is not consistent with legislative intent and goes beyond the statutory authority granted to the Idaho Transportation Board and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 39.02.71.200 relating to drivers license violation point count system and promulgated as a pending and a temporary rule, be, and the same is hereby rejected.

BE IT FURTHER RESOLVED that it is legislative intent that the Idaho Transportation Board immediately adopt a temporary rule to replace the aforementioned rejected rule to read substantially as follows:

200. LIST OF MOVING TRAFFIC CONVICTIONS AND/OR VIOLATIONS POINT COUNT.

Idaho Code	Convictions Reported By Court	Point Count
49-603	STARTING PARKED VEHICLE	two (2)
49-604	LIMITATIONS ON BACKING	one (1)
49-615	DRIVERS TO EXERCISE DUE CARE	three (3)
49-616	DRIVING THROUGH SAFETY ZONE PROHIBITED	two (2)
49-634	LIMITATIONS ON OVERTAKING ON THE LEFT	three (3)
49-635	FURTHER LIMITATIONS ON DRIVING ON LEFT OF CENTER OF HIGHWAY	three (3)
49-636	ONE-WAY HIGHWAYS	one (1)
49-637	DRIVING ON HIGHWAYS LANED FOR TRAFFIC	one (1)
49-638	FOLLOWING TOO CLOSELY	three (3)
49-640	VEHICLES APPROACHING OR ENTERING UNMARKED OR UNCONTROLLED INTERSECTION	three (3)
49-641	VEHICLE TURNING LEFT	three (3)
49-642	VEHICLE ENTERING HIGHWAY	three (3)
49-644	REQUIRED POSITION AND METHOD OF TURNING	three (3)
49-645	LIMITATIONS ON TURNING AROUND	three (3)
49-648	OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN	four (4)
49-649	COMPLIANCE WITH STOPPING REQUIREMENT AT ALL RAILROAD GRADE CROSSING	four (4)
49-651	EMERGING FROM ALLEY, DRIVEWAY OR BUILDING	three (3)
49-654	BASIC RULE AND MAXIMUM SPEED LIMITS	three (3) four (4)
49-655	MINIMUM SPEED REGULATION	three (3)
49-656	SPECIAL SPEED LIMITATIONS	three (3) four (4)
49-657	CONSTRUCTION DANGER ZONE SPEED LIMITS	three (3)
49-1303	DUTY UPON STRIKING UNATTENDED VEHICLE	four (4)
49-1304	DUTY UPON STRIKING FIXTURES UPON OR ADJACENT TO A HIGHWAY	four (4)

49-1401(3)	INATTENTIVE DRIVING	three (3)
49-1419	OBEDIENCE TO TRAFFIC DIRECTION	two (2)
49-1421(1)	DRIVING ON DIVIDED HIGHWAYS	one (1)
49-1421(2)	RESTRICTED ACCESS	one (1)
49-1422	OVERTAKING AND PASSING SCHOOL BUS	four (4)
49-1424	RACING ON PUBLIC HIGHWAYS	four (4)
49-1424	EXHIBITION OF SPEED	four (4)
49-1424	EXCESSIVE ACCELERATIONS	four (4)

( )

Adopted by the House March 5, 1997
Adopted by the Senate March 14, 1997

(H.C.R. No. 18)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND REJECTING A RULE OF THE IDAHO TRANSPORTATION BOARD RELATING TO OPERATIONS AT STATE AIRPORTS.

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

WHEREAS, the Legislature is vested with authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event the Legislature finds that the rules were not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Idaho Transportation Board relating to operations at state airports is not consistent with legislative intent and goes beyond the statutory authority granted to the Idaho Transportation Board and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 39.04.08.300 relating to operations at state airports and promulgated as a pending and a temporary rule, be, and the same is hereby rejected.

BE IT FURTHER RESOLVED that it is legislative intent that the Idaho Transportation Board immediately adopt a temporary rule to replace the aforementioned rejected rule to read substantially as follows:

300. VEHICLES, DOMESTIC ANIMALS, BAGGAGE, AND OBJECTS.

01. Parking. No person shall operate or park any vehicle on an airport without prior approval of the Division. Vehicles authorized on

an airport will not be operated on the runway or parked so as to occupy or block designated tiedowns or loading areas, except that temporary parking necessary for actual loading or unloading of baggage or objects is allowed if no hazard is thus created. Vehicles shall be parked only in designated parking areas. (1-2-93)

02. Domestic Animals. No person shall allow any animal on an airport, taxiway or adjacent camping area without its being on a leash beyond the minimum time necessary for the loading or unloading of such animal into or from an aircraft without prior approval of the Division. ( )

03. Livestock. No person shall allow livestock to graze on airport property without permission from the Division. (1-2-93)

04. Domestic Animal Droppings. No person shall allow animal droppings to be left on an airport, a loading area or in an adjacent camping area. ( )

05. Unattended Objects or Baggage. No person shall place any unattended objects or baggage in a tiedown area when such placement creates a hazard, or restricts aircraft parking in such a way that displaced aircraft create a hazard. (7-20-89)

Adopted by the House March 5, 1997
Adopted by the Senate March 14, 1997

(H.C.R. No. 19)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A RULE OF THE IDAHO STATE BOARD OF EDUCATION RELATING TO MISASSIGNMENTS AND GRANDFATHERING OF DISTRICT PERSONNEL.

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

WHEREAS, the Legislature is vested with the authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds the rules are not consistent with legislative intent; and

WHEREAS, the criteria for granting misassigned personnel a waiver from certification have not been adequately specified; and

WHEREAS, traditional methods by which approval to teach have operated well; and

WHEREAS, it is important that local boards of trustees retain authority to set the parameters for the number or percent of district personnel that may be misassigned; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Idaho State Board of Education relating to misassignments and grandfathering of district personnel is not consistent with legislative intent and goes beyond the statutory authority granted to the State Board of Education and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 08.02.02.040

relating to misassignments and grandfathering of district personnel and promulgated as a pending rule, be, and the same is hereby rejected.

BE IT FURTHER RESOLVED that it is legislative intent that the State Board of Education immediately adopt a temporary rule to replace the aforementioned rejected rule, and it is the recommendation of the Legislature that the policy for misassignments of district personnel be readdressed with consideration given to local school board decision-making.

Adopted by the House February 27, 1997
Adopted by the Senate March 10, 1997

(H.C.R. No. 20)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A RULE OF THE IDAHO STATE BOARD OF EDUCATION RELATING TO HIGH SCHOOL GRADUATION STANDARDS.

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

WHEREAS, the Legislature is vested with the authority to reject, amend or modify executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds the rules are not consistent with legislative intent; and

WHEREAS, the Legislature finds that the credits comprising the standards for high school graduation are in need of review and should be reconsidered; and

WHEREAS, the eight credits which have traditionally been required for mathematics and science are, and continue to be, sufficient; and

WHEREAS, any credits which may be added to the total minimum number required may be apportioned to the areas of humanities; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Idaho State Board of Education relating to high school graduation standards is not consistent with legislative intent and goes beyond the statutory authority granted to the State Board of Education and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 08.02.03.06 relating to high school graduation requirements and promulgated as a pending rule, be, and the same is hereby rejected.

BE IT FURTHER RESOLVED that it is legislative intent that the State Board of Education immediately adopt a temporary rule to replace the aforementioned rejected rule, and such rule set a meaningful standard which allows local boards of trustees flexibility to control the method by which credits are awarded within the major areas of study.

Adopted by the House February 27, 1997
Adopted by the Senate March 12, 1997

(H.C.R. No. 21)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND AUTHORIZING THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO STUDY THE REPORT AND RECOMMENDATIONS OF THE GOVERNOR'S ENDOWMENT FUND INVESTMENT REFORM COMMITTEE AND TO MAKE RECOMMENDATIONS.

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

WHEREAS, in 1996 the Governor appointed an Endowment Fund Investment Reform Committee to study the current structure and management practices of the state's endowment funds and endowment lands, and to identify opportunities for the state to maximize returns to the endowments through coordinated management of the endowments; and

WHEREAS, that Committee's findings call for certain legislative amendments and enactments affecting the management and control of the various financial trusts associated with the lands granted to the state by the federal government upon statehood; and

WHEREAS, some of these legislative amendments require study and coordination between the Legislature, the State Board of Land Commissioners and the Idaho Endowment Fund Investment Board.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is authorized to appoint a Committee to study the report and recommendations of the Governor's Endowment Fund Investment Reform Committee and that the Committee appointed by the Legislative Council in conjunction with the State Board of Land Commissioners and Idaho Endowment Fund Investment Board shall submit recommendations and proposed legislation, if any, for endowment investment reform as deemed appropriate to the Second Regular Session of the Fifty-fourth Idaho Legislature.

Adopted by the House March 5, 1997
Adopted by the Senate March 17, 1997

(H.C.R. No. 25)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS OF SUPPORT AND APPRECIATION FOR STATE EMPLOYEES AND STATING LEGISLATIVE POLICY CONCERNING THE CHANGE IN EMPLOYEE COMPENSATION FOR STATE EMPLOYEES FOR FISCAL YEAR 1998.

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

WHEREAS, the Legislature recognizes the significant contribution made by our dedicated state employees in serving the needs of the citizens of Idaho; and

WHEREAS, the Legislature has always supported salary policies

which strive to reward state employees for their hard work and professionalism; and

WHEREAS, the policy issue with the Legislature is not whether state employees will receive a raise, but rather the means through which state agencies, entities and institutions will fund that raise from moneys appropriated; and

WHEREAS, the Legislature has reviewed the report of the Governor and the Idaho Personnel Commission.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislature supports the pay policy recommended by the Governor, wherein merit-based salary increases are provided to state employees.

BE IT FURTHER RESOLVED that state agencies, entities and institutions are hereby authorized and encouraged, to the extent possible within available appropriations, to provide merit-based salary increases for state employees for fiscal year 1998 consistent with the recommendation made by the Governor.

Adopted by the House March 12, 1997
Adopted by the Senate March 17, 1997

(H.C.R. No. 27)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND CREATING A SPECIAL COMMITTEE ON GOVERNMENT, SPECIFYING THE APPOINTMENT OF THE COMMITTEE AND A REPORT OF THE COMMITTEE.

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

WHEREAS, it is essential in a democracy that the government operate in an environment of the trust and confidence of the people; and

WHEREAS, the costs of campaigns have grown significantly in recent years, causing greater reliance upon private sources of campaign funds to win electoral office; and

WHEREAS, the people have shown concern about the influence which may be wielded as a result of campaign contributions; and

WHEREAS, lobbyists representing organized interest groups of every stripe appear before the Legislature and work behind the scenes to influence the outcome on behalf of the interests they represent; and

WHEREAS, there may be an appearance that the lobbyists exert excessive influence resulting from their positions within the system, which may exceed the influence of the average citizens; and

WHEREAS, the Idaho Legislature is a citizen Legislature and certain inherent strengths and weaknesses result from this status; and

WHEREAS, the essential role of money in campaigns and lobbyists' activities may result in an appearance of ethical impropriety which can compromise public confidence in government; and

WHEREAS, the current legislative session and other recent sessions have given extensive consideration to many bills concerning issues of

campaign finance reform, lobbying and ethics; and

WHEREAS, it is essential to citizens' confidence and the credibility of governmental functions to address these important issues.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that a special committee on government is hereby created. The committee shall consist of four members, one member appointed by the Governor, one member appointed by the Chief Justice of the State Supreme Court, one member appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, and one member appointed by the minority leaders of the Senate and House of Representatives. Two of the appointees shall be former holders of judicial office, and two of the appointees shall be former holders of other state elective office. These four members shall convene and appoint a fifth member. No current officeholder shall serve on the committee. Expenses of the committee shall be paid from legislative funds. The committee shall report its recommendations and proposed legislation, if any, to the Second Regular Session of the Fifty-fourth Idaho Legislature.

Adopted by the House March 14, 1997
Adopted by the Senate March 18, 1997

(H.C.R. No. 28)

A CONCURRENT RESOLUTION
AUTHORIZING THE IDAHO STATE BUILDING AUTHORITY TO ISSUE BONDS FOR THE CONSTRUCTION OF A PRISON.

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

WHEREAS, the Department of Correction has demonstrated the need for new prison facilities with approximately 1,250 beds; and with infrastructure to support an expansion up to approximately 3,000 beds; and

WHEREAS, the Department of Correction is estimating increases in numbers of inmates requiring a minimum construction of 400 beds per year; and

WHEREAS, it is imperative and necessary that this facility be placed in service at the earliest time to serve the public need.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislature hereby authorizes and provides approval for the State Board of Correction to enter into an agreement or agreements with the Idaho State Building Authority, under such terms and conditions as may be reasonable and necessary, to provide financing to construct a prison on state-owned land.

BE IT FURTHER RESOLVED that the Legislature intends that the prison be constructed to standards as determined by the State Board of Correction.

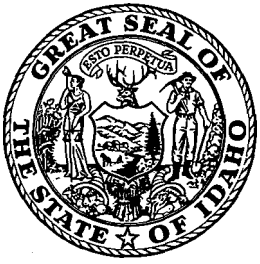
BE IT FURTHER RESOLVED this Resolution acts as authorization required by the provisions of Section 67-6410, Idaho Code.

Adopted by the House March 14, 1997
Adopted by the Senate March 18, 1997

CERTIFICATE OF SECRETARY OF STATE

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

I, PETE T. CENARRUSA, Secretary of the State of Idaho, do hereby certify that the foregoing printed pages contain true, full, and correct and literal copies of all the general laws and resolutions passed by the Fifty-fourth Legislature of the State of Idaho, First Regular Session thereof, which convened January 6, 1997, and which House of Representatives thereof adjourned on March 18, 1997, and which Senate thereof adjourned March 19, 1997, as they appear in the enrolled acts and resolutions on file in this office, all of which are published by authority of the Laws of the State of Idaho.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Idaho. Done at Boise City, the Capital of Idaho, this 24th day of April, 1997.

Pete T. Cenarrusa
Secretary of State

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

INITIATIVES

INITIATIVE INSTRUCTING CANDIDATES FOR STATE LEGISLATURE AND U.S. CONGRESS TO SUPPORT CONGRESSIONAL TERM LIMITS; REQUIRES STATEMENT INDICATING NON-SUPPORT ON BALLOT.

Initiative instructing Idaho congressional delegation to support amendment to U.S. Constitution limiting terms of U.S. Representative to three, and U.S. Senator to two terms. If member of Idaho congressional delegation fails to perform certain acts supporting congressional term limits amendment, the phrase "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" would appear adjacent to their name on ballot. The initiative allows candidates for U.S. Congress to sign a pledge to support congressional term limits amendment, and the phrase "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" would appear adjacent to the candidate's name on ballot if they fail to sign. The initiative instructs state legislators to make application to U.S. Congress for a convention proposing amendments to the U.S. Constitution. If a state legislator fails to perform certain acts in support of application, the phrase "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" would appear adjacent to the legislator's name on ballot. The initiative requires Secretary of State to determine whether statement should appear on ballot, and candidates and electors can appeal the decision to the Idaho Supreme Court. If congressional term limits amendment is before states for ratification or becomes part of U.S. Constitution, no statement would appear on ballot and act would be repealed.

Proposition Four

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

Section 1: This act shall be known and may be cited as The Congressional Term Limits Act of 1996.

Section 2: That Chapter 9, 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 34-907A, Idaho Code, and to read as follows:

34-907A. INFORMATION ON LEGISLATORS' SUPPORT FOR CONGRESSIONAL TERM LIMITS AMENDMENT. (1) Purpose -- Constitutional Amendment. -- It is the purpose and intent in enacting this legislation to secure the adoption of the following Congressional Term Limits Amendment under the provisions of Article 5 of the United States Constitution by informing voters of acts and omissions by candidates for State and Federal legislative office with respect to said constitutional amendment:

Section A. No person shall serve in the office of the United

States Representative for more than three (3) terms, but upon ratification no person who has held the office of United States Representative or who then holds the office shall serve for more than two additional terms.

Section B. No person shall serve in the office of the United States Senator for more then two (2) terms, but upon ratification, no person who has held the office of the United States Senator or who then holds the office shall serve for more than one additional term.

Section C. This article shall have no time limit within which it must be ratified to become operative upon the ratification of the legislatures of three-fourths of the several States.

(2) Ballot Information for Members of Congress.--

(a) Each member of the Idaho congressional delegation is hereby instructed to use all of his or her delegated powers to pass the Congressional Term Limits Amendment set forth above. All primary, general, and special election ballots shall have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any U.S. Representative or U.S. Senator who did any one or more of the following acts:

1. failed to vote in favor of the proposed Congressional Term Limits Amendment set forth above when brought to a vote; or
2. failed to second the proposed Congressional Term Limits Amendment set forth above if it lacked for a second before any proceeding of the legislative body; or
3. failed to propose or otherwise bring to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above if it otherwise lacked a legislator whose proposed or brought to a vote of the full legislative body the proposed Congressional Term Limits Amendment set forth above; or
4. failed to vote in favor of all votes bringing the proposed Congressional Term Limits Amendment set forth above before any committee or subcommittee upon which he or she served in the respective house; or
5. failed to vote against or reject any attempt to delay, table, or otherwise prevent a vote by the full legislative body of the proposed Congressional Term Limits Amendment set forth above; or
6. failed to vote against any term limits proposal with longer limits than the proposed Congressional Term Limits Amendment set forth above; or
7. sponsored or co-sponsored any proposed Constitutional amendment or law that proposes term limits with longer limits than those in the proposed Congressional Term Limits Amendment set forth above; or
8. failed to ensure that all votes on the proposed Congressional Term Limits Amendment set forth above were recorded and made available to the public.

(b) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS' shall not appear adjacent to the name of a candidate for Congress if the Congressional Term Limits Amendment set forth above is before the States for ratification or has become part of the U.S. Constitution.

(3) Ballot Information on Term Limit Pledge for Non-Incumbents. --

(a) Each non-incumbent for the office of U.S. Representative and U.S. Senator, state representative or state senator shall be offered the opportunity to sign a "Term Limits Pledge" each time he or she files as a candidate for such an office. A candidate who declines to sign the "Term Limits Pledge" shall have the information "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed adjacent to his or her name of the election ballot.

(b) The "Term Limit Pledge" shall be offered to every non-incumbent candidate for U.S. Senator, U.S. Representative, state senator, or state representative each time he or she files for candidacy until such time as the U.S. Constitution has been amended to limit U.S. Senators to two terms in office and U.S. Representatives to three terms in office.

(c) The "Term Limits Pledge" that each non-incumbent candidate set forth above shall be offered is as follows:

"I support congressional term limits and pledge to use all of my legislative powers to enact the proposed Congressional Term Limits Amendment set forth in the Congressional Term Limits Act of 1996. If elected, I pledge to act and vote in such a way that the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" will not appear next to my name."

The pledge form will provide a space for the signature of the candidate and the date signed.

(d) The information "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall not appear adjacent to the names of non-incumbent candidates for U.S. Congress or the Idaho Legislature if the Congressional Term Limits Amendment set forth above has become part of the United States Constitution.

(4) Ballot Information for State Legislators. --

(a) since it is the purpose and intent of this act to secure the Congressional Term Limit Amendment, the legislature of the State of Idaho is specifically instructed to support the following application to Congress:

"We, the People and Legislature of the State of Idaho, due to our desire to establish term limits on the Congress of the United States, hereby make application to Congress, pursuant to our power under Article 5 of the United States Constitution, to call a convention for proposing amendments to the Constitution."

(b) At each election for the office of state legislator, the ballot shall inform voters regarding any incumbent and non-incumbent candidate's failure to support the Congressional Term Limits Amendment proposed in Section 2. (1) above. All primary, general, and special election ballots shall have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" printed adjacent to the name of any state senator or representative who did any one or more of the following acts:

1. failed to vote in favor of the application set forth above when brought to a vote; or
2. failed to second the application set forth above if it lacked for a second; or
3. failed to vote in favor of all votes bringing the application set forth above before any committee, subcommittee or legislative council upon which he or she served in the respective house; or

4. failed to propose or otherwise bring to a vote of the full legislative body the application set forth above if it otherwise lacked a legislator who so proposed or brought to a vote of the full legislative body the application set forth above; or

5. failed to vote against any attempt to delay, table, or otherwise prevent a vote by the full legislative body of the application set forth above; or

6. failed in any way to ensure that all votes on the application set forth above were recorded and made available to the public; or

7. failed to vote against any change, addition, or modification to the application set forth above; or

8. failed to vote in favor of the amendment set forth above when it was sent to the States for ratification; or

9. failed to vote against any term limits amendment with longer limits than the proposed amendment set forth above, if such an amendment was sent to the States for ratification.

(c) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" as required by any of subsections (1) through (7) shall not appear adjacent to the names of candidates for the state legislature if the State of Idaho has made the application to Congress for a convention for proposing amendments to the U.S. Constitution pursuant to this Act and such application has not been withdrawn.

(d) The information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" as required by either of subsections (8) or (9), shall not appear adjacent to the names of candidates for the state legislature if the Congressional Term Limits Amendment set forth above has been submitted to the States for ratification and ratified by the Idaho Legislature, or the proposed Congressional Term Limits Amendment set forth above has become part of the U.S. Constitution.

(5) Ballot Information Designation -- Determination by the Secretary Of State. --

(a) The Secretary of State shall be responsible to make an accurate determination from any official report or record of Congress or the Legislature or any other report deemed reliable by the Secretary Of State as to whether a candidate for the state or federal legislature shall have placed adjacent to his or her name on the election ballot the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS."

(b) The Secretary of State shall consider timely submitted public comments prior to making the determination required in subsection (a) of this section.

(c) The Secretary of State, in accordance with subsection (a) of this section shall determine and declare what information, if any, shall appear adjacent to the names of each incumbent state and federal legislator if he or she was to be a candidate in the next general election. In the case of U.S. Representatives and U.S. Senators, this determination and declaration shall be made in a fashion necessary to ensure orderly printing of primary and general election ballots with allowance made for all legal action provided in sections (e), (f), and (g), below, and shall be based upon each member of Congress's action during their current term of office and any action taken in any concluded term, if such action was taken after the determination and declaration was made by the Secretary of State in a previous election.

In the case of incumbent state legislators, this determination and declaration shall be made not later than thirty (30) days after the end of the regular session following each general election, and shall be based upon legislative action in the previous regular session and any action taken in a previous session, if such action was taken after the determination and declaration was made by the Secretary of State in the previous election. The Secretary of State shall provide official notification to the incumbents by certified mail and to the public by official media statement, or legal publication.

(d) The Secretary of State shall, determine and declare what information, if any, shall appear adjacent to the names of non-incumbent candidates for state and federal legislator, not later than five (5) days after the deadline for filing for the office. The Secretary of State shall provide official notification to the candidate by certified mail and to the public by official media statement or legal publication.

(e) If the Secretary of State makes the determination that the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall not be placed on the ballot adjacent to the name of a candidate for senator or representative for state or federal office, any elector may appeal such decision within five (5) days after official public notification of the determination by the Secretary of State to the Idaho Supreme Court as an original action or shall waive any right to appeal such decision; in which case the burden of proof shall be upon the Secretary of State, relying upon information provided by the candidate, to demonstrate by clear and convincing evidence that the candidate has met the requirements set forth in this Act and therefore should not have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(f) If the Secretary of State determines that the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" shall be placed on the ballot adjacent to a candidate's name, the candidate may appeal such decision within five (5) days after receipt of notification to the Idaho Supreme Court as an original action or shall waive any right to appeal such decision; in which case the burden of proof shall be upon the candidate to demonstrate by clear and convincing evidence that he or she should not have the information "DISREGARDED VOTERS' INSTRUCTION ON TERM LIMITS" or "DECLINED TO PLEDGE TO SUPPORT TERM LIMITS" printed on the ballot adjacent to the candidate's name.

(g) The Idaho Supreme Court shall hear the appeals provided for in sections (e) and (f) on an expedited basis and shall issue decisions not later than two days prior to the date by which the Secretary of State must order ballots printed to comply with election laws.

Section 3: Automatic Repeal.
At such time as the Congressional Term Limits Amendments set forth in Section 2 or an amendment with no longer terms has become part of the U.S. Constitution, this Act automatically shall be repealed.

Section 4: Severability.
If any portion, clause, or phrase of this Act is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be affected, but shall remain in full force and effect.

PROCLAMATION

WHEREAS, The Secretary of State, in the presence of the Governor, has canvassed the votes cast on November 5, 1996, concerning Initiative Petition No. 4 (Initiative instructing candidates for State Legislature and U.S. Congress to support Congressional Term Limits; requires statement indicating non-support on ballot.), and,

WHEREAS, The results show that the said Initiative Petition has received 267,973 "yes" votes, 210,108 "no" votes, and

WHEREAS, The "yes" vote on Initiative Petition No. 4 is more than a majority of the vote cast for said Initiative Petition No. 4

NOW, THEREFORE, I PHILIP E. BATT, Governor of the State of Idaho, pursuant to Section 34-1813, Idaho Code, do hereby proclaim that Initiative Petition No. 4 has been approved by the people of the State of Idaho and is in full force and effect as the law of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise, the Capital, the Twentieth day of November, in the year of our Lord One Thousand Nine Hundred and Ninety-Six and of the Independence of the United States of America the Two Hundred and Twenty-First.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 96-08

CREATING THE GOVERNOR'S MEDICAID REFORM ADVISORY COUNCIL

WHEREAS, there is concern at both state and federal levels over growth in Medicaid spending, leading Congress to consider how it will attempt to control Medicaid expenditures; and

WHEREAS a state study of possible changes in eligibility for, services provided by, or reimbursement rates for, the Medicaid program is an important part of on-going program evaluation in Idaho and a way to involve the general public in decisions about the future of Medicaid; and

WHEREAS any discussion of the future of Idaho's Medicaid program must include reference to related issues such as federal funding, restrictions, and requirements; welfare reform; the role of both the public and private sectors in providing and purchasing health care services, including preventive care services; individual rights and responsibilities; the impact of changes in Medicaid on services for or payments on behalf of Idaho's eligible indigent population; and topics such as managed care, prioritization of services, co-payments, and similar matters; and

WHEREAS Idaho must be prepared to assume greater responsibility for ensuring that her citizens have access to quality health care should Congress pass this obligation on to the states, and should in any event examine its own range of medical assistance programs for eligible Idahoans to make certain state revenues dedicated to health care programs are used as prudently and effectively as possible;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby establish the Governor's Medicaid Reform Advisory Council, as follows:

I. PURPOSE

A. The Governor's Medicaid Reform Advisory Council will:

- Educate itself about Idaho's participation in the federal-state medical assistance program known as Medicaid, including, to the extent possible, what changes will be necessary in Idaho's program to comply with any revisions to the federal program or any alterations in the current method of funding Medicaid;
- Evaluate a variety of options, including but not limited to managed care, cost-containment, co-payments, service prioritization, privatization, funding mechanisms, changes in eligibility criteria, licensing and certification standards for providers and facilities, cost-sharing opportunities, purchasing reforms, and preventive care services, to ensure that Idaho's medical assistance program is cost-effective, responsive to the needs of Idaho's citizens, and well managed; and
- Prepare a final report of recommendations on how, if necessary, Idaho's medical assistance program should be reorganized or administered to comply with changes in federal requirements for this program, and on what changes Idaho can make, either by statute or through the rules process, to

ensure the viability of its medical assistance program. This report should be completed no later than December of 1996, with relevant proposals prepared for submission to the Idaho Legislature in 1997 or, if waiver requests should be necessary, for submission to the U.S. Department of Health and Human Services.

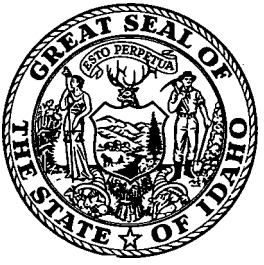
B. In performing its responsibilities, the Advisory Council will:

- Focus on the Medicaid program as set forth in Title 56, Chapter 2, Idaho Code, and on any revisions to the program enacted by Congress and signed into law during the course of the study;
- Consider in its discussions the impact any changes to Idaho's Medicaid program will have on current efforts to provide health care to the state's eligible indigent population;
- Solicit ideas and suggestions from a variety of sources, including recipients, providers, advocates, community leaders, program staff at both the state and federal levels, and the general public; and
- Incorporate into its review process opinions from qualified advisors who can ensure that topics are thoroughly analyzed and discussed.

II. COMPOSITION AND STAFFING

A. The Governor's Medicaid Reform Advisory Council will be composed of no more than 18 members, each of whom will be appointed by the Governor and will serve at his pleasure. Six members will be selected from the Idaho Legislature.

B. The Department of Health and Welfare will provide staff and administrative support to the council.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this sixteenth day of April in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-09

CREATING AN INTERIM COUNCIL TO ESTABLISH THE PROCEDURES AND CRITERIA FOR THE WORKFORCE DEVELOPMENT TRAINING FUND

WHEREAS, Section 71-1347B, Idaho Code, establishes a Workforce

Development Training Fund; and

WHEREAS, the Governor is to appoint a Council to establish procedures, criteria and performance measures for expenditures from the Workforce Development Training Fund;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order as follows:

1. An interim Workforce Development Training Fund Council ("the Council") shall be established;
2. The Council shall serve until December 31, 1996, and shall establish the procedures, criteria and performance measures for expenditures from the Workforce Development Training Fund;
3. The Council shall be jointly staffed by the Idaho Department of Commerce and the Idaho Department of Labor in consultation with the Division of Vocational Education;
4. The Council shall consist of not more than seven (7) members, representing business and labor, appointed by the Governor.

This Executive Order shall be in effect until December 31, 1996.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this sixth day of May in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-10

CONTINUING PROVISIONS FOR STATE COOPERATION WITH THE FEDERAL INSURANCE ADMINISTRATION UNDER THE NATIONAL FLOOD INSURANCE ACT OF 1968, AS AMENDED, REPEALING AND REPLACING EXECUTIVE ORDER NO. 92-06

WHEREAS, uneconomic uses of the state's floodplains have occurred and potential flood losses have increased despite substantial efforts to control floods; and

WHEREAS, national, state, and local studies of areas and property subject to flooding predict increases in flood damage potential and flood losses, despite continuing investment in flood protection structures; and

WHEREAS, the State of Idaho maintains programs for the construction of buildings, roads, and other facilities and annually acquires

and disposes of lands in flood hazard areas, significantly influencing patterns of commercial, residential, and industrial development; and

WHEREAS, the availability of flood insurance under the National Flood Insurance Program, as provided by the National Flood Insurance Act of 1968, as amended, is dependent upon state coordination of federal, state, and local activities to manage floodplains, mudslide (i.e., mudflow) areas, and flood-related erosion areas in the state; and

WHEREAS, the Department of Water Resources is the state agency responsible for assisting with local regulations necessary for flood insurance provided by the National Flood Insurance Act of 1968 and regulations set forth in 44 CFR 60.25; and

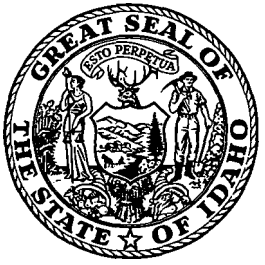
WHEREAS, the Federal Insurance Administration has promulgated and adopted rules and regulations governing eligibility of state and local communities to participate in the National Flood Insurance Program, which participation depends on state coordination of federal, state, and local activities to manage floodplains, mudslide (i.e. mudflow) areas, and flood-related erosion areas in the state;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order as follows:

1. The Department of Water Resources is hereby designated to assist in the implementation of 44 CFR 60.25, Rules and Regulations of the Federal Insurance Administration and will encourage a broad and unified effort to prevent uneconomic use and development of the state's floodplains and, in particular, to lessen the risk of flood losses in connection with state lands and installation and state-financed or supported improvement, specifically as follows:
2. Under the leadership and direction of the Department of Administration, all state agencies directly responsible for the construction of buildings, structures, roads, or other facilities shall preclude the uneconomic, hazardous, or unnecessary use of floodplains in connection with such facilities; in the event of construction in the floodplain, management criteria set forth in 44 CFR 60.3, 60.4, and 60.5 of the National Flood Insurance Regulations shall apply; floodproofing measures shall be applied to existing facilities in order to reduce flood damage potential;
3. All state agencies responsible for the administration of grant or loan programs involving the construction of building, structures, roads, or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief, shall preclude the uneconomic, hazardous, or unnecessary use of floodplains in such connection;
4. All state agencies responsible for the disposal of lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to other public instrumentalities or private interests and, in order to minimize future state expenditures for flood protection and flood

disaster relief, shall notify those instrumentalities and private interests that such hazards exist;

5. All state agencies responsible for programs which affect land use planning, including state permit programs, shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved; and
6. In evaluating flood hazard potential, all state agencies shall coordinate their work with the Department of Water Resources to assure that the most up-to-date data and/or methods of analysis are utilized.
7. As may be permitted by law, the head of each state agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency to be coordinated with the Department of Administration.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this ninth day of May in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-11

CONTINUATION OF THE ENERGY RESOURCES DIVISION OF THE IDAHO DEPARTMENT OF WATER RESOURCES, REPEALING AND REPLACING 92-04

WHEREAS, energy and the availability of long-range supplies are critical to the well-being of our state; and

WHEREAS, energy is a vital natural resource and is inextricably linked to our vital water resources; and

WHEREAS, it is the responsibility of state government to employ measures to reduce wasteful, uneconomical, and unnecessary uses of energy which will diminish Idaho's precious natural resources; and

WHEREAS, the consolidation of governmental activities relating to water resources and energy has provided for more efficient state services;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby renew Executive Order 92-04, and order the continua-

tion of the Energy Resources Division of the Idaho Department of Water Resources as follows:

1. TRANSFER AND RETENTION OF FUNCTIONS. The Director of the Department of Water Resources, being authorized by Section 42-1706, Idaho Code, to perform professional duties at the request of the Governor, and as otherwise provided by law, is vested with the following energy planning, policy, and coordination functions:
   a) Advise the Governor, the Legislature, and other public officials of the state's energy requirements, supply, resources, management, and production;
   b) Prepare and, as necessary, implement contingency plans for the conservation and allocation of energy supplies not regulated by the state during periods of shortages and supply interruptions;
   c) Promote energy conservation through research, public information, and other activities;
   d) Promote the increased utilization of renewable energy resources through research, technical assistance, and public information;
   e) Assist local governments, school districts, and public institutions in obtaining funds and carrying out programs of improved energy management;
   f) Assist citizens in developing energy-efficient technologies;
   g) Provide public information and data on energy supplies, demands, resources, technologies, and conservation;
   h) Pursue and accept federal delegation of responsibility and authority for matters that affect the energy supply and consumption of the citizens of Idaho other than those matters related to public utilities subject to the jurisdiction of the Idaho Public Utilities Commission;
   i) Enter into agreements and contracts and do all else necessary to carry out the provisions of this Executive Order and in the performance of other duties as may be directed by the Governor;
   j) Serve as the lead state agency to solicit, receive and disburse any funds which promote the conservation of energy and the development of energy resources from all available sources;
   k) Coordinate with other state agencies to assist in the development of plans to reduce energy consumption by the agencies;
   l) Require reports of energy plans and energy consumption from state agencies other than the Idaho Public Utilities Commission.
2. SAVINGS PROVISIONS. All orders, regulations, contracts, and licenses which have been issued in the performance of functions which are retained under this Executive Order, and which are in effect at the time this Executive Order takes effect, shall continue in effect according to their terms until modified or terminated;
   a) Whenever the Idaho Office of Energy or the Director

thereof is referred to in any law, rule, regulation, order, contract, document, judicial or administrative proceeding, or otherwise, the same shall be considered to mean the Department or the Director of the Department of Water Resources;

b) The duties, responsibilities and authority of this Executive Order shall not alter any existing responsibilities, jurisdiction or planning functions of state agencies established by state or federal law; nothing in this Executive Order shall be construed to provide or imply any regulatory authority by the Energy Division of the Department of Water Resources over public utilities that are subject to the jurisdiction of the Idaho Public Utilities Commission.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this ninth day of May in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-12

CONTINUATION OF THE IDAHO GEOGRAPHIC INFORMATION CENTER DIRECTED BY THE DEPARTMENT OF WATER RESOURCES, REPEALING AND REPLACING EXECUTIVE ORDER NO. 92-05

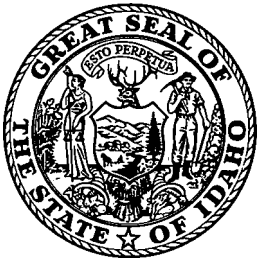
WHEREAS, the Department of Water Resources has image analysis capability to effectively utilize remote sensing and geographically-referenced data; and

WHEREAS, it is in the best interest of the state of Idaho to continue to share and develop this capability in cooperation with federal resource management agencies, local government, and private organizations for conducting needed resource inventory and mapping; and

WHEREAS, the Department of Water Resources has been designated as the lead state agency to ensure the proper coordination, maintenance, and support of the image analysis and geographic information system capability and to provide for its effective use;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order the continuation of the Idaho Geographic Information Center and direct the Idaho Department of Water Resources to:

1. Provide necessary coordination and technical support;
2. Promote the operational applications of digital image analysis and geographic information systems;
3. Provide systems management support to ensure the proper operation and availability of digital geographically-referenced data for applications by various users;
4. Provide technical assistance, in the form of consultation and training, to allow and encourage application of digital mapping techniques and equipment by employees of other agencies and organizations;
5. Cooperate with, receive, and expend funds from other sources for the continued development and utilization of image analysis geographic information techniques; and
6. Maintain an assessment of the geographic information system and image processing capabilities needed within Idaho by existing and potential users, to cooperate with Idaho universities and other research institutions for the development and implementation of improved capabilities resulting from research activities.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this ninth day of May in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-13

REESTABLISHING THE OREGON TRAIL COMMITTEE AS CREATED IN EXECUTIVE ORDER NO. 91-2

WHEREAS, the Oregon Trail has great historical significance to the State of Idaho; and

WHEREAS, it is important that Idaho designate a committee to work with other Oregon Trail states;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby reestablish the Oregon Trail Committee as follows:

1. The purpose of the Committee shall be to serve as an advisory body to state, local and federal governments on the development and management of the Oregon Trail. The Committee shall:

a) Promote public awareness of the historical significance of the Oregon Trail and encourage the development and protection of historical sites and outdoor recreation resources along the Oregon Trail;
b) Act in an advisory capacity to other Idaho commissions, bureaus, agencies, and committees by making recommendations regarding the activities and policies that relate to the history and importance of the Oregon Trail; and
c) Serve as the official liaison with other Oregon Trail states, federal departments, bureaus, and committees concerned with organizing activities to foster state and national recognition of the significance of the Oregon Trail.

2. The members of the Committee shall be appointed by the Governor and serve at his pleasure. The membership of the Committee shall include a representative of the Idaho Heritage Trust, a representative of the Idaho Historical Society, a representative of the Idaho Department of Parks and Recreation, and the Governor or his designee, and such other members as appointed by the Governor.
3. The Committee shall have regular meetings as determined by the majority of the committee and shall meet on special occasions as requested by the chairperson.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this thirteenth day of May in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-14

ESTABLISHING GUIDELINES FOR CHARITABLE SOLICITATIONS AMONG STATE EMPLOYEES PROVIDED AS A SUPPLEMENT TO EXECUTIVE ORDER 95-01

WHEREAS, state employees desire to improve their communities and have been very generous in contributing to those in need; and

WHEREAS, state employees should have the ability to choose to give to any health and human service tax exempt 501(c)(3) organization;

WHEREAS, it has become necessary to establish specific guidelines for charitable solicitations among state employees to minimize costs

to the state and employee administrative involvement;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby establish guidelines for charitable solicitations among state employees as follows:

Section 1. Purpose.

A. To provide state employees the opportunity to give to charitable agencies with a thorough and equitable understanding of the agencies' charitable purpose.

Section 2. Goals.

A. To facilitate charitable giving through an efficient, open process.

B. To provide maximum education and information to state employees regarding potential giving.

C. To provide efficient campaign processes and techniques to those state employees charged with conducting employee campaigns.

D. To ensure that all employees are given an opportunity to give without being pressured by any employee or charity.

Section 3. Campaign Leadership.

A. Department heads will be encouraged by the Governor, through normal state activities, to support the State Employees' Campaign. The Governor will ask each Department Head to appoint a Campaign Coordinator for the Department.

B. The Campaign Coordinator for each department will provide leadership in planning and completing the State Campaign.

C. The Campaign Coordinators will be given campaign assistance and training as described in the "Campaign Administration" section of this document.

Section 4. Eligibility of Participants and Campaign Material.

A. State employees will continue to be able to designate to any charitable health and human services agency, federation, program or field of service. All agencies receiving designations must be non-profit, tax-exempt 501(c)(3) organizations.

B. Each state employee will receive:

1) An agency neutral pledge form similar to the 1994 state employee pledge card with multiple lines to designate their contributions to the agencies of their choice.

2) A listing of all United Way agencies, other federations, and other agencies receiving one or more contributions from the State Employees' Campaign over the prior two years. The list will be updated annually and will include 25 word statements on the mission of each agency.

Section 5. Communications Committee for the State Employees' Campaign

A. A Communications Committee representative of the participating federations and charities will meet at least twice per year to discuss the State Employees' Campaign.

1) Two state employee representatives, appointed by the Governor, will be members.
   (a) One representative shall be appointed from the Governor's office.
   (b) One representative shall be an appointed Department Head.
2) Each federation listed will be invited to appoint one volunteer and one staff member.
3) Unaffiliated listed agencies, as a group, will be invited to appoint one volunteer and one staff member as a Committee representative.

B. The Communications Committee will receive campaign analysis reports from the previous campaign by March 1, and the campaign audit as described in the financial procedures below, as soon as it is available, usually late May or June. Because United Way's audit is an in-kind donation, flexibility in timing is needed.

C. The Communications Committee will coordinate with United Way in the design of the pledge forms, participants' list and the training agenda before they are finalized.

Section 6. Campaign Administration.

A. Campaign Coordinators will be requested by the Governor and chosen by the department heads.

B. Training for Campaign Coordinators will take place in August to ensure they have adequate time to develop a campaign plan, secure Department Head approval, and make necessary arrangements. Because United Way is the campaign facilitator, they will organize the training with the assistance of the Communications Committee.

C. The training will be at a site chosen by the Committee's State Employees' Representatives.

D. All agencies listed on State Employees' Campaign material will be invited to attend training. Time will be given to the Coordinators after the campaign process presentation to visit with any and all agencies individually.

E. All formal presentations will be directed toward campaign techniques and processes, without promoting any one federation or charity.

F. United Way will provide customer service to all those planning campaigns. This will include campaign planning, facilitating, and reporting assistance. All agencies will be listed on a Request for Presentation form to be used by Campaign Coordinators and the Campaign Specialist Administrator to schedule agency speakers and tours. The Campaign Specialist Administrator will schedule presentations for the Campaign Coordinators.

G. Individual charities may not contact Coordinators directly. Direct contact would cause an unmanageable burden on the Coordinator.

Section 7. Financial Procedures.

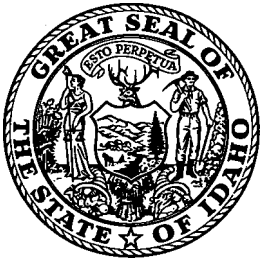
A. All organizations receiving designations will be subject to a pledge loss fee, based on the loss rate experienced

in the prior year by the State Employees' Campaign, and to a campaign administrative fee which shall not exceed 10%. It is intended that the costs for the State Employees' Campaign will be distributed and shared fairly and equitably and in direct relation to the ratio of designations received by each agency/charity to the total designations. The fee will only include United Way expenses directly attributed to this campaign. No fund distribution or community planning expenses will be included.

B. For the 1996 campaign, fund raising expenses are estimated at 10%. This is based on adjusted actual expenses from the 1995 campaign ($23,896 unaudited). In future years, the annual post campaign audit will provide audited expenses and final campaign figures in order to estimate the percent of expenses for the next year's campaign. The Communications Committee will meet to examine the annual audit and review campaign costs for the purpose of mutually minimizing costs.

C. Designations will be paid quarterly beginning March 30. Agencies receiving designations totaling less than $1000 will be paid in a single payment in June of each year.

D. Undesignated money will be divided among federations in proportion to their designations. Any unaffiliated agency receiving designations in excess of 2% of the State Employees' Campaign will be eligible for undesignated funds. Undesignated funds are those funds that contributors have not designated on their pledge card to a specific agency, federation, program or field of service.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this sixteenth day of May in the year of our and nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-15

REPEALING EXECUTIVE ORDER 96-12

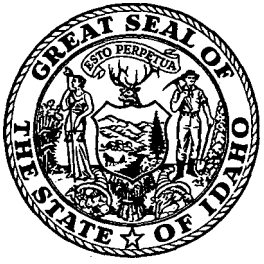
WHEREAS, Executive Order No. 96-12, Continuation of the Idaho Geo-

graphic Information Center Directed by the Department of Water Resources, was issued on May 9, 1996 to repeal and replace Executive Order No. 92-05, Renaming the Idaho Image Analysis Facility as the Idaho Geographic Information Center and Continuing Its Functions at the Department of Water Resources; and

WHEREAS, Executive Order No. 92-05 had previously been repealed and replaced by Executive Order No. 92-24, Idaho Geographic Information Advisory Committee and Geographic Information Center; and

WHEREAS, Executive Order No. 96-12 was thus issued in error;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order that Executive Order No. 96-12 be repealed.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this third day of June in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

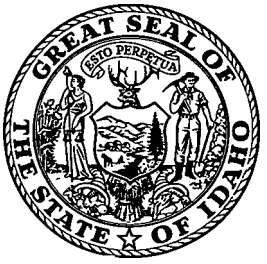
EXECUTIVE ORDER NO. 96-16

CONTINUATION OF THE PROHIBITION OF USE OF STATE FUNDS FOR MEMBERSHIP IN PROFESSIONAL ASSOCIATIONS BY STATE EMPLOYEES, REPEALING AND REPLACING EXECUTIVE ORDER NO. 92-13

WHEREAS, there is need for a uniform state policy regarding the payment of professional dues, fees, and memberships for state employees, I find it is prudent to continue the policy for all state employees in the Executive Department that was promulgated by Executive Order No. 81-11;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order as follows:

No state money shall be used to pay for any kind of professional, occupational, or trade license, certificate, permit, or occupational registration for any state employee or officer; nor shall any state monies be used to pay for any kind of dues to any professional, occupational, or trade association in which membership is restricted to persons who are licensed, certified, or registered under Idaho law. This policy does not preclude the state or state departments from paying dues to organizations relating to their responsibilities in state government.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this fourteenth day of June in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-17

CONTINUATION OF THE IDAHO COUNCIL FOR PURCHASES FROM SEVERELY DISABLED PEOPLE REPEALING AND REPLACING EXECUTIVE ORDER NO. 92-14

WHEREAS, it is in the public interest to promote employment opportunities for severely disabled people; and

WHEREAS, the rehabilitation facilities of Idaho strive to provide employment opportunities for severely disabled people; and

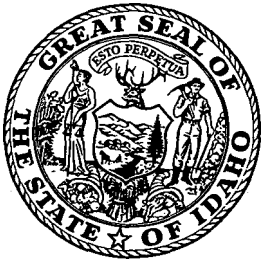
WHEREAS, the Idaho Code provides for the purchase by the agencies of the State of Idaho of goods and services that are produced by severely disabled people employed by rehabilitation facilities;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuation of the Idaho Council for Purchases from Severely Disabled People, as follows:

1) The Council's responsibilities will be:

- To promote the purchase by state agencies of goods and services produced by severely disabled people in rehabilitation facilities under the auspices of Section 67-2319, Idaho Code;
- To conduct monitoring and study of the implementation of the purchasing program authorized by said Section 67-2319;
- To designate a central non-profit organization to coordinate the participation of rehabilitation facilities in the Idaho purchasing program and develop procedures for such participation;
- To advise the Division of Purchasing on the development and operation of a program to purchase products and services from severely disabled people in rehabilitation facilities; and
- To provide an annual report of activities, products, services, employment opportunities, and other benefits derived from this program.

2) The Governor shall appoint members of the Council who shall serve at his pleasure. Council members shall be selected from rehabilitation facilities, the Division of Purchasing, the private sector, a labor organization, the Division of Vocational Rehabilitation, and the Division of Community Rehabilitation. The members of the Council shall elect one of their number Chairman.
3) The Council shall be administratively supported by the Division of Vocational Rehabilitation.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this fourteenth day of June in the year of our Lord nineteen hundred ninety-six and of the Independence of the United States of America the two hundred twentieth and of the Statehood of Idaho the one hundred sixth.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-18

ENERGY CONSERVATION CONSIDERATIONS IN STATE BUILDINGS AND LEASES, REPEALING AND REPLACING EXECUTIVE ORDER NO. 88-19

WHEREAS, the efficient use of energy is of prime importance to the economic and energy well-being of the State of Idaho; and

WHEREAS, the State of Idaho uses, in its owned and leased buildings, a considerable portion of the state's energy supply; and

WHEREAS, the state government's ability to control energy use in leased facilities has been minimal, particularly after signing a lease; and

WHEREAS, it is imperative that the state government of Idaho set an example of energy efficiency for owners and operators of public and private buildings;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order that all building designs and lease agreements shall include, where feasible, energy conservation considerations, including:

1. Chapter 13 of the Uniform Building Code, 1994 Edition;
2. Use of alternative energy sources;
3. Energy management systems and controls to effectively monitor and maintain systems at optimal operations; and
4. State-of-the-art systems and equipment to conserve energy economically.

FURTHER, I order that all lease agreements be reviewed in draft form for compliance with these objectives. All parties are to be notified in any such negotiations that failure to comply with these objectives may be sufficient grounds for voiding the lease agreement. I further order that the signing of such agreements include a statement of accountability to the intent of this order so that compliance will be a part of the lease-drafting procedure rather than a source of conflict after a contract has been signed. I further direct the attention of all persons and agencies in all branches of state government to the spirit of this order. Consideration of long-term energy costs, including seasonal and peaking demands upon the suppliers of energy, shall be a major consideration in construction of all state buildings and execution of lease agreements.

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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-19

CREATING A WORKFORCE DEVELOPMENT COUNCIL FOR PLANNING AND OVERSIGHT OF THE STATE'S WORKFORCE DEVELOPMENT SYSTEM

WHEREAS, the economic future of Idaho and the prosperity of its residents depend upon the ability of businesses in Idaho to compete in the world economy; and

WHEREAS, a well-educated and highly skilled workforce provides businesses in Idaho with a competitive edge critical for their success; and

WHEREAS, Idaho is committed to preparing its current and future workforce for the skills necessary in the 21st Century; and

WHEREAS, empowering business, labor and community leaders to take a more active and strategic role in developing the state's economic and workforce development policy will enhance the quality and responsiveness of these programs; and

WHEREAS, the development of a comprehensive workforce development strategy for Idaho and the consolidation of federal and state advisory councils will improve planning and oversight functions, improve the effectiveness, quality and coordination of services designed to main-

tain a highly skilled workforce, and help provide for the most efficient use of federal, state and local workforce development resources; and

WHEREAS, Idaho's current workforce development efforts and initiatives require clear strategic planning, increased coordination, and consolidated oversight for better coordination of workforce development programs under one council at the state level,

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order that:

1. The Idaho Workforce Development Council (the "Council") is established in accordance with Title VII of the Job Training Partnership Act, as amended, and referred to as JTPA.
2. The Council will replace and consolidate the following existing councils: the Idaho Job Training Council, the State Council on Vocational Education, the State School-to-Work Collaborative Team, and the Employment Security Advisory Council;
3. The councils that will be consolidated, identified in paragraph 2 above, shall make plans to transition their responsibilities to the integrated Council as soon as practical, but no later than October 1, 1997, and may continue to perform functions authorized in state and federal law under their existing structure until such transition is accomplished. Under the authority vested in me by Section 72-1336, Idaho Code, I designate the existing Employment Security Advisory Council to approve expenditures pursuant to Section 72-1347A, Idaho Code through December 31, 1996;
4. The Council shall consist of not more than 33 members appointed by the Governor, drawing upon the membership of the consolidated councils identified in paragraph 2 above, as appropriate and consistent with federal requirements for the nomination and composition requirements set forth in section 702 of the JTPA as amended. The Council's membership, shall be as follows:
   a. Representatives of business and industry shall comprise at least 40% of the members;
   b. At least 15% of the members shall be representatives of local public education, postsecondary institutions, and secondary or postsecondary vocational educational institutions;
   c. At least 15% of the members shall be representatives of organized labor based on nominations from recognized state labor federations;
   d. Representatives from the Department of Labor, the Department of Health & Welfare, the Department of Commerce, the Division of Vocational Rehabilitation, the Division of Vocational Education, the Commission on Aging and the Superintendent of Public Instruction;
   e. A representative of a Community-Based Organization; and
   f. Individuals from the general public who have special knowledge and qualifications with respect to special education and career development needs of hard to serve

individuals.

5. The Council will be responsible for advising the Governor and the State Board of Education, as appropriate and at regular intervals, on the following:
   a. Development of a statewide strategy for workforce development programs which encompasses all workforce programs including, school-to-work, work-to-work, welfare-to-work and economic stimulus initiatives;
   b. Priorities for the use of any federal employment and training block grant and the employment and training related activities under any welfare reform grant as well as state appropriated workforce development funds;
   c. Development, in collaboration with local and state stakeholders, of a substate structure for planning and oversight of the statewide workforce development system;
   d. Streamlining of services to customers to achieve an efficient and effective, customer driven workforce system for the state;
   e. Development of goals, standards and measures to evaluate the effectiveness and efficiency of workforce development programs; and,
   f. Implementation of a continuous improvement process designed to ensure high quality services for Idaho's citizen and business customers;
6. The Council shall also be responsible for:
   a. Effective January 1, 1997, approval and oversight of the expenditures from the Employment Security Special Administration Fund as set forth in Section 72-1347A, Idaho Code;
   b. Effective January 1, 1997, development and oversight of procedures, criteria and performance measures for the Workforce Development Training fund established under Section 71-1347B, Idaho Code;
   c. Effective December 1, 1996, oversight of all remaining funds and performance of duties of the State Council on Vocational Education as described in the Carl D. Perkins Act under P.L. 101-392, Section 112;
   d. Such functions and responsibilities transferred to it from existing councils; and
   e. Such other duties as the Governor assigns the Council.
7. The Governor shall name the chair and vice-chair from among the private sector members of the Council;
8. The Council shall be jointly staffed by a management team of directors of state agencies that administer workforce development programs, as designated by the Governor. Funding for the Council shall be provided by the agencies staffing the Council, which shall agree upon appropriate ratios for the allocation of administrative funding. The Idaho Department of Labor shall have responsibility for providing secretarial and logistical support to the Council;
9. The Council's members shall serve at the pleasure of the Governor. Members shall initially serve for staggered terms of one, two and three years, as designated by the Governor's

appointment. Upon expiration of the initial terms, appointments shall be for three year terms.

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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-20

CONTINUATION OF THE GOVERNOR'S MOTOR CARRIER ADVISORY COMMITTEE, REPEALING AND REPLACING EXECUTIVE ORDER NO. 92-20

WHEREAS, the people of Idaho are dependent upon the motor carrier industry to deliver raw materials, manufactured goods, agricultural products and other necessities; and

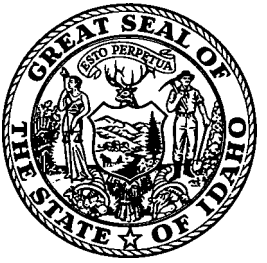
WHEREAS, the motor carrier industry, which employs thousands of Idahoans, requires user participation in developing the rules and regulations to guide the industry;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order the continuation of the Governor's Motor Carrier Advisory Committee as follows:

1. The purpose of the Committee shall be to meet bi-monthly to review appropriate changes to the safety, size and weight, and operational rules and regulations of state agencies as they apply to common, contract and private motor carriers and to adivse the Governor of the Committee's findings and recommendations.
2. The Committee shall consist of 12 members. The members shall represent the various elements of the trucking industry, including: long haul, heavy haul, short haul, wood products, logging, contracting, agriculture, truck and trailer manufacturing, tankers, concrete and aggregates, private carriers, transcontinental interstate common carriers, and others deemed appropriate by the committee.
3. Appointment of the members of the Committee shall be made by the Governor. The Committee shall assist the Governor in this task by recommending to him the names of at least two persons for appointment to each seat that becomes open on the Committee. Appointments shall be for staggered three-year terms expiring on July 1,

three years after appointment. Committee members shall elect their chairman from among their number.

4. Committee members shall receive no salary for their services. The Idaho Department of Transportation shall, however, reimburse Committee members for expenses incurred in attending Committee meetings.
5. A representative from each of the following state agencies shall provide support to the Committee: The Idaho Transportation Department, the Department of Law Enforcement, the Public Utilities Commission, and the Tax Commission. The Idaho Department of Transportation shall be the lead agency responsible for providing administrative support.
6. The Committee shall present all formal recommendations to the participating agencies and the Governor and shall present to the Governor each December a report of the activities of the Committee during that year.



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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-21

REDUCTION OF GENERAL FUND SPENDING AUTHORITY

WHEREAS, Article 7, Section 11, of the Idaho Constitution provides that state government expenditures shall not exceed state government revenue; and

WHEREAS, I have determined that expenditures from the General Fund authorized by the Legislature for the current fiscal year will exceed anticipated state revenue for the fiscal year;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me pursuant to Section 67-3512A, Idaho Code, do hereby order:

1. That the General Fund spending authority on file in the Office of the State Controller be reduced for all departments, offices and institutions of the state by two and half percent (2.5%) of their Fiscal Year 1997 General Fund Appropriation with the exception of the offices of the elected

State Constitutional officers, and the judicial and legislative departments.

2. Each department, office and institution shall notify the Office of the State Controller and the Division of Financial Management of the Office of the Governor of budget changes by September 30, 1996.

3. Elected State Constitutional officials and officers of the legislative and judicial branches of government are requested to reduce General Fund expenditures for Fiscal Year 1997 to reflect the realities of the projected revenue shortfall without impairing the discharge of their constitutional duties.

This order shall take effect immediately upon its execution and shall continue in effect until January 31, 1997, unless revoked or modified by the Governor, or until the Legislature or the Board of Examiners takes further action.

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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-22

GOVERNOR'S TASK FORCE FOR CHILDREN AT RISK, REPEALING AND REPLACING EXECUTIVE ORDER NO. 92-25

WHEREAS, Idaho's children are her most valuable and most vulnerable resource; and

WHEREAS, crimes of abuse and neglect can psychologically and physically harm innocent children for life, depriving them of their right to live happy and productive lives; and

WHEREAS, abuse and neglect of children have been recognized to be multi-generational problems; and

WHEREAS, thousands of incidents of child abuse and neglect occur each year in Idaho; and

WHEREAS, the system that responds to reports of child abuse and neglect requires more effective and efficient statewide coordination and consistent monitoring in order to better protect children; and

WHEREAS, in order to protect all children, those who commit crimes

against children need to be held accountable for their actions; and

WHEREAS, the child victims of abuse, neglect, and domestic violence must receive immediate and adequate protection from continued maltreatment; and

WHEREAS, all child victims of abuse and neglect deserve treatment and necessary medical attention; and;

WHEREAS, it is the responsibility of all Idahoans to provide a community system of support and protection for these children; and

WHEREAS, the protection of children from abuse and neglect is in the best interests of all Idahoans;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby order the continuance of the Governor's Task Force for Children at Risk.

The Task Force's responsibilities are:

1. To review existing systems and procedures and encourage improvements in the investigative, administrative and judicial handling of cases of child abuse and neglect, particularly child sexual abuse to limit the trauma to the child victim;
2. To evaluate, propose, and encourage cooperation between persons and agencies involved in cases of child abuse and domestic violence evaluations;
3. To investigate and recommend optimum models of prevention, evaluation and treatment of victims and offenders;
4. To establish procedures for the review of child fatalities and substantial or severe injuries where the circumstances of the death or injury suggest the possibility of child abuse; and
5. To study, propose, and encourage means to establish a highly professional, stable work force devoted to working with child abuse cases and issues.

The Task Force shall be composed of between 13 and 16 members appointed by the Governor.

The membership shall include:

- A Judge (Handling civil and criminal cases)
- A Prosecuting Attorney
- At least one representative of the Division of Family and
- Community Services of the Department of Health and Welfare
- A law enforcement representative with experience in child abuse cases
- A representative of the Department of Correction's Probation and Parole Division
- A juvenile correction or probation worker
- A defense attorney
- A health professional (pediatrician)
- A mental health professional specializing in therapy for abused children
- A parent or parent group representative
- Individuals experienced in working with children with disabilities
- A Court Appointed Special Advocate (CASA) representative
- A child advocates (Attorneys for children)

The members of the Task Force shall serve at the pleasure of the Governor. Members of the Task Force shall elect their chair from among their number.

The Department of Health and Welfare shall be the lead agency, providing support for the Task Force, and shall maintain office staff to carry out the activities directed by the Task Force as funding is available.

This Executive Order repeals and replaces Executive Order No. 92-25. This Executive Order shall cease to be effective four years after its entry into force.

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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 96-23

RELATING TO THE DESIGNATION OF EDUCATION FUNDING ASSOCIATION, INC. AS AN AUTHORIZED ENTITY TO PURCHASE STUDENT LOANS RELATING TO RESIDENTS OF THE STATE OF IDAHO OR PERSONS ATTENDING POST SECONDARY EDUCATIONAL INSTITUTIONS IN THE STATE OF IDAHO

WHEREAS, pursuant to the provisions of Title IV, Part B of the Federal Higher Education Act of 1965, as amended (the "Higher Education Act") (20 U.S.C., Chapter 1071 et seq.) the United States Congress has provided for Federal insurance of student loans made pursuant to the Higher Education Act or, in the alternative, for Federal reimbursement of guaranty payments made on such student loans in states where state guaranty programs are operated pursuant to the Higher Education Act and the United States Congress has also provided through the Higher Education Act for payment by the Federal government of interest and other subsidies on such student loans; and

WHEREAS, the United States Congress has provided through the Higher Education Act and Section 150(d) of the Internal Revenue Code 1986, as amended ("Section 150(d)"), procedures whereby certain non-profit corporations may issue tax exempt "qualified scholarship funding bonds" for the purpose of obtaining funds to finance the acquisition of student loans originated under the Higher Education Act; and

WHEREAS, assuring that loans for post secondary education are

accessible in Idaho at favorable rates of interest and repayment terms is an important objective in Idaho's total effort to provide adequate opportunities for our citizens to benefit from post secondary education; and

WHEREAS, assuring adequate access to educational loans requires the establishment of an additional statewide secondary market and warehousing facility which will provide liquidity for investments in such loans, thereby further encouraging and permitting commercial lenders to make additional educational loans; and

WHEREAS, Education Funding Association, Inc., an Idaho nonprofit corporation (the "Corporation"), has been formed under the nonprofit corporation laws of the State of Idaho. The Corporation will establish a student loan purchase program by establishing an additional statewide secondary market and warehousing facility designed to provide funds for student loans to all lenders which are eligible to originate student loans under the Higher Education Act, and such program will increase significantly the amount of funds available for student loans to students who are residents of Idaho or who are attending post secondary education institutions in the State of Idaho; and

WHEREAS, the establishment of such student loan purchase program, as provided by the United States Congress through the Higher Education Act and Section 150(d), will assure to the people of the State of Idaho fair, efficient and competitive access to educational loans and coordinated planning and administration of this program; and

WHEREAS, in my capacity as Chief Executive Officer of the State of Idaho, I desire to facilitate the continued provision of the best possible student loan and educational finance services available to the students in Idaho; and

WHEREAS, it is advantageous to all sectors of post secondary education in the State of Idaho for this State to continue receiving the assistance made available under applicable programs established pursuant to the Federal Higher Education Act.

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state, do hereby order as follows:

1. Education Funding Association, Inc. is hereby designated to provide an additional Idaho educational loan secondary market and warehousing facility pursuant to the provisions of Part B of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C., chapter 1071, et seq.) and Section 150(d) of the Internal Revenue Code of 1986, as amended.
2. Education Funding Association, Inc. shall meet all of the requirements of Federal law and regulations as well as the statutes of the State of Idaho, and shall obtain all necessary designations required under Federal law and regulations necessary and appropriate to act in such capacity under the Higher Education Act of 1965, as amended.
3. Education Funding Association, Inc. shall come under the supervision of the Idaho Department of Finance.
4. Prior to the sale of any securities, Education Funding Association, Inc. shall provide to the Department of Finance the following:

(a) A market survey outlining the potential scope of its secondary market, including comments by affected persons;
(b) A plan for doing business in accordance with the requirements of the Higher Education Act of 1965;
(c) All approvals, disapprovals and comments by the United States Department of Education; and
(d) Its Articles of Incorporation and Bylaws setting forth, among other things, its standards for directors, officers, and employees.

5. Once engaged in providing a secondary market for student loans, Education Funding Association, Inc. shall:
(a) Submit to periodic examinations by the Department of Finance.
(b) File each preliminary prospectus with the Department of Finance prior to the issuance of securities;
(c) Provide copies to the Department of Finance of any and all internal or external audits from any sources, as well as management letters, adverse actions, or other significant communications from the United States Department of Education;
(d) Make quarterly financial reports to the Department of Finance; and
(e) Provide the Department of Finance with prompt notice of any defaults, litigation by or against Education Funding Association, Inc., or any material change in the program offered by Education Funding Association, Inc.

6. This order may be revoked upon a 60-day written notice except that such revocation must be made in good faith, and adequate financial arrangements must be made to insure the proper continuation of coverage for outstanding loans.

7. The State of Idaho assumes no liability as a result of this request. All debts and liabilities resulting from this program shall be the sole responsibility of the Education Funding Association, Inc.

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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 97-01

TRANSFER OF FUNDS TO THE DISASTER EMERGENCY ACCOUNT

WHEREAS, due to severe flooding in parts of the state of Idaho, the Office of the Governor, by virtue of the authority vested in me by Idaho Code Sections 46-601 and 46-1008, issued proclamation on the twenty-seventh day of December, 1996, declaring that states of extreme and disaster emergencies existed in the counties of Adams, Boise, Bonner, Boundary, Clearwater, Elmore, Gem, Gooding, Idaho, Latah, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington; and

WHEREAS, tremendous obligations and expenses have been and will be incurred by various departments and agencies of the state of Idaho in responding to assisting in efforts to deal with the extreme flooding emergency; and

WHEREAS, all funds in the Disaster Emergency Account created by Idaho Code Section 46-1005A have or soon will be expended; and

WHEREAS, no funds in the general account are available to transfer to the Disaster Emergency Account under the requirements set forth in Idaho Code Section 46-1005A(2)(b); and

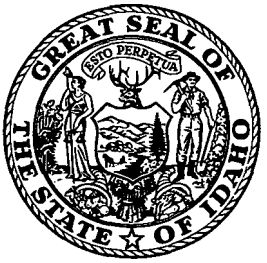
WHEREAS, the Budget Reserve Fund #0150 is eligible under Idaho Code Section 46-1005A(2)(c) to have moneys transferred from such funds to the Disaster Emergency Account to pay obligations and expenses incurred by the state of Idaho in dealing with the flooding emergency; and

WHEREAS, it is my judgement, as Governor of the state of Idaho, that any moneys transferred from the Budget Reserve Fund up to the limits provided below would not be required to support the current year's appropriation of these funds;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the state of Idaho, by virtue of the authority vested in me by Section 46-1005A of the Idaho Code do hereby order as follows:

1. The state controller is directed to transfer moneys in the Budget Reserve Fund to the Disaster Emergency Account in such amount and at such times as directed by me or my designee, the Administrator of the Division of Financial Management. In no event shall more than five (5) million dollars be transferred from the Budget Reserve Fund to the Disaster Emergency Account during the current fiscal year.
2. In no event may the revenues made available under this executive order exceed, during any fiscal year, one percent (1%) of the annual appropriation of general account moneys for the fiscal year.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at Boise the Capital, the ninth day of January in the year of our Lord nineteen hundred



ninety-seven and of the Independence of the United States of America the two hundred twenty-first and of the Statehood of Idaho the one hundred seventh.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 97-02

AUTHORIZING THE CONTINUATION OF THE IDAHO RURAL DEVELOPMENT COUNCIL REPEALING AND REPLACING EXECUTIVE ORDER NO. 95-07

WHEREAS, Idaho is among the most rural states in the nation; and

WHEREAS, Idaho's tremendous geography and sparse population create problems of distance and isolation; and

WHEREAS, the most rural counties in Idaho consistently have lower per capita incomes, higher unemployment rates, lower rates of in-migration, higher poverty levels, and less new construction and job growth; and

WHEREAS, the most rural residents of Idaho have less access to health care services, employment training, business assistance, library service, and diverse educational and cultural opportunities; and

WHEREAS, the most rural communities have disproportionately large infrastructure needs for transportation, utility services, and education; and

WHEREAS, the multitude of public and private organizations with an interest in helping rural Idaho need a mechanism for coordination and collaboration; and

WHEREAS, three state goals are to provide universal access to basic services, to create economic opportunities so that citizens can live in rural Idaho if they so choose, and to increase the efficiency of service delivery by all units of government;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me by law, do hereby authorize the continuation of the Idaho Rural Development Council.

The Rural Development Council's responsibilities will be:

1. To identify organizations, authorities, and resources to address various aspects of rural development;
2. To serve as a clearinghouse of information and as a referral center on rural problems, programs, and policies;
3. To serve as a nonpartisan forum for identifying and understanding rural issues from all perspectives;
4. To assess conditions in rural Idaho and to set overarching goals and specific objectives for improving the quality of life in rural Idaho;

5. To identify collaborative strategies toward meeting these goals and to facilitate the implementation of these strategies by the Council member organizations;
6. To develop better intergovernmental and private/public coordination and to seek out opportunities for new partnerships to achieve rural development goals within the existing structure;
7. To identify and seek solutions to unnecessary impediments to rural development, first within Idaho and then through the National Rural Development Partnership; and
8. To work cooperatively with the National Rural Development Partnership and other state rural development councils.

The Idaho Rural Development Council is a joint effort between local, tribal, state, and federal governments, as well as the profit and not-for-profit private sectors. Its purpose is to foster coordinated approaches to rural development that support local initiatives, not to usurp the individual missions of any of its member organizations or duplicate effort.

Membership shall include representation from the following state entities:

1. Executive Office of the Governor
2. Idaho Legislature (4)
3. Department of Commerce
4. Department of Agriculture
5. Department of Labor
6. Department of Health and Welfare
7. Division of Environmental Quality
8. Department of Parks and Recreation
9. Idaho Transportation Department
10. Department of Lands
11. Department of Water Resources
12. Division of Vocational Education
13. Commission on the Arts
14. Small Business Development Centers
15. State Library
16. Public Utilities Commission

A representative of each of the five tribal governments of Idaho shall be invited to participate:

1. Kootenai Tribe
2. Coeur d'Alene Tribe
3. Nez Perce Tribe
4. Shoshone-Paiute Tribes
5. Shoshone-Bannock Tribes

A representative from each of the following local government organizations shall be invited to participate:

1. Association of Idaho Cities
2. Idaho Association of Counties
3. Regional planning or economic development districts
4. Resource Conservation and Development Districts (RC&Ds)
5. Health Districts

Representatives from private and not-for-profit organizations with an interest in the well-being of rural Idaho, including but not limited to the following organizations, shall be invited to participate:

1. Private and cooperative utilities
2. Banks and financial institutions
3. Health care providers
4. Idaho Rural Health Education Center
5. Idaho Migrant Council
6. Agricultural and industry organizations
7. Environmental organizations

Representatives and members of the following federal entities shall be invited to join the Council and to participate:

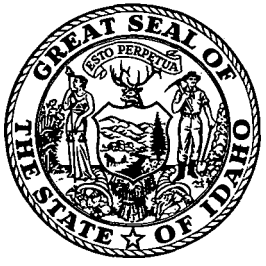
1. Senators (2)
2. Congressmen (2)
3. USDA Rural Development
4. USDA Natural Resources Conservation Service
5. USDA Farm Services Agency
6. Idaho Cooperative Extension System
7. USDA Forest Service
8. Bureau of Land Management
9. Bureau of Reclamation
10. Small Business Administration
11. Economic Development Administration
12. Department of Housing and Urban Development
13. Veterans Affairs
14. Department of Energy

Additional Members may be added by consensus of the Council.

The Council shall meet no less than quarterly. The Council shall elect officers and a Board of Directors representing federal, state, local, and tribal governments and the private sector. This Board shall set operating policies and manage the Council budget and staff. The Council shall submit a report of its activities to the Governor and the Legislature annually.

This Executive Order repeals and replaces Executive Order No. 95-07.

This Executive Order shall cease to be effective four years after its entry into force.



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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 97-03

DEFERRED COMPENSATION PROGRAM FOR EMPLOYEES OF THE STATE OF IDAHO, REPEALING AND REPLACING EXECUTIVE ORDER NO. 95-15

WHEREAS, there is a continuing interest on the part of employees of the State of Idaho in a plan whereby employees may defer the receipt of portions of their earnings until retirement; and

WHEREAS, the Idaho Legislature by and through the implementation of section 59-513, Idaho Code, has provided for the establishment of a Deferred Compensation Program; and

WHEREAS, in response to this interest, the Board of Examiners of the State of Idaho has appointed a Deferred Compensation Committee to study implementation of such a plan; and

WHEREAS, a Deferred Compensation Program has been presented to and approved by the Board of Examiners of the State of Idaho by the Deferred Compensation Committee; and

WHEREAS, administrative entities on the state level are necessary for proper implementation and maintenance of the plan;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, do hereby, by virtue of the authority vested in me by law, order the following:

1. The Deferred Compensation Committee comprised of a representative appointed by the Governor, a representative from the Office of the Attorney General, a representative from the Office of the State Controller, and a representative from the Office of the Secretary of State is hereby named as the policymaking board for the Deferred Compensation Program subject to the authority vested in the Board of Examiners of the State of Idaho by law.
2. The Deferred Compensation Committee shall make the following decisions concerning the implementation and maintenance of a Deferred Compensation Program subject to the approval of the Board of Examiners.
   a. Selection of a third-party administrator.
   b. Selection of product companies which sell or offer securities or other assets to the State of Idaho in accordance with the Deferred Compensation Program.
   c. Approval and monitoring of the marketing program to introduce and explain the Deferred Compensation Program to state employees.
   d. Review all summary reports produced by the Office of the State Controller and the third-party administrator to insure proper accounting for all funds.
   e. Review on a yearly basis the viability of all product companies associated with the Deferred Compensation Program and to determine if rebidding is necessary.
   f. Review all financial hardship cases and other unusual circumstances developing with employees enrolled in the Deferred Compensation Program.
   g. Review and approve all plan documents, contracts, bylaws, and rules and regulations.
   h. Review the performance of the third-party administrator.

i. Review all audits of the Deferred Compensation Program.

3. A representative of the Department of Administration in accordance with the request of the Board of Examiners of the State of Idaho shall be responsible for all daily paperwork and contact with the third-party administrator and employees concerning routine matters. The Department of Administration is hereby required to provide the following routine administrative services:

a. Insure that remittance to the product companies of deferred moneys is made from the periodic payroll.

b. Review and sign all enrollments, change and claim requests.

c. Keep or arrange to keep any necessary files concerning the Deferred Compensation Program.

d. Communicate with state employees and the third-party administrator concerning routine matters.

e. Provide or arrange to provide completion of any other routine matters as requested by the Deferred Compensation Committee.

This Executive Order repeals and replaces Executive Order No. 95-15.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho, at Boise the Capital, the eighteenth day of February, in the year of our Lord nineteen hundred ninety-seven, and of the Independence of the United States of America the two hundred twenty-first, and of the Statehood of Idaho the one hundred seventh.

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

EXECUTIVE ORDER NO. 97-04

ESTABLISHMENT OF THE GOVERNOR'S AFFORDABLE HOUSING ADVISORY TASK FORCE

WHEREAS, the availability of affordable housing for all Idahoans is important in building strong families and communities, and is critical to Idaho's ongoing economic development; and

WHEREAS, the increasing cost of housing, coupled with the reduction in available federal resources, is making both home ownership and rental homes less affordable; and

WHEREAS, the Idaho Housing and Finance Association was created by the state of Idaho to provide financing for affordable housing to Idaho's limited-income citizens and to administer federal housing

funds and financing programs on behalf of the state; and

WHEREAS, the Idaho Department of Commerce assists communities with infrastructure and economic development grants which create a need for affordable housing and in some cases may be used for housing activities; and

WHEREAS, cities, counties, local housing authorities, nonprofits, developers, banking institutions and other community and real estate organizations also are concerned with the continuing finance and development of affordable housing; and

WHEREAS, a state study of the role each of these organizations play in providing affordable housing and an assessment of how existing affordable housing resources are used are necessary to develop a state affordable housing policy in Idaho and a way to involve the general public in decisions;

NOW, THEREFORE, I, PHILIP E. BATT, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby establish the Governor's Affordable Housing Advisory Task Force as follows:

I. PURPOSE

A. The Governor's Affordable Housing Advisory Task Force will:

Educate itself about the current and projected housing needs within Idaho.

Educate itself about the available resources from private industry, government, nonprofit organizations and other sources for meeting Idaho's affordable housing needs.

Assess the effectiveness of how existing scarce resources are being used in addressing Idaho's housing needs, identifying opportunities for improvement.

Evaluate a variety of options to leverage market resources, remove regulatory barriers, consolidate programs, and place decision-making authority at appropriate levels.

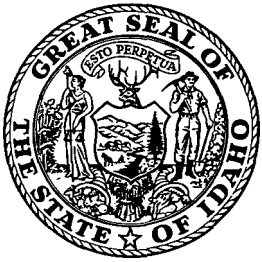
Evaluate appropriate roles for the various state, federal and local government agencies involved in providing affordable housing funds in order to develop a coordinated state affordable housing policy.

Prepare a final report of recommendations to the Governor as soon as possible but no later than six months from the date of this order.

II. COMPOSITION AND STAFFING

A. The Governor's Affordable Housing Advisory Task Force will be composed of no more than 12 members. Members will be appointed by the Governor and will serve at his pleasure.

B. The Idaho Housing Finance Association and the Idaho Department of Commerce will provide staff and administrative support to the Council.



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

/s/ Philip E. Batt
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ Pete T. Cenarrusa
SECRETARY OF STATE

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Bd = Board
Com = Commission
Comm = Committee
Dept = Department
Dist = District
F&G = Fish and Game
H&W = Health and Welfare
INEEL = Idaho National Engineering & Environmental Laboratory
MV = Motor Vehicle
PUC = Public Utilities Com
PERSI = Public Employees Retirement System Incorporated

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07.01.07.013	Rejected	SCR113 - 1313
07.01.04.014	Rejected	SCR113 - 1313
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07.01.04.014	Rejected	SCR117 - 1315
Education, Board of		
08.02.02.040	Rejected	HCR19 - 1338
08.02.03.06	Rejected	HCR20 - 1339
Health and Welfare, Department of		
16.01.18	Approved	SCR116 - 1315
Human Rights Commission		
45.01.01.300.03	Rejected	HCR15 - 1334
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17.10.01 through 17.10.30.	Rejected	SCR112 - 1313
17.08.16.011.19	Rejected	SCR111 - 1312
Juvenile Corrections, Department of		
05.01.01.412.01	Rejected	SCR117 - 1315
05.01.01.455.01	Rejected	SCR117 - 1315
05.01.01.475.13	Rejected	SCR117 - 1315
Parks and Recreation, Department of		
26.01.20	Approved	SCR116 - 1315
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IDAHO STATE OFFICIAL DIRECTORY

ELECTED OFFICIALS

CONGRESSIONAL

UNITED STATES SENATORS
Senator Larry E. Craig (R)
Senator Dirk Kempthorne (R)

REPRESENTATIVES IN CONGRESS
Helen Chenoweth (R), First District
Mike Crapo (R), Second District

Mailing Address:
304 N. 8th
Boise, Idaho 83702

STATE ELECTED OFFICIALS

GOVERNOR Philip E. Batt (R)

LT. GOVERNOR C. L. "Butch" Otter (R)

SECRETARY OF STATE Pete T. Cenarrusa (R)

STATE AUDITOR J. D. Williams (D)

STATE TREASURER Lydia Justice-Edwards (R)

ATTORNEY GENERAL Alan G. Lance (R)

SUPERINTENDENT OF PUBLIC INSTRUCTION Anne C. Fox (R)

Mailing Address:
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P.O. Box 83720
Boise, Idaho 83720-0054

LEGISLATORS BY DISTRICT

1-BONNER & BOUNDARY COUNTIES

Shawn Keough (R), Senate . . . . . 1st Term
523 Humbird, P.O. Box 101, Sandpoint 83864
Home 263-1839 Toll Free 1-888-453-6844
Information Specialist/Public Relations Husband - Mike
Agricultural Affairs, Commerce/Human Resources
Education

John L. Campbell (R), House Seat A . . . . . 1st Term
1509 Cedar St., Sandpoint 83864
Home 263-4774 Wife - Deceased
Semi-Retired - Fishing Tackle Mfg & Outdoor Columnist
Education, Local Government
Resources/Conservation

Jim Stoicheff (D), House Seat B . . . . . 13th Term
615 Lakeview, Sandpoint 83864
Home 263-2375 Wife - Jerry
Retired Teacher
MINORITY LEADER
Local Government, Resources/Conservation
State Affairs, Ways/Means

2-BONNER & KOOTENAI COUNTIES

Clyde Boatright (R), Senate . . . . . 2nd Term
N. 17520 Wrangler Rd, Rathdrum 83858
Home 687-0591 FAX 765-5808 Bus 667-0521
Realtor/Rancher Wife - "Bing" Karen
VICE CHAIR--Judiciary/Rules
Health/Welfare, Transportation

Hilde Kellogg (R), House Seat A . . . . . 3rd Term
(Served 4 terms House, 1983-91)
P.O. Box 1479, Post Falls 83854-1479
Phone 773-5412
Businesswoman
VICE CHAIR--Revenue/Taxation
Business, Transportation/Defense

Wayne R. Meyer (R), House Seat B . . . . . 2nd Term
E. 100 Lancaster, Rathdrum 83858
Home 687-0420 Wife - Karleen
Farmer
VICE-CHAIR--Business
Education, Environmental Affairs

3-KOOTENAI COUNTY

Gordon F. Crow (R), Senate . . . . . 2nd Term
10282 Hillview Dr., Hayden 83835-9236
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Media Consultant Wife - Sandy
VICE CHAIR--Commerce/Human Resources
Health/Welfare, Resources/Environment

Jim Clark (R), House Seat A . . . . . 1st Term
3665 N. Clarkview P., Hayden 83835
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Management Consultant Wife - Vickie Parker-Clark
Judiciary/Rules/Administration
Local Government, Revenue/Taxation

Jeff Alltus (R), House Seat B . . . . . 2nd Term
2465 Upper Hayden Lake Rd, Hayden 83835
Home 762-3371 FAX 762-1141 Bus 762-1141
Insurance Agent Wife - Margaret
Business, State Affairs

4-BENEWAH, KOOTENAI & SHOSHONE COUNTIES

Jack Riggs (R), Senate . . . . . 1st Term
801 S. 11th, Coeur d'Alene 83814
Home 765-3326 FAX 664-2793 Bus 667-8608
Physician/Business Owner Wife - Rachel
Commerce/Human Resources
Education, Judiciary/Rules

Larry Watson (D), House Seat A . . . . . 1st Term
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Home 556-7481 Bus 752-1202
Chief Deputy Assessor/Shoshone County Wife - Sheila
Business, Local Government
Revenue/Taxation

Don Pischner (R), House Seat B . . . . . 2nd Term
P.O. Box 7, Coeur d'Alene 83816
Home 667-5770
Site Adm. Consultant
Appropriations (JFAC), Transportation/Defense

5-LATAH COUNTY

Gary J. Schroeder (R), Senate . . . . . 3rd Term
1289 Highland, Moscow 83843
Home 882-9092 FAX 882-5715 Bus 882-0601
Business Owner/Outdoor Writer
CHAIR--Education
Resources/Environment, Transportation

Tom Trail (R), House Seat A . . . . . 1st Term
2039 Mountain View Rd, Moscow 83843
Home 882-6077 FAX 882-0896 Bus 882-6077
Education Consultant/Farmer Wife - JoAnn
Agricultural Affairs, Education
Human Resources

Maynard M. Miller (R), House Seat B . . . . . 3rd Term
514 E. First Street, Moscow 83843
Home/FAX 882-1237 Bus 885-6192
University Professor/ FAX 885-5724 - B
Administrator, U of Idaho Wife - Joan
VICE CHAIR--Human Resources
Education, Environmental Affairs

6-NEZ PERCE COUNTY

Bruce L. Sweeney (D), Senate . . . . . 8th Term
(Served 2 terms House, 1970-74)
P.O. Box 604, Lewiston 83501
Home 743-9148 FAX 746-8414 Bus 743-2534
Land Development/Construction Wife - Marilyn
ASSISTANT MINORITY LEADER
CO-CHAIR--Legislative Oversight Committee
Finance (JFAC), State Affairs

Frank C. Bruneel (R), House Seat A . . . . . 2nd Term
1319 7th St., Lewiston 83501
Home 743-8951 FAX 743-0323 Bus 746-9873
Tire Business Wife - Sharon
Judiciary/Rules/Administration, Revenue/Taxation
Transportation/Defense

Dan Mader (R), House Seat B . . . . . 3rd Term
Route 2, Box 57A, Genesee 83832
Home 285-0135 FAX 285-0138 Business 285-1294
Farmer Wife - Cindi
Agricultural Affairs, Appropriations (JFAC)
Resources/Conservation

7-BENEWAH, CLEARWATER, IDAHO, LATAH, LEWIS & NEZ PERCE COUNTIES

Marguerite McLaughlin (D), Senate . . . . . 8th Term
(Served 2 terms House, 1979-82)
704 Floyd Ave., Orofino 83544
Home 476-4136 Bus 476-4136
Business Manager Husband - G. Bruce
MINORITY LEADER
Commerce/Human Resources, Finance (JFAC)
Local Government/Taxation

Charles D. Cuddy (D), House Seat A . . . . . 4th Term
12640 Hartford Ave., Orofino 83544
Home 476-3729 Bus 476-4643
Surveying/Engineering Consultant Wife - Judy
Resources/Conservation, Revenue/Taxation
Transportation/Defense

June E. Judd (D), House Seat B . . . . . 4th Term
2105 College Ave, St. Maries 83861-1218
Retired Educator Home 245-2818
Agricultural Affairs, Judiciary/Rules/Administration
State Affairs

8-ADAMS, BOISE, GEM, IDAHO & VALLEY COUNTIES

Judi Danielson (R), Senate . . . . . 2nd Term
(Served 3 terms House, 1989-94)
P.O. Box 528, Council 83612
Home 253-4850 Husband - John
Retired Nurse/Former County Commissioner
VICE CHAIR--Resources/Environment
Health/Welfare, Tranportation

Christian Zimmermann (R), House Seat A . . 1st Term
Box 121 Bogie Drive, Cascade 83611
Home 382-3100 FAX 382-3100 Bus 634-6900
Aviator, Small Businessman Wife - Melvia K.
City Council, Clergyman
Education, Human Resources
Local Government

Twila Hornbeck (R), House Seat B . . . . . 2nd Term
808 Lake, Grangeville 83530-1334
Home 983-1412 FAX 983-1412
Past Grangeville City Council Husband - John G.
Local Government, State Affairs
Judiciary/Rules/Administration

9-GEM, PAYETTE & WASHINGTON COUNTIES

W. Ric Branch (R), Senate . . . . . 2nd Term
3770 N. Crane Rd, Midvale 83645
Home 355-2426 FAX 355-2426
Cattle Rancher Wife - Cory
Agricultural Affairs, Local Government/Taxation
Resources/Environment

Lawerence Denney (R), House Seat A . . . . . 1st Term
2227 Denney Rd, Midvale 83645
Home 355-2374 FAX 355-3334
Farmer Wife - Donna
Health/Welfare, Resources/Conservation
State Affairs

Donna Jones (R), House Seat B . . . . . 6th Term
1911 1st Ave. S., Payette 83661
Home 642-9679 FAX 642-9476 Bus. 642-9433
Real Estate Broker Husband - Donald
CHAIR--Revenue/Taxation
Judiciary/Rules/Administration

10-CANYON COUNTY

Darrel Deide (R), Senate . . . . . 1st Term
603 W. Walnut, Caldwell 83605
Home 459-9716 Bus 455-3300
Retired School Superintendent Wife - LaDonna
Commerce/Human Resources, Education
Judiciary/Rules

Ron Crane (R), House Seat A . . . . . 8th Term
1907 Alder, Caldwell 83605
Home 459-4990
Businessman Wife - Cheryl
CHAIR--State Affairs
Business

Dorothy L. Reynolds (R), House Seat B . . . 11th Term
(Served 3 terms House, 1974-80)
1920 Howard, Caldwell 83605
Home 459-2553
Farm Owner/Substitute Teacher
CHAIR--Health/Welfare
Education

11-CANYON COUNTY

Atwell J. Parry (R), Senate . . . . . 9th Term
6985 Baseline Road, Melba 83641
Home 495-2226 Wife - Elaine
Grocer/Meat Cutter -- Retired
CHAIR--Finance, CO-CHAIR--JFAC
Local Government/Taxation

Robert E. Schaefer (R), House Seat A . . . . . 7th Term
P.O. Box 55, Nampa 83653
Home/Bus 466-3636 Wife - Betty
Architect
CHAIR--Human Resources
Environmental Affairs

W. O. "Bill" Taylor (R), House Seat B . . . . . 6th Term
1225 Virginia Circle, Nampa 83687
Home 466-0970 Wife - Shirley
Real Estate Investments
CHAIR--Business
Local Government, Revenue/Taxation

12-CANYON COUNTY

J. L. "Jerry" Thorne (R), Senate . . . . . 7th Term
331 Winther Blvd., Nampa 83651
Home 467-2892 FAX 466-1133
Retired Wife - Lois
CHAIR--Local Government/Taxation
Finance (JFAC), Transportation

Dolores J. Crow (R), House Seat A . . . . . 8th Term
203 11th Ave. S. Extension, Nampa 83686
Home 467-1302 FAX 467-7387 Husband - Wayne
CHAIR--Environmental Affairs
Revenue/Taxation

William W. "Bill" Deal (R), House Seat B . . 4th Term
917 2nd St. So, P.O. Drawer B, Nampa 83653
Home 466-3184 FAX 466-2471 Bus 466-2465/887-1077
Insurance Wife - Joan
VICE CHAIR--State Affairs
Business

LEGISLATORS BY DISTRICT (Continued)

13-ADA COUNTY

Sheila Sorensen (R), Senate . . . . . 3rd Term
(Served 3 terms House, 1987-92)
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Home 345-8688 Bus. 344-4900
Health Care Professional Husband - Dean
VICE CHAIR--State Affairs
Judiciary/Rules

Debbie S. Field (R), House Seat A . . . . . 2nd Term
3236 Chickory Way, Boise 83706
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Political Consultant Husband - Mike
Judiciary/Rules/Administration
State Affairs

Julie Ellsworth (R), House Seat B . . . . . 1st Term
P.O. Box 668, Boise 83701
Home 336-6747
Homemaker Husband - Maurice
Environmental Affairs, Judiciary/Rules/Administration
State Affairs

14-ADA COUNTY

Harold R. "Hal" Bunderson (R), Senate . . . . 3rd Term
582 River Heights Dr., Meridian 83642
Home 888-7156 FAX 888-7188
CPA, Retired Wife - Mary
VICE CHAIR--Transportation
Health/Welfare, Judiciary/Rules

Dave Bivens (R), House Seat A . . . . . 3rd Term
(Served 8 years Senate, 1967-74)
2354 Star Lane, Meridian 83642
Home 888-3776
Retired Agribusiness Wife - Helen
Resources/Conservation, Revenue/Taxation
Transportation/Defense

Shirley McKague (R), House Seat B . . . . . 1st Term
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Home 888-2842 Bus 888-3379
Family Service Station Business Husband - Paul
State Affairs, Transportation/Defense

15-ADA COUNTY

John C. Andreason (R), Senate . . . . . 2nd Term
(Previously served in Senate, 1967-1970)
9120 Mountain View Drive, Boise 83704
Home 322-8558
Retired Wife - Darlene
VICE CHAIR--Education
Commerce/Human Resources, Resources/Environment

Paul Kjellander (R), House Seat A . . . . . 2nd Term
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Home 322-6954 Bus 385-3752
Boise State University Faculty Wife - Radelle
VICE CHAIR--Judiciary/Rules/Administration
State Affairs, Transportation/Defense

Max C. Black (R), House Seat B . . . . . 3rd Term
731 Buckingham Drive, Boise 83704
Home 375-2635 FAX 375-8250 Bus 327-3400
Insurance Wife - Clydene
CHAIR--Ways/Means
Business, Education, Health/Welfare

16-ADA COUNTY

Cecil D. Ingram (R), Senate . . . . . 3rd Term
7025 El Caballo Dr., Boise 83704
Home 375-8876
Retired, Boise Cascade Corporation Wife - Ann
CHAIR--Agricultural Affairs
Finance (JFAC), Transportation

Margaret Henbest (D), House Seat A . . . . . 1st Term
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Pediatric Nurse Practitioner Husband - Michael
Health/Welfare, State Affairs

Horace B. "Hod" Pomeroy (R), House Seat B 5th Term
6822 Kingsdale Dr., Boise 83704
Home 377-1293 Wife - Margarita
Business Consultant
Appropriations (JFAC)
Transportation/Defense

17-ADA COUNTY

Grant R. Ipsen (R), Senate . . . . . 3rd Term
1010 Houston Road, Boise 83706
Home 342-4470 FAX 342-0261
CPA--Insurance/investments Wife - Edna (Eddie)
CHAIR--Health/Welfare
Local Government/Taxation

David Callister (R), House Seat A . . . . . 1st Term
7011 Holiday Dr., Boise 83709
Home 377-8951
Businessman Wife - Becky
Business, Education
Local Government

Ruby R. Stone (R), House Seat B . . . . . 7th Term
6604 Holiday Drive, Boise 83709
Property Management Home 375-7975
CHAIR--Local Government
State Affairs

18-ADA COUNTY

James E. Risch (R), Senate . . . . . 2nd Term
(Previously served in Senate, 1975-1988)
5400 S. Cole Rd., Boise 83709
Home 362-2626 FAX 345-9982 Bus 345-9974
Attorney and Rancher Wife - Vicki
MAJORITY LEADER
Judiciary/Rules, State Affairs

William T. "Bill" Sali (R), House Seat A . . . . 4th Term
2295 W. Columbia, Meridian 83642
Home 888-3165 Wife - Terry
Attorney
VICE CHAIR--Health/Welfare
Judiciary/Rules/Administration

Fred D. Tilman (R), House Seat B . . . . . 4th Term
11457 Alejandro, Boise 83709
Home 322-1133 Wife - Geri
Business Consultant
CHAIR--Education
Business

LEGISLATORS BY DISTRICT (Continued)

19-ADA COUNTY

Betsy D. Dunklin (D), Senate ..... 1st Term
2500 E. Parkside Dr., Boise 83712
Home/FAX 336-8201 (Call first) bdunklin@micron.net
Certified Social Worker Husband - Chip Cole
Education, Judiciary/Rules

J. Patrick Bieter (D), House Seat A ..... 1st Term
926 N. 8th St., Boise 83702
Home 343-6939 Wife - Eloise G.
Retired BSU Professor
Education, Health/Welfare
Human Resources

Kenneth L. Robison (D), House Seat B ..... 6th Term
(Served 1 Term Senate, 1979-80)
1119 N. 12th Street, Boise 83702
Journalist Home 345-3440
Appropriations (JFAC), Environmentl Affairs
Resources/Conservation

20-ELMORE & OWYHEE COUNTIES

Robbi King (R), Senate ..... 1st Term
(Previously served in House 1993-1996)
P.O. Box 280, Glenns Ferry 83623
Home 366-7715 Husband - Kevin
Commerce/Human Resources
Health/Welfare, Jucidiary/Rules

Frances Field (R), House Seat A ..... 7th Term
HC-85, Box 221, Grand View 83624
Home 834-2488
Retired Teacher and School Dist Mgr
Farm Owner
VICE CHAIR--Agricultural Affairs
Appropriations (JFAC), Resoures/Conservation

Jim Jones (R), House Seat B ..... 1st Term
1107 Maple Drive, Mountain Home 83647
Home 587-3028 Wife - Loretta
U.S. Army, Ret./Insurance Agent, Ret.
Health/Welfare, Human Resources
State Affairs

21-BLAINE, CAMAS, ELMORE, GOODING & LINCOLN COUNTIES

W. Clinton Stennett (D), Senate ..... 2nd Term
(Served 2 terms House, 1990-94)
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Businessman
TV and Radio Broadcasting Owner Wife - Michelle
MINORITY CAUCUS CHAIR
Agriculture, Resources/Environment
State Affairs

Wendy Jaquet (D), House Seat A ..... 2nd Term
P.O. Box 783, Ketchum 83340
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Consultant Husband - Jim
MINORITY CAUCUS CHAIR
Education, Judiciary/Rules/Administration
Health/Welfare, Ways/Means

Tim Ridinger (R), House Seat B ..... 2nd Term
607 West B, P.O. Box 110, Shoshone 83352
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Hay Hauler Wife - Penny
Human Resources, Revenue/Taxation
Transportation/Defense

22-GOODING & TWIN FALLS COUNTIES

John Sandy (R), Senate ..... 2nd Term
3104 S. 1200 E., Hagerman 83332
Home 837-6680 Wife - Robin
Farmer/Private Businessman
ASSISTANT MAJORITY LEADER
Agricultural Affairs, Education, State Affairs

Celia R. Gould (R), House Seat A ..... 6th Term
4406 N. 1400 E., Buhl 83316
Home/Bus 543-6725
Rancher Husband - Bruce Newcomb
CHAIR--Judiciary, Rules/Administration
Revenue/Taxation

Douglas R. Jones (R), House Seat B ..... 7th Term
3515 N. 2300 E., Filer 83328
Home 326-4181 FAX 326-5280 Bus 733-8458
Farmer Wife - Mary Liz
CHAIR--Agricultural Affairs
Education, Resources/Conservation

23-TWIN FALLS COUNTY

Laird Noh (R), Senate ..... 9th Term
3442 Addison Ave E., Kimberly 83341
Home 733-3617 Wife - Kathleen
Sheep Producer
CHAIR--Resources/Environment
Agricultural Affairs, Education

Ronald L. Black (R), House Seat A ..... 6th Term
921 Trotter Dr., Twm Falls 83301
Home 734-9035 FAX 736-4711 Bus 736-2166
Director of Refugee Services rlblack@micron.net
College of Southern Idaho Wife - Gael
Appropriations (JFAC), Health/Welfare

Mark D. Stubbs (R), House Seat B ..... 4th Term
P.O. Box 1846, Twm Falls 83303
Home 733-0049 FAX 733-7967 Bus 733-7180
Attorney Wife - Jan
VICE CHAIR--Environmental Affairs
Resources/Conservation, Revenue/Taxation

24-JEROME & MINIDOKA COUNTIES

Dean L. Cameron (R), Senate ..... 4th Term
1101 Ruby St., Rupert 83350
Home/Bus 436-5624 FAX 436-3776
Legislative Office 436-4424
Self-employed Insurance Agent Wife - Linda
CHAIR--Commerce/Human Resources
Finance (JFAC)

John A. "Bert" Stevenson (R), House Seat A . 1st Term
1099 N. 400 W., Rupert 83350
Home 532-4524 FAX 532-4720 Bus 532-4105
Farmer Wife - Elaine
Agricultural Affairs, Resources/Conservation
State Affairs

Maxine T. Bell (R), House Seat B ..... 5th Term
194 S. 300 E., Jerome 83338
Home 324-4296 FAX 324-4296
Farmer/Homemaker Husband - H. Jack
VICE CHAIR--Appropriations (JFAC)
Agricultural Affairs, Resources/Conservation

LEGISLATORS BY DISTRICT (Continued)

25-CASSIA, MINIDOKA & TWIN FALLS COUNTIES

Denton Darrington (R), Senate . . . . . 8th Term
302 S. Hiway 77, Declo 83323
Home 654-2712 Bus 678-6613
Farmer/Teacher Wife - Virgene
CHAIR--Judiciary/Rules
Health/Welfare, State Affairs

Jim D. Kempton (R), House Seat A . . . . . 4th Term
HC 36, Box 28, Albion 83311
Home 673-6261 Wife - Susan
Agribusiness
CHAIR--Transportation/Defense
Revenue/Taxation

Bruce Newcomb (R), House Seat B . . . . . 6th Term
1626 Monroe, Burley 83318
Home 678-3758 Wife - Celia Gould
Farmer/Rancher
MAJORITY LEADER
CO-CHAIR--Legislative Oversight Committee
Resources/Conservation, State Affairs, Ways/Means

26-CLARK, CUSTER, JEFFERSON & LEMHI COUNTIES

Don M. Burtenshaw (R), Senate . . . . . 1st Term
1603 N. 1000 E., Monteview 83435
Home 663-4493 FAX 663-4499 Bus 663-4492
Farmer/Rancher/Business Wife - Beverly
Agricultural Affairs
Commerce/Human Resources, Education

JoAn E. Wood (R), House Seat A . . . . . 8th Term
3778 E. 500 N., Rigby 83442
Home 745-7846 Husband - Thomas D.
Partner-Ranch/Farm
VICE CHAIR--Transportation/Defense
Appropriations (JFAC), Resources/Conservation

Lenore Hardy Barrett (R), House Seat B . . . . 3rd Term
143 W. Pleasant, P.O. Box 347, Challis 83226
Phone 879-2797 Husband - Robert
Mining/Investments
VICE CHAIR--Local Government,
Judiciary/Rules/Administration, Revenue/Taxation

27-FREMONT & MADISON COUNTIES

Robert R. Lee (R), Senate . . . . . 2nd Term
1330 Barney Dairy Rd., Rexburg 83440
Home 356-9506 Wife - Gwen
Irrigation Engineer
VICE CHAIR--Agricultural Affairs
Resources/Environment, Transportation

Diana Richman (R), House Seat A . . . . . 2nd Term
3381 N. 5000 E., Sugar City 83448
Home 458-4149 FAX 458-4661
Farmer
Education, Health/Welfare
Human Resources

Golden C. Linford (R), House Seat B . . . . . 7th Term
2120 W. 4200 S., Rexburg 83440
Home 356-7220
Potato Grower/Processor Wife - Elizabeth
CHAIR--Resources/Conservation
Revenue/Taxation

28-BONNEVILLE, FREMONT & TETON COUNTIES

Stan Hawkins (R), Senate . . . . . 4th Term
(Served 6 years House, 1984-90)
P.O. Box 367, Ucon 83454
Home 524-1586 Bus. 523-2880
Agribusiness Wife - Linn
Local Government/Taxation
Finance (JFAC), Resources/Environment

Max C. Mortensen (R), House Seat A . . . . . 3rd Term
120 N. 7th E., St. Anthony 83445
Home 624-3379 Wife - Bonnie
Self-employed
VICE CHAIR--Education
Agricultural Affairs, Human Resources

Cameron Wheeler (R), House Seat B . . . . . 1st Term
556 W. Birch Creek Rd., P.O. Box 335, Ririe 83443
Home 538-7355 FAX 538-6018 Bus 538-6018
Farmer/Real Estate Broker Wife - Beverly
Health/Welfare, Resources/Conservation
State Affairs

29-BONNEVILLE COUNTY

John D. Hansen (R), Senate . . . . . 6th Term
2840 Westmoreland Dr., Idaho Falls 83402
Legislative Address: P.O. Box 50096-0096 83405
Home 523-5599 Legis. Office 523-1055
Bus 523-4445 FAX 523-4474
Attorney Wife - Michele
CHAIR--State Affairs
Finance (JFAC), Resources/Environment

Jack T. Barraclough (R), House Seat A . . . . 3rd Term
3018 Westmoreland Circle, Idaho Falls 83402
Home 523-4463
Hydrologist Wife - Elaine
VICE CHAIR--Resources/Conservation
Appropriations (JFAC), Environmental Affairs

Reed Hansen (R), House Seat B . . . . . 6th Term
(Served 4 terms House, 1985-92)
4512 N. 26th W., Idaho Falls 83402
Home 522-5359
Farmer Wife - Marilyn
Local Government, Resources/Conservation
Revenue/Taxation

30-BONNEVILLE COUNTY

Melvin M. "Mel" Richardson (R), Senate . . . 3rd Term
(Served 2 terms House, 1989-92)
3725 Brookfield, Idaho Falls 83406
Home 522-0772 Bus 525-8655
Public Relations - Broadcasting Wife - Dixie
MAJORITY CAUCUS CHAIR
Finance (JFAC), State Affairs

Lee Gagner (R), House Seat A . . . . . 1st Term
2555 Fieldstream Ln., Idaho Falls 83404
Home 522-4580 FAX 529-3263 Bus 529-5600
Home Builder Wife - Linda
Business, Education
Environmental Affairs

Thomas F. Loertscher (R), House Seat B . . . 6th Term
1357 Bone Road, Iona 83427
Home 522-3072 FAX 522-1141
Farmer Wife - Linda
ASSISTANT MAJORITY LEADER
Health/Welfare, State Affairs
Ways/Means

31-BINGHAM & BUTTE COUNTIES

Jerry T. Twiggs (R), Senate . . . . . 7th Term
955 W. 100 S., Blackfoot 83221
Senate Office 334-2085 Home 684-4090
Farmer Wife - Sandra
PRESIDENT PRO TEM
State Affairs

Dennis M. Lake (R), House Seat A . . . . . 1st Term
830 Taber Rd., Blackfoot 83221
Home 684-4967 Wife - Luann
Agribusiness
Agricultural Affairs, Human Resources
Revenue/Taxation

Michael K. Simpson (R), House Seat B . . . . . 7th Term
786 Hoff Drive, Blackfoot 83221
Home 785-5043 Bus 785-0310
Dentist Wife - Kathy
SPEAKER OF THE HOUSE

32-BANNOCK, BEAR LAKE, CARIBOU FRANKLIN & ONEIDA COUNTIES

Robert L. Geddes (R), Senate . . . . . 2nd Term
370 Mt. View Ave., Soda Springs 83276
Home 547-2423 Bus 547-3391
Environmental Engineer Wife - Tammy
VICE CHAIR--Local Government/Taxation
Agricultural Affairs, Resources/Environment

Robert C. Geddes (R), House Seat A . . . . . 11th Term
7235 N. 2600 W., Preston 83263
Home 852-1376
Farmer, Retired Wife - Carma
CHAIR--Appropriations (JFAC)
Agricultural Affairs

John H. Tippets (R), House Seat B . . . . . 5th Term
65 E. Center, Bennington, 83254
Home 847-2876 Wife - Nancy
Industrial Plant Trainer
MAJORITY CAUCUS CHAIR
Judiciary/Rules/Administration
State Affairs, Ways/Means

33-BANNOCK COUNTY

Lin Whitworth (D), Senate . . . . . 2nd Term
P.O. Box 183, Inkom 83245
Home 775-3773
Farmer/RR Conductor - Ret. Wife - Carol
Health/Welfare, Resources/Environment,
Transportation

John Alexander (D), House Seat A . . . . . 4th Term
3537 Conlin, Pocatello 83201
Home 238-0912 Bus 526-0849
INEL -- Technology Transfer Executive Wife - Lisa
ASSISTANT MINORITY LEADER
Human Resources, State Affairs
Transportation/Defense, Ways/Means

Roger W. Chase (D), House Seat B . . . . . 1st Term
4985 Clearview, Pocatello 83204
Home 234-1427
Chemical Plant Operator Wife - Janis Rhoads
Agricultural Affairs, Business
Revenue/Taxation

34-BANNOCK COUNTY

Evan Frasure (R), Senate . . . . . 3rd Term
(Served 1 term House, 1990-92)
2950 Trevor, Pocatello 83201
Home/Bus. 238-8800
Marketing Executive Wife - Analyn
CHAIR--Transportation
Finance (JFAC), Local Government/Taxation

Donna H. Boe (D), House Seat A . . . . . 1st Term
226 S. 16th Ave., Pocatello 83201
Home 233-5651 Husband - Roger
ESL Tutor
Education, Health/Welfare
Judiciary/Rules/Administration

Kent S. Kunz (R), House Seat B . . . . . 1st Term
128 Fairway Circle, Pocatello 83201
Home 237-0900 FAX 237-3637
UPRR Locomotive Engineer Wife - Kitty
Business, State Affairs
Transportation/Defense

35-BANNOCK, BINGHAM & POWER COUNTIES

Ralph "Moon" Wheeler (R), Senate . . . . . 2nd Term
(Served 2 terms House, 1973-76)
659 Gifford Ave., American Falls 83211
Home 226-2409 FAX 226-2409 w/prior notice
Retired Pharmacist Wife - Ann
VICE CHAIR--Health/Welfare
Local Government/Taxation

J. Steven Hadley (R), House Seat A . . . . . 1st Term
4877 Freedom Ave, Chubbuck 83202
Home 237-9094 Bus 233-5466
Small Business
Education, Environmental Affairs
Human Resources

Wayne Kendall (R), House Seat B . . . . . 1st Term
2652 W. 1200 S., Aberdeen 83210
Home 397-4884 FAX 397-5273 Bus 221-4444
Farmer/Rancher Wife - Shirley T.
Agricultural Affairs, Business, Education