GENERAL LAWS

OF THE

STATE OF IDAHO

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THE SECOND REGULAR SESSION OF THE
FIFTY-SIXTH IDAHO LEGISLATURE

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

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PETE T. CENARRUSA
Secretary of State
Boise, Idaho

CHAPTER 220
(S.B. No. 1322)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO CODE, TO REVISE AND DEFINE TERMS; AMENDING SECTION 54-2012, IDAHO CODE, TO MAKE A TECHNICAL CHANGE, TO PROVIDE THAT APPLICANTS SHALL FILE NEW FINGERPRINTS IF ORIGINAL FINGERPRINTS SUBMITTED TO THE COMMISSION ARE DEEMED ILLEGIBLE AND TO PROVIDE FOR AN ALTERNATIVE METHOD FOR VERIFICATION OF LISTINGS AND SALES REPORTS; AMENDING SECTION 54-2015, IDAHO CODE, TO MAKE A GRAMMATICAL CORRECTION; AMENDING SECTION 54-2016, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-2017, IDAHO CODE, TO PROVIDE THAT RECIPROCAL LICENSES SHALL BE ISSUED AND MAINTAINED AS THE SAME TYPE AND STATUS AS THE LICENSEE'S PRIMARY LICENSE AND TO REMOVE LANGUAGE PROVIDING THAT CERTAIN LICENSES SHALL BE MADE INACTIVE; AMENDING SECTION 54-2018, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE, TO PROVIDE CORRECT TERMINOLOGY, TO MAKE TECHNICAL CHANGES, TO REVISE PROVISIONS RELATING TO LICENSE RENEWAL AND LATE RENEWAL OF A LICENSE, TO REVISE PROVISIONS RELATING TO ACTIVE AND INACTIVE LICENSE STATUS AND TO PROVIDE THAT BROKERS SHALL SUBMIT WRITTEN NOTICE OF CHANGES IN PERSONAL INFORMATION AND SHALL REMOVE FROM PUBLIC VIEW LICENSE CERTIFICATES BEARING OUTDATED INFORMATION; AMENDING SECTION 54-2020, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE FOR A FEE FOR THE COMPILATION OF CERTIFIED COPIES OF A LICENSEE'S EDUCATION OR LICENSE HISTORY; AMENDING SECTION 54-2040, IDAHO CODE, TO MAKE GRAMMATICAL CHANGES, TO PROVIDE THAT BROKERS SHALL REMOVE FROM PUBLIC VIEW LICENSE CERTIFICATES BEARING OUTDATED INFORMATION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 54-2041, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE THAT ONLY MONEYS RELATING TO REGULATED REAL ESTATE TRANSACTIONS MAY BE DEPOSITED IN A BROKER'S REAL ESTATE TRUST FUND ACCOUNT; AMENDING SECTION 54-2054, IDAHO CODE, TO REMOVE A CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2056, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO MAKE A TECHNICAL CHANGE, TO PROVIDE FOR WRITTEN NOTICE OF TERMINATION OF LICENSED ASSOCIATIONS, TO PROVIDE THAT BROKERS SHALL REMOVE FROM PUBLIC VIEW A FORMER ASSOCIATE'S LICENSE CERTIFICATE UPON TERMINATION, TO PROVIDE THAT BROKERS SHALL SUBMIT WRITTEN APPLICATIONS FOR EACH SALES ASSOCIATE LICENSING WITH THE BROKER AND TO PROVIDE THAT BROKERS SHALL PROVIDE WRITTEN NOTICE OF THE CLOSURE OF A BRANCH OFFICE AND IMMEDIATELY REMOVE FROM PUBLIC VIEW LICENSE CERTIFICATES BEARING OUTDATED INFORMATION; AND AMENDING SECTION 54-2079, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO MAKE

TECHNICAL CHANGES AND TO PROVIDE THAT A BROKER WHO TERMINATES A SALES ASSOCIATE SHALL PROMPTLY FILE A WRITTEN STATEMENT OF FACTS WITH THE COMMISSION.

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

SECTION 1. That Section 54-2004, Idaho Code, be, and the same is hereby amended to read as follows:

54-2004. DEFINITIONS. As used in this chapter:

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

(2) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (25) of this section.

(~~2~~3) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(~~3~~4) "Brokerage agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(~~4~~5) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(~~5~~6) "Business name" means the name ~~that appears on the real estate broker's license issued~~ in which the brokerage company is licensed by the commission.

(~~6~~7) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(~~7~~8) "Commission" means the Idaho real estate commission, unless the context clearly indicates a different meaning.

(~~8~~9) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(~~9~~10) "Cooperative sale" means a transaction involving two (2) or more brokers.

(~~10~~11) "Council" means the Idaho real estate education council.

(~~11~~12) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(~~12~~13) "Designated broker" means an individual who is licensed as a

real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(~~13~~4) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by distance or time.

(~~14~~5) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(~~15~~6) "Executive director" means the executive director of the Idaho real estate commission.

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

(~~16~~8) "Fee or commission" means a payment, actual, promised or expected, as ~~compensation~~ for the performance of any act requiring a real estate license.

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

(~~17~~20) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(~~18~~21) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(~~19~~22) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(~~20~~3) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility.

(~~21~~4) "Main office" means the principal location where the real estate broker is licensed to transact business.

(~~22~~5) "Person" means and includes an individual, or any legal business entity.

(~~23~~6) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(~~24~~7) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code,

or for any other purpose allowed by this chapter.

(~~25~~8) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;

(e) A dealer in options as defined in this section.

(26~~9~~) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (2~~5~~8) of this section.

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

(~~27~~31) "Reciprocal license" means an Idaho real estate license that is issued pursuant to the terms of a specific, written reciprocal agreement between Idaho and another state or jurisdiction, and that is contingent upon the licensee's maintaining a license in the other state or jurisdiction.

(~~28~~32) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(~~29~~33) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(34) "Revoked license" means a license that has been permanently revoked by the issuing authority.

(3~~0~~5) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(3~~1~~6) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

(3~~2~~7) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

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

(339) "~~Wall~~Suspended license" means ~~the--certificate--of~~ a license ~~issued--by--the--commission~~ that has been temporarily suspended by the issuing authority.

SECTION 2. That Section 54-2012, Idaho Code, be, and the same is hereby amended to read as follows:

54-2012. MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY IDAHO LICENSE. (1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section 54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate broker or designated broker shall meet all of the following minimum qualifications:

(a) Be an individual;

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

(c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of general education;

(d) Not have had a real estate or other professional or occupational license revoked, suspended, or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(e) Not have been convicted, issued any fine, placed on probation, received a withheld judgment or completed any sentence of confinement for or on account of any felony, or any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(f) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;

(g) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;

(h) Be fingerprinted by an authorized law enforcement agency, and file these fingerprints with the commission for the purpose of determining whether the qualifications for licensure are fulfilled.~~;~~ ~~t~~The fingerprints will be forwarded to the federal bureau of investigation or the Idaho department of law enforcement~~;~~. If the fingerprints are returned to the commission as illegible the applicant shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission. A~~a~~ll fees charged by the commission and the law enforcement agency for fingerprint services shall be paid by the applicant;

(i) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue

in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified mail to the last known business address of the licensee. All licensees shall provide the commission a full and current mailing address and shall immediately notify the commission in writing of any change in mailing address;

(j) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(k) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(l) Provide satisfactory proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees, as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated, provided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(b) Designate a physical office location and a business name. The commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this subsection shall restrict an individual from obtain-

ing a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing with the application and pay associated fees.

SECTION 3. That Section 54-2015, Idaho Code, be, and the same is hereby amended to read as follows:

54-2015. INDIVIDUALS ACTIVELY LICENSED IN ANOTHER STATE OR JURISDICTION SEEKING PRIMARY IDAHO LICENSURE. (1) An individual who is currently and actively licensed as a real estate broker or salesperson in another state or jurisdiction at the time of application for a primary Idaho real estate license shall meet all qualifications listed in section 54-2012, Idaho Code, for the type of license sought, except that the applicant shall not be required to furnish proof of the educational prerequisites described in subsection (1)(f) of section 54-2012, Idaho Code. In addition, such applicant shall provide a current, certified license history from the other licensing state or jurisdiction, which history shall indicate any disciplinary action taken against the applicant's license by the other licensing state or jurisdiction, and the status and standing of the applicant's license in the other state or jurisdiction.

(2) An individual who holds an active license in good standing in another state or jurisdiction may, upon written request ~~from~~ to the commission, obtain a certificate of waiver of the national portion of the exam required for Idaho licensure. A request for waiver shall indicate the individual's mailing address to which the commission is to deliver the certificate of waiver. The certificate of waiver shall be submitted with the application for exam as provided in subsection (4) of section 54-2014, Idaho Code.

(3) An individual who is currently and actively licensed in another state or jurisdiction that administers a real estate exam may be issued a primary Idaho license without further exam or proof of educational prerequisites pursuant to written agreement between Idaho and the other state or jurisdiction, provided that such other state or jurisdiction allows the issuance of real estate licenses in substantially the same manner as set forth in this subsection.

SECTION 4. That Section 54-2016, Idaho Code, be, and the same is hereby amended to read as follows:

54-2016. PRIMARY IDAHO LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE PROPRIETORSHIPS AND BRANCH OFFICES -- ADDITIONAL REQUIREMENTS. (1) Legal business entities. Each legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed by the Idaho real estate commission to engage in the real estate business in Idaho and shall make proper application, pay all required fees, and meet all requirements listed below.

(a) Each legal business entity shall have a properly licensed individual designated broker, who shall be held responsible for the activities of the licensed entity. The individual designated broker shall also hold the following legal position within the licensed entity:

(i) Corporation -- an officer;
(ii) Partnership or limited partnership -- a general partner;
(iii) Limited liability company -- a member or manager.

The individual designated broker for any business entity shall have full authority to act on behalf of the licensed business entity, and shall submit sufficient and satisfactory proof thereof with the application for license. Such proof shall include a list of the entity's officers, directors, members or managers, as reflected in the minutes, resolutions or other similar business documents of the entity. All acts of that individual as designated broker shall be considered acts of the licensed business entity. Nothing in this section is intended to create liability to a legal business entity for illegal or fraudulent acts by the individual broker performed solely on his own account.

(b) A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required above, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(c) One (1) individual may act as designated broker for more than one (1) licensed business entity, however, all entities shall have their main offices in the same physical location.

(d) Satisfactory proof of mandatory errors and omissions insurance shall be provided for both the individual designated broker and the licensed business entity.

(e) A legal business entity doing business under an assumed name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state.

(2) Sole proprietorships. An individual designated broker not licensed with a legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed as a sole proprietor. Each sole proprietorship seeking a real estate license shall meet all of the following requirements:

(a) A licensed sole proprietor doing business under an assumed business name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state;

(b) Satisfactory proof of mandatory errors and omissions insurance shall be provided for the licensed designated broker of a sole proprietorship.

(3) Multiple business names prohibited. A legal business entity or sole proprietorship shall be licensed under only one (1) business name.

(4) Branch offices. Each branch office in which trust funds and original transaction files are maintained shall be separately licensed in accordance with the following:

(a) The designated broker establishing the branch office shall submit an application, along with the required fee for the issuance or renewal of the branch office license.

(b) The broker shall designate in the application a branch manager, who shall be a salesperson with at least two (2) years' experience or an associate broker, to regularly occupy and be responsible for the supervision of the branch office. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than the place he is licensed to do business, a presumption will be made that the branch manager is unable to responsibly supervise the branch; provided however, the presumption may be overcome by evidence to the contrary which the commission determines to be satisfactory.

(c) A branch manager shall not be licensed to manage more than one (1) branch office at a time.

(d) A license issued to a branch office is valid and in effect only as long as the license of the designated individual remains in active status. The ~~wall~~ license certificate of the branch office shall be signed by the designated broker.

(e) No separate branch office license or manager is required for business locations other than the main office unless trust funds or original transaction records are kept at the branch.

(f) If a separate real estate trust account is maintained for a branch office, all records and related files for that account shall be maintained at the branch office.

(g) Each branch office or business location, whether separately licensed or not, shall conduct business only in the licensed name of the legal entity or sole proprietor.

SECTION 5. That Section 54-2017, Idaho Code, be, and the same is hereby amended to read as follows:

54-2017. RECIPROCAL IDAHO LICENSES. The commission may issue a reciprocal Idaho real estate license to a qualified person who holds an active primary license in another state or jurisdiction if a written reciprocal licensing agreement exists between Idaho and the other state or jurisdiction. Each reciprocal license issued shall be limited to and governed by the terms of the applicable written agreement between Idaho and the other jurisdiction.

(1) Any reciprocal licensing agreement with Idaho shall require that the person seeking an Idaho reciprocal license make proper application, pay all required fees, and:

(a) Be currently and actively licensed as a designated broker in the applicant's primary state or jurisdiction, or be licensed under a designated broker who holds a current, active Idaho reciprocal license;

(b) Provide satisfactory proof of holding an active license, in good standing, as defined in the agreement, at the time of application;

(c) File an irrevocable consent to service as described in section 54-2012(1)(i), Idaho Code, on the form approved and furnished by the Idaho real estate commission;

(d) Provide satisfactory proof of errors and omissions insurance covering the applicant's licensed activities in Idaho; and that

(2) ~~Whenever a designated broker who holds a reciprocal Idaho license ceases to hold a current active license in the primary licensing jurisdiction, the Idaho reciprocal license of that broker, and the~~

~~licenses of all persons licensed under that broker, shall immediately be made inactive without further process. If a salesperson who holds a reciprocal Idaho license ceases to hold a current, active license in the primary licensing jurisdiction, that person's Idaho reciprocal sales license shall immediately be made inactive without further process~~ A reciprocal license shall be issued and maintained as the same type and status as the licensee's primary license.

SECTION 6. That Section 54-2018, Idaho Code, be, and the same is hereby amended to read as follows:

54-2018. LICENSE RENEWALS -- INACTIVE LICENSES STATUS -- PERSONAL CHANGES -- EFFECTIVE DATES. (1) Initial license period. Each new ~~or reactivated~~ license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on a date to coincide with the last day of the month of the birth date of the licensee. Corporations, partnerships, limited liability companies and other entities defined as "persons" in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the real estate broker establishing the branch office.

(2) License renewal. Each license shall be renewable for a period of two (2) years by submitting a ~~properly~~ completed application, ~~including~~ on or before 5 p.m. of the expiration date.

(a) If renewing an active license, the application shall include:

(i) Evidence of having met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code~~, and~~;

(ii) Proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and

(iii) Payment of all renewal fees established by this chapter or by the commission~~, on or before 5 p.m. of the last day of the birth month of the licensee~~.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the commission by rule.

(3) Late renewal. If the licensee fails to submit a proper completed application for renewal or pay the renewal fee on or before the ~~last day of the birth month of the licensee~~ expiration date, the commission may accept a later application or payment of the fee, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided that between the ~~last day of the month of the licensee's birth~~ license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for any licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expira-

tion date shall be automatically terminated by the commission and may not be renewed.

(4) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not ~~affiliated~~ associated with a designated broker and who holds a current license that is not revoked, ~~or~~ suspended ~~may place~~ or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the commission in the form and manner approved by the commission. During the period that his license is inactive, the licensee shall not engage in the business or act in the capacity of real estate broker, associate broker or salesperson. However, an inactive licensee may receive a referral fee for any referral made during the period his license was active. A licensee may reactivate an inactive license by meeting each of the following:

(a) ~~Making--proper~~ If activating as a sales associate, associating with a designated Idaho broker and having the broker submit an application ~~and--paying--the--required--fee~~ in the form and manner approved by the commission;

(b) ~~Licensing under an Idaho broker as a--sales--associate--or,--if licensing~~ If activating as a designated broker, establishing an office in the manner required by this chapter and ~~making proper~~ submitting an application ~~and paying the required fee~~ in the form and manner approved by the commission;

(c) Paying the required fee;

(d) Providing evidence of having errors or omissions insurance in the manner required by section 54-2013, Idaho Code, and in accordance with the rules of the commission; and

(~~d~~e) Providing evidence of having successfully completed the continuing education requirements, ~~or their equivalent,~~ as prescribed in section 54-2023, Idaho Code. A continuing education course taken to make up a deficiency of the requirements from the previous renewal period may be applied toward the continuing education requirements for the current period.

(5) Change in personal information. An individual licensee, whether active or inactive, shall provide written notice to the commission, in the form and manner approved by the commission, of any change of his personal name, address of personal residence or personal telephone number. Notice shall be provided within ten (10) days of the change. If the licensee has changed his personal name, he shall also submit legal proof of the change and the fee for ~~printing~~ issuing a new license certificate and, if an active licensee, he shall ~~return the wall~~ have the broker submit the written notice of change to the commission. Upon receipt of the new license certificate or upon its effective date, whichever is later, the broker shall remove from public view any license certificate bearing ~~his~~ the licensee's former name.

(6) Signature required. No license shall be valid unless the license certificate is signed by the licensee.

(7) ~~Application~~ Effective dates. A requests for licensure ~~and~~ or for license changes shall become effective when the properly completed ~~forms~~ application, attachments and any required fees are received at and approved by the commission. An a~~A~~pplications ~~which are~~ that is incomplete or lacking proper fees shall be returned to the applicant and no

license shall be issued until a completed application and proper fees are ~~physically~~ received at and actually approved by the commission.

SECTION 7. That Section 54-2020, Idaho Code, be, and the same is hereby amended to read as follows:

54-2020. FEES. The Idaho real estate commission shall establish fees which, in its discretion, are sufficient, when added to the other fees authorized by this chapter, or any other law or rule, to raise that revenue required to administer the provisions of this chapter.

The commission shall assess the following fees, in addition to any other fees established in this chapter or by rule:

(1) For each year or portion thereof for which an active or inactive license is issued or renewed, a license fee in an amount not to exceed one hundred fifty dollars ($150), the exact fee to be determined by administrative rule of the commission. Fees so established shall remain effective from year to year unless changed through the rules promulgation process prescribed in chapter 52, title 67, Idaho Code;

(2) A tuition or registration fee for real estate education courses, course materials and any course exam fee. These fees shall be established based upon the total annual costs involved in the provision of all real estate education courses, course materials and course exam fees;

(3) A fee in the amount of twenty-five dollars ($25.00) for late license renewal;

(4) A fee in the amount of fifteen dollars ($15.00) for any license change that necessitates the ~~printing~~ issuance of a new license certificate;

(5) A fee in the amount allowed by law for insufficient funds checks or other types of insufficient payment;

(6) A fee in the amount of ten dollars ($10.00) for the compilation of each certified copy of a licensee's education history or license history;

(7) A fee in the amount of fifty dollars ($50.00) for issuance or renewal of a branch office license.

SECTION 8. That Section 54-2040, Idaho Code, be, and the same is hereby amended to read as follows:

54-2040. MAIN OFFICE OR BUSINESS LOCATION -- DISPLAY OF LICENSE. (1) Definite location required. Each individual licensed as a designated real estate broker under the provisions of this chapter shall be required to have and maintain a definite, physical place of business, which place shall serve as his main office for the transaction of business and be regarded for the intent and purpose of this chapter as his principal place of business. Notice in writing shall be given to the commission of any change by the broker of the business name, location, or mailing address ~~and--each-wall-license-requiring-a-change-shall-be returned-to-the-commission~~ along with the fee for ~~printing-and~~ issuance of a new license certificate. Upon receipt of the new license certificate or upon its effective date, whichever is later, the broker shall remove from public view any license certificate bearing the former business name or former location. A change of business name or location without notification to the commission and issuance of a new license

certificate shall automatically inactivate the license previously issued. The broker shall also notify the commission in writing of any change in the business telephone number.

(2) Broker for more than one business. A qualified individual may be the designated broker for more than one (1) licensed real estate business entity only if all licensed businesses operate their main offices at the same physical location.

(3) Brokers sharing same business location. More than one (1) individually licensed broker may operate an office at the same address only if each broker operates under a business name which clearly identifies the broker as an individual within the group of brokers, and each broker shall maintain his or her records and trust accounts separate from all other brokers.

(4) Business name and display of licenses. A broker shall not conduct business under any name other than the one in which the license is issued. The c~~C~~urrent license~~s of~~ certificate for the broker and ~~all~~ for each associate~~s~~ licensed with the broker shall be prominently displayed or available for public inspection in the office designated with the ~~commission~~ as the broker's main office location. No other location may be used as a main office location until proper notice is acknowledged by the commission.

(5) Lending license prohibited. A broker shall not lend or permit the use of the broker's license, whether for compensation or not, to enable anyone licensed or unlicensed to, in fact, establish or carry on a business for which a real estate broker's license is required, wherein the broker does not actively manage and have full control. In like manner, a salesperson shall not use another person's broker's license, whether for compensation or not, to establish or carry on a business for which a broker's license is required, nor to manage and control the office, except as allowed by sections 54-2016(4) and 54-2039(1), Idaho Code.

(6) Return of license certificate. Upon surrender of ~~his~~ a real estate license or upon notice of suspension or revocation of such license, ~~a licensee~~ the broker shall immediately forward the ~~wall~~ license certificate to the commission. The license certificate of any sales associate licensed under and associated with a broker whose license is to be surrendered, suspended or revoked shall be returned to the commission on or before the effective date of the notice or order surrendering, suspending or revoking the broker's license.

SECTION 9. That Section 54-2041, Idaho Code, be, and the same is hereby amended to read as follows:

54-2041. TRUST ACCOUNTS AND ENTRUSTED PROPERTY. (1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker.

(2) Immediately upon receipt, the broker shall ~~place~~ deposit entrusted moneys in a neutral, qualified trust fund account in Idaho, and shall properly care for any entrusted property.

(3) Only moneys relating to a regulated real estate transaction may be deposited in the broker's real estate trust fund account. Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain

the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) The real estate broker shall remain fully responsible and accountable for all entrusted moneys and property until a full accounting has been given to the parties involved.

SECTION 10. That Section 54-2054, Idaho Code, be, and the same is hereby amended to read as follows:

54-2054. COMPENSATION, COMMISSIONS AND FEES -- PROHIBITED CONDUCT. (1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to a corporation, all of whose shareholders and directors are active real estate licensees. An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter, or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

(4) Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(5) Double contracts prohibited. No licensed broker or salesperson shall use, propose the use of, agree to the use of, or knowingly permit

the use of a double contract, as defined in section 54-2004, Idaho Code, in connection with any regulated real estate transaction. Such conduct by a licensee shall be deemed flagrant misconduct and dishonorable and dishonest dealing and shall subject the licensee to disciplinary action by the commission.

(6) Kickbacks and rebates prohibited. No licensed real estate broker or salesperson shall receive a kickback or rebate for directing any transaction to any individual for financing. A licensee shall not receive a kickback or unearned fee for directing any transaction to any lending institution, escrow or title company, as those practices are defined and prohibited by the real estate settlement ~~and~~ procedures act. ~~of 1974, as amended, 12 U.S.C. section 2601 et seq.~~ However, a licensee legally receiving any fee or rebate from any person providing direct services to either the buyer or the seller in connection with a regulated real estate transaction is required to disclose the licensee's intent to receive such fee, rebate or compensation in writing to all parties to the transaction prior to closing.

(7) Compensation from more than one party. No licensed real estate broker or salesperson shall charge or accept compensation from more than one (1) party in any one (1) transaction, without first making full disclosure in writing of the broker's intent to do so, to all parties involved in the transaction.

(8) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate, for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction. It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

(9) All fees must be paid through broker. No sales associate shall accept any commission, compensation or fee for the performance of any acts requiring a real estate license from any person except the real estate broker with whom the sales associate is licensed. However, a broker may pay a former sales associate for services performed while the sales associate was actively licensed with that broker, regardless of the former sales associate's license status at the time the commission or fee is actually paid.

SECTION 11. That Section 54-2056, Idaho Code, be, and the same is hereby amended to read as follows:

54-2056. TERMINATING OR CHANGING LICENSED BUSINESS RELATIONSHIPS. (1) ~~Sales associate--terminating--license--with--broker~~ Termination of licensed association. Any sales associate who terminates his licensed association with a broker ~~and licenses with another broker shall immediately return his wall license to the commission, along with the completed forms and fees necessary for relicensing. If the sales associate is unable to obtain his wall license from the broker, the sales associate shall send written notice of his termination, by certified mail, return receipt requested, to the broker, and shall deliver a copy of such notice to the commission. Upon receipt of such notice from the sales associate, the broker shall immediately return the sales associate's wall license to the commission~~ shall provide the broker written notice of the termination and the effective date. A broker who terminates the licensed association of a sales associate shall provide the associate written notice of the termination and the effective date. Upon termination of a sales associate's licensed business association with a broker, whether by the broker or by the sales associate, the broker shall remove from public view the former associate's license certificate.

(2) ~~Broker terminating sales associate. Any broker who terminates the association of a sales associate shall return the sales associate's wall license along with a completed termination form to the commission~~ New association. The broker shall submit a written application, in the form and manner approved by the commission, for each sales associate licensing with the broker.

(3) Termination for cause. Any broker who terminates the association of a sales associate for the violation of any of the provisions of sections 54-2059 through 54-2065, Idaho Code, shall promptly notify the commission, in writing, of the termination and the facts giving rise to the termination.

(4) Closing a branch office. ~~A~~ Immediately upon closing a branch office, the broker shall provide the commission written notice of the closure advising of the new status of all licensees licensed with the closed branch. The broker shall ~~be sent to the commission office along with~~ immediately remove from public view the branch office license certificate and the ~~wall~~ licenses certificates of all licensees licensed in the branch office. ~~immediately upon closing the branch office.~~

(5) Property of the broker. Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information and listing contracts, keys, purchase and sale agreements and similar contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices or induces clients of the broker to terminate any legal business relationship with the broker unless he first obtains written permission of the broker.

(6) Location of trust accounts and file records. When an actively licensed broker changes to a license status other than that of a designated broker, that individual must notify the commission in writing of the location of all trust accounts and transaction file records which the broker was responsible for during the term of licensure as a designated broker. These records shall be available to the commission for three (3) years following the year in which each transaction was closed.

(7) Terminating relationships between a broker and a sole proprietorship owned by a person other than the broker. When a broker for a sole proprietorship, owned by a person other than the broker, terminates an association with the owner, all records and trust account funds shall become the property of, and be maintained and disbursed by, the terminating broker in accordance with this chapter and applicable rules promulgated thereunder. The terminating broker shall deliver, upon request made in writing by the clients and the new broker of that sole proprietorship, such records and trust account funds pertaining to that client, to the new broker who shall thereafter have the responsibility for preservation and disbursement, in accordance with this chapter and applicable rules promulgated thereunder.

SECTION 12. That Section 54-2079, Idaho Code, be, and the same is hereby amended to read as follows:

54-2079. TERMINATION OF SALES~~PERSON~~ ASSOCIATE FOR VIOLATION OF DISCIPLINARY PROVISIONS -- STATEMENT TO BE FILED WITH COMMISSION. When~~ever~~ ~~any~~ real estate broker terminates a sales~~person shall be terminated by his broker~~ associate for a violation of any of the provisions of sections 54-2060 through 54-2062, Idaho Code, the broker shall promptly file a written statement of the facts in reference thereto ~~shall be filed forthwith~~ with the commission.

Approved March 22, 2002.

CHAPTER 221
(S.B. No. 1325, As Amended, As Amended in the House)

AN ACT

RELATING TO AIRPLANE AND AIRPORT SECURITY; AMENDING SECTION 18-7503, IDAHO CODE, TO PROVIDE THAT ANY PERSON WHO ATTEMPTS TO ENTER OR ENTERS AN AIRPLANE OR STERILE AREA OF AN AIRPORT WHILE KNOWINGLY CARRYING A CONCEALED OR UNCONCEALED WEAPON SHALL BE GUILTY OF A MISDEMEANOR, TO PROVIDE ANY PERSON WHO ATTEMPTS TO ENTER OR ENTERS AN AIRPLANE OR STERILE AREA IN AN AIRPORT WITH A WILLFULLY AND INTENTIONALLY CONCEALED WEAPON WITH THE INTENT TO AVOID ITS DETECTION BY SECURITY MEASURES AT THE STERILE AREA SHALL BE GUILTY OF A FELONY, TO DEFINE STERILE AREA, TO PROVIDE EXCEPTIONS FOR AUTHORIZED LAW ENFORCEMENT PERSONNEL, TO PROVIDE SEARCH AUTHORITY FOR AIRPORT PERSONNEL, TO PROHIBIT INTERFERENCE WITH CERTAIN PERSONNEL IN AIRPORTS CARRYING OUT THEIR DUTIES, AND TO PROVIDE LEGAL IMMUNITY TO AIRPORTS IN CERTAIN CIRCUMSTANCES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-7503, Idaho Code, be, and the same is hereby amended to read as follows:

18-7503. WEAPONS ABOARD AIRCRAFT -- PENALTY. (1) No person, ~~shall,~~ while aboard an airplane being operated by a holder of a certificate issued by the federal government or the state of Idaho, shall carry on or about his person a deadly or dangerous weapon, either concealed or

unconcealed; nor shall any person enter or attempt to enter any sterile area of an airport, which is a holder of a certificate issued by the federal government or the state of Idaho, while knowingly carrying on or about his person, or in a bag, case, pouch or other container, a deadly or dangerous weapon, either concealed or unconcealed. Any person who pleads guilty or is found guilty of this subsection shall be guilty of a misdemeanor. As used in this section "sterile area" shall mean that area of a certificated airport to which access is controlled as required by the federal aviation administration regulations.

(2) No person, while aboard an airplane being operated by a holder of a certificate issued by the federal government or the state of Idaho, shall willfully and intentionally conceal on or about his person, or in a bag, case, pouch or other container any deadly or dangerous weapon; nor shall any person enter or attempt to enter any sterile area of an airport which is a holder of a certificate issued by the federal government or the state of Idaho, while willfully and intentionally concealing on or about his person, or in a bag, case, pouch or other container any deadly or dangerous weapon with the intent to avoid its detection by security measures at the sterile area.

(~~2~~3) This section does not apply to:

(a) Law enforcement o~~O~~fficials ~~or employees~~ of a city, county or state, or of the United States, who are authorized to carry arms and who have fulfilled the requirements of federal aviation administration regulations 107 and 108 in effect on January 1, 2001, and as may be amended from time to time;

(b) Crew members and other persons authorized by the certificate holder to carry arms;

(c) Parties chartering an aircraft for the purpose of hunting when a weapon is properly stored and/or in the custody of the pilot in command of the aircraft; or

(d) An aircraft owner and his invited guests when the weapon is properly stored and/or in the custody of the pilot of the aircraft.

(~~3~~4) Any person convicted of violating the provisions of ~~this~~ subsection (2) of this section shall be guilty of a felony, punishable by imprisonment in the state prison not exceeding five (5) years or by fine not exceeding five thousand dollars ($5,000) or by both such fine and imprisonment.

(~~4~~5) Any person presenting a ticket to board any commercial or charter aircraft shall by such presentation consent to a search or screening of his person or personal belongings by the aircraft company boarding him, by personnel of the airport from which the flight is originating, persons authorized by federal aviation administration regulations or by law enforcement officials. In case said person shall refuse to submit to a search or screening of his person or personal belongings by said aircraft company personnel, airport personnel, federal aviation administration regulation authorized personnel, federal employees or ~~said~~ law enforcement officials the person refusing ~~may~~ shall be denied the right to board said commercial or charter aircraft.

(6) Any person entering or attempting to enter into the sterile area of an airport shall be presumed to have fully consented to a search of their person, clothing and belongings including, but not limited to, any bags, cases, pouches or other containers with which they are associated. Such full consent shall remain until the aircraft shall depart from the airport.

(7) No person in, near or attempting to enter a sterile area of a certificated airport shall assault, obstruct or delay any aircraft company personnel, airport personnel, federal aviation administration regulation authorized personnel, federal employee or law enforcement official in the performance of their assigned duties within the airport.

(~~5~~8) No action, either at law or equity, shall be brought against any commercial or charter airline company or airport operating in this state~~,~~ for the refusal of said company or airport to permit a person to board said aircraft where said person has refused to be searched as set out in subsections (~~4~~5) and (6) of this section.

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

Approved March 22, 2002.

CHAPTER 222
(S.B. No. 1348)

AN ACT

RELATING TO TERRORISM; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3322, IDAHO CODE, TO PROHIBIT THE USE OF WEAPONS OF MASS DESTRUCTION, TO PROVIDE FOR PUNISHMENT AND TO DEFINE "WEAPON OF MASS DESTRUCTION"; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3323, IDAHO CODE, TO PROHIBIT THE USE OF BIOLOGICAL WEAPONS, TO PROVIDE FOR PUNISHMENT AND TO DEFINE TERMS; AMENDING CHAPTER 33, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3324, IDAHO CODE, TO PROHIBIT THE USE OF CHEMICAL WEAPONS, TO PROVIDE FOR PUNISHMENT, TO PROVIDE EXCEPTIONS AND TO DEFINE TERMS; AMENDING SECTION 18-4003, IDAHO CODE, TO INCLUDE WITHIN THE DEFINITION OF MURDER OF THE FIRST DEGREE ACTS OF TERRORISM AND THE USE OF A WEAPON OF MASS DESTRUCTION, BIOLOGICAL WEAPON OR CHEMICAL WEAPON AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-7803, IDAHO CODE, TO INCLUDE TERRORISM WITHIN THE DEFINITION OF "RACKETEERING"; AMENDING SECTION 18-8102, IDAHO CODE, TO DEFINE "TERRORISM" AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-8103, IDAHO CODE, TO PROVIDE PENALTIES FOR PERSONS WHO COMMIT ACTS OF TERRORISM OR WHO CONSPIRE WITH OTHERS TO COMMIT SUCH ACTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 81, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-8106, IDAHO CODE, TO PROHIBIT THE PROVISION OF MATERIAL SUPPORT TO TERRORISTS, TO PROVIDE FOR PUNISHMENT AND TO DEFINE "MATERIAL SUPPORT OR RESOURCES"; AND AMENDING SECTION 19-402, IDAHO CODE, TO INCLUDE REFERENCE TO ACTS OF TERRORISM FOR PURPOSES OF COMMENCING PROSECUTION AND TO PROVIDE THAT AN INDICTMENT MAY BE FOUND OR AN INFORMATION INSTITUTED FOR CERTAIN PROSECUTIONS.

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 a NEW SECTION, to be known

and designated as Section 18-3322, Idaho Code, and to read as follows:

18-3322. USE OF WEAPONS OF MASS DESTRUCTION — DEFINITION. (1) Any person who willfully and without lawful authority uses, threatens, attempts or conspires to use a weapon of mass destruction, as defined in this section and including a biological agent, toxin or vector, against any person or property shall be guilty of a felony and shall be punished by a term of up to and including life imprisonment or by a fine not exceeding fifty thousand dollars ($50,000), or by both.

(2) As used in this section, the term "weapon of mass destruction" means:

(a) Any bomb or destructive device, as those terms are defined in section 18-3318, Idaho Code;

(b) Any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination or impact of toxic or poisonous chemicals or the precursors of such chemicals;

(c) Any weapon involving a disease organism; or

(d) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

SECTION 2. That Chapter 33, 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 18-3323, Idaho Code, and to read as follows:

18-3323. BIOLOGICAL WEAPONS — DEFINITIONS. (1) Any person who knowingly develops, produces, stockpiles, transfers, acquires, retains or possesses any biological agent, toxin or delivery system for use as a weapon, or who knowingly assists another person or group of persons in doing so, or attempts, threatens or conspires to do so, shall be guilty of a felony and shall be punished by imprisonment for a term of up to and including life imprisonment or by a fine not exceeding fifty thousand dollars ($50,000), or by both.

(2) As used in this section, the term "for use as a weapon" does not include the development, production, stockpiling, transfer, acquisition, retention or possession of a biological agent, toxin or delivery system for prophylactic, protective or other peaceful purposes if such biological agent, toxin or delivery system is of a type and in a quantity that is reasonable for such purposes.

(3) The attorney general of the state of Idaho may obtain in a civil action an injunction against:

(a) The conduct prohibited under this section;

(b) The preparation, solicitation, attempt, threat or conspiracy to engage in conduct prohibited under this section; or

(c) The development, production, stockpiling, acquisition, retention or possession of any biological agent, toxin or delivery system of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective or other peaceful purposes.

(4) As used in this section:

(a) "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance or biological product that is capable of causing:

(i) Death, disease or other biological malfunction in any animal, including humans, or any plant or other living organism;
(ii) Deterioration of food, water, equipment, supplies or material of any kind; or
(iii) Deleterious alteration of the environment;
(b) "Toxin" means the toxic material of animals, plants, microorganisms, viruses, fungi, infectious substances or a recombinant molecule, whatever its origin or method of production including:
(i) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced from a living organism; or
(ii) Any poisonous isomer or biological product, homologue, or derivative of such substance;
(c) "Delivery system" means any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin or vector;
(d) "Vector" means a living organism or molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology capable of carrying a biological agent to a host.

SECTION 3. That Chapter 33, 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 18-3324, Idaho Code, and to read as follows:

18-3324. USE OF CHEMICAL WEAPONS -- DEFINITIONS. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to knowingly:
(a) Develop, produce or otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, use or threaten to use any chemical weapon; or
(b) Assist or induce in any way a person to violate, or attempt or conspire to violate, subsection (1)(a) of this section.
(2) Subsection (1) of this section shall not apply to:
(a) The retention, ownership, possession, transfer or receipt of a chemical weapon by a department, agency or other entity of the state of Idaho or the United States; or
(b) Any person, including a member of the armed forces of the United States, who is authorized by law or by an appropriate officer of the state of Idaho or the United States to retain, possess, transfer or receive a chemical weapon; or
(c) To an otherwise nonculpable person in an emergency situation if such person is attempting to seize or destroy the weapon.
(3) (a) Any person who violates this section is guilty of a felony and shall be punished by imprisonment for a term of up to and including life imprisonment or by a fine not exceeding fifty thousand dollars ($50,000), or by both.
(b) The attorney general of the state of Idaho may bring a civil action in a state district court against any person who violates this section and, upon proof of such violation by a preponderance of the evidence, such person shall be required to pay a civil penalty in an amount not to exceed one hundred thousand dollars ($100,000)

for each violation. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law or administrative remedy which is otherwise available by law to the state of Idaho or any other person.

(c) The court shall order any person convicted of an offense under this section to reimburse the state of Idaho for any expenses incurred by the state incident to the seizure, storage, handling, transportation, destruction or other disposition of any property or material seized in connection with an investigation of the commission of an offense by that person.

(d) The state of Idaho may obtain in a civil action an injunction against any conduct prohibited in subsection (1) of this section or the preparation or solicitation to engage in such conduct.

(4) Nothing in this section shall be construed to prohibit the possession or use of any individual self-defense device, including devices which contain pepper spray or chemical mace.

(5) As used in this section:

(a) "Chemical weapon" means the following, together or separately:

(i) A toxic chemical and its precursors, except where intended for a purpose not prohibited by this section provided the type and quantity of such chemical or precursors are consistent with such a purpose;

(ii) A munition or device that is specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in paragraph (5)(a)(i) of this section and that would be released as a result of the employment of such munition or device;

(iii) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (5)(a)(ii) of this section.

(b) Except as otherwise provided, "person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, the state of Idaho or any political subdivision thereof, or any political entity within the state, any foreign government or nation or any agency, instrumentality or political subdivision of such government or nation located in the state of Idaho.

(c) "Precursor" means any chemical reactant that takes part at any stage in the production, by whatever method, of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

(d) "Purposes not prohibited by this section" means:

(i) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(ii) Any purpose directly related to protection against toxic chemicals or chemical weapons;

(iii) Any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or

(iv) Any law enforcement purpose, including any domestic riot control purpose and the imposition of capital punishment.

(e) "Toxic chemical" means any chemical that, through its chemical

action on life processes, can cause death, temporary incapacitation or permanent harm to animals, including humans. The term includes all such chemicals, regardless of their form or method of production, and regardless of whether they are produced in facilities, munitions or elsewhere.

SECTION 4. That Section 18-4003, Idaho Code, be, and the same is hereby amended to read as follows:

18-4003. DEGREES OF MURDER. (a) All murder which is perpetrated by means of poison, or lying in wait, or torture, when torture is inflicted with the intent to cause suffering, to execute vengeance, to extort something from the victim, or to satisfy some sadistic inclination, or which is perpetrated by any kind of ~~wilful~~ willful, deliberate and premeditated killing is murder of the first degree.

(b) Any murder of any peace officer, executive officer, officer of the court, fireman, judicial officer or prosecuting attorney who was acting in the lawful discharge of an official duty, and was known or should have been known by the perpetrator of the murder to be an officer so acting, shall be murder of the first degree.

(c) Any murder committed by a person under a sentence for murder of the first or second degree, including such persons on parole or probation from such sentence, shall be murder of the first degree.

(d) Any murder committed in the perpetration of, or attempt to perpetrate, aggravated battery on a child under twelve (12) years of age, arson, rape, robbery, burglary, kidnapping or mayhem, or an act of terrorism, as defined in section 18-8102, Idaho Code, or the use of a weapon of mass destruction, biological weapon or chemical weapon, is murder of the first degree.

(e) Any murder committed by a person incarcerated in a penal institution upon a person employed by the penal institution, another inmate of the penal institution or a visitor to the penal institution shall be murder of the first degree.

(f) Any murder committed by a person while escaping or attempting to escape from a penal institution is murder of the first degree.

(g) All other kinds of murder are of the second degree.

SECTION 5. That Section 18-7803, Idaho Code, be, and the same is hereby amended to read as follows:

18-7803. DEFINITIONS. As used in this chapter, (a) "Racketeering" means any act which is chargeable or indictable under the following sections of the Idaho Code or which are equivalent acts chargeable or indictable as equivalent crimes under the laws of any other jurisdiction:

(1) Homicide (section 18-4001, Idaho Code);

(2) Robbery, burglary, theft, forgery, counterfeiting, and related crimes (sections 18-1401, 18-1405, 18-2403, 18-2407, 18-3123, 18-3124, 18-3125, 18-3601, 18-3602, 18-3603, 18-3605, 18-3606, 18-3607, 18-3609, 18-3610, 18-3614, 18-3615, 18-3618, 18-4630, 18-6501 and 49-518, Idaho Code);

(3) Kidnapping (section 18-4501, Idaho Code);

(4) Prostitution (sections 18-5601, 18-5602, 18-5603, 18-5604, 18-5605, 18-5606, 18-5608 and 18-5609, Idaho Code);

(5) Arson (sections 18-801, 18-802, 18-803, 18-804 and 18-805, Idaho Code);
(6) Assault (sections 18-908 and 18-4015, Idaho Code);
(7) Lotteries and gambling (sections 18-3801, 18-3802, 18-3809, 18-4902, 18-4903, 18-4904, 18-4905, 18-4906 and 18-4908, Idaho Code);
(8) Indecency and obscenity (sections 18-1515, 18-1518, 18-4103, 18-4103A, 18-4104, 18-4105, 18-4105A and 18-4107, Idaho Code);
(9) Poisoning (sections 18-4014 and 18-5501, Idaho Code);
(10) Fraudulent practices, false pretenses, insurance fraud, financial transaction card crimes and fraud generally (sections 18-2403, 18-2706, 18-3002, 18-3101, 18-3124, 18-3125, 18-3126, 18-6713, 41-293, 41-294 and 41-1306, Idaho Code);
(11) Alcoholic beverages (sections 23-602, 23-606, 23-610, 23-703, 23-905, 23-914, 23-928, 23-934 and 23-938, Idaho Code);
(12) Cigarette taxes (sections 63-2505 and 63-2512(b), Idaho Code);
(13) Securities (sections 30-1403, 30-1403A, 30-1404, 30-1405, 30-1406, 30-1438 and 30-1439, Idaho Code);
(14) Horseracing (section 54-2512, Idaho Code);
(15) Interest and usurious practices (sections 28-45-401 and 28-45-402, Idaho Code);
(16) Corporations (sections 18-1901, 18-1902, 18-1903, 18-1904, 18-1905, 18-1906 and 30-1510, Idaho Code);
(17) Perjury (sections 18-5401 and 18-5410, Idaho Code);
(18) Bribery and corrupt influence (sections 18-1352 and 18-1353, Idaho Code);
(19) Controlled substances (sections 37-2732(a), (b), (c), (e) and (f), 37-2732B, 37-2734 and 37-2734B, Idaho Code);
(20) Motor vehicles (sections 49-228, 49-231, 49-232 and 49-518, Idaho Code);
(21) Terrorism (section 18-8103, Idaho Code).

(b) "Person" means any individual or entity capable of holding a legal or beneficial interest in property;

(c) "Enterprise" means any sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or any group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities; and

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

SECTION 6. That Section 18-8102, Idaho Code, be, and the same is hereby amended to read as follows:

18-8102. DEFINITIONS. As used in this chapter:

(1) "Civil disorder" means any public disturbance involving acts of violence by an assemblage of two (2) or more persons which acts cause an immediate danger of or result in damage or injury to the property or person of any other individual.

(2) "Governmental military force" means the national guard, as defined in section 101(9) of title 10, United States Code; the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, not included with the definition of national guard as defined by such section 101(9); and the armed forces of the United States.

(3) "Law enforcement agency" means a governmental unit of one (1) or more persons employed full time or part time by the state or federal government, or a political subdivision thereof, for the purpose of preventing and detecting crime and enforcing laws or local ordinances and the employees of which are authorized to make arrests for crimes while acting within the scope of their authority.

(4) "Peace officer" means any duly appointed officer of a law enforcement agency as defined herein including, but not limited to, an officer of the Idaho state police, department of fish and game, a sheriff or deputy sheriff of a county, or a marshal or police officer of a city.

(5) "Terrorism" means activities that:

(a) Are a violation of Idaho criminal law; and

(b) Involve acts dangerous to human life that are intended to:

(i) Intimidate or coerce a civilian population;

(ii) Influence the policy of a government by intimidation or coercion; or

(iii) Affect the conduct of a government by the use of weapons of mass destruction, as defined in section 18-3322, Idaho Code.

SECTION 7. That Section 18-8103, Idaho Code, be, and the same is hereby amended to read as follows:

18-8103. PROHIBITED ACTIVITIES -- PENALTIES. Any person who:

(1) Conspires with one (1) or more persons to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitutions or laws of the United States or the state of Idaho, by the use of violence against the person or property of such citizen; or

(2) Goes on the highway, or on the premises of any citizen, with one (1) or more other persons, with the intent by use of violence against such citizen or his property, to prevent or hinder his free exercise or enjoyment of any right or privilege so secured; or

(3) Assembles with one (1) or more persons for the purpose of training or instructing in the use of, or practicing with, any technique or means capable of causing property damage, bodily injury or death with the intent to employ such training, instruction or practice in the commission of a civil disorder, as defined herein; or

(4) Commits an act of terrorism. as defined in this chapter; or

(5) Conspires with one (1) or more persons to commit an act of terrorism, as defined in this chapter;

shall be guilty of a felony. ~~and~~ A violation of subsection (1), (2) or (3) of this section shall be punished by imprisonment in the state prison for a period not to exceed ten (10) years, by a fine not in excess of fifty thousand dollars ($50,000), or by both such fine and imprisonment. A violation of subsection (4) or (5) shall be punished by imprisonment in the state prison for a period of up to and including

life imprisonment or by a fine not exceeding fifty thousand dollars ($50,000), or by both.

SECTION 8. That Chapter 81, 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 18-8106, Idaho Code, and to read as follows:

18-8106. PROVIDING MATERIAL SUPPORT TO TERRORISTS. (1) A person who provides material support or resources, or who conceals or disguises the nature, location, source or ownership of material support or resources, with the knowledge and intention that such support or resources are to be used in the preparation or carrying out of a violation of this chapter, or in the preparation or carrying out of the concealment of such support or resources, or in the escape from the commission of any such violation, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not exceeding fifty thousand dollars ($50,000), or by both.

(2) As used in this section, the term "material support or resources" means currency or other financial securities, financial services, lodging, safe houses, training, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets. "Material support or resources" does not include medical or religious material.

SECTION 9. That Section 19-402, Idaho Code, be, and the same is hereby amended to read as follows:

19-402. COMMENCEMENT OF PROSECUTIONS FOR CRIMES AGAINST CHILDREN AND OTHER FELONIES. (1) A prosecution for any felony other than murder, voluntary manslaughter, rape pursuant to section 18-6101 2., 3., 4. or 5., or section 18-6108, Idaho Code, or any felony committed upon or against a minor child, or an act of terrorism as set forth in sections 18-8102, 18-8103, 18-3322, 18-3323 and 18-3324, Idaho Code, must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission. Except as provided in subsection (2) of this section, a prosecution for any felony committed upon or against a minor child must be commenced within five (5) years after the commission of the offense by the filing of the complaint or a finding of an indictment.

(2) A prosecution under section 18-1506 or 18-1508, Idaho Code, must be commenced within five (5) years after the date the child reaches eighteen (18) years of age.

(3) A prosecution under section 18-1506A, Idaho Code, must be commenced within three (3) years after the date of initial disclosure by the victim.

(4) Notwithstanding any other provision of law, an indictment may be found, or an information instituted, at any time without limitation for a prosecution under section 18-8103, 18-3322, 18-3323 or 18-3324, Idaho Code.

Approved March 22, 2002.

CHAPTER 223
(S.B. No. 1349, As Amended)

AN ACT

RELATING TO COMMUNICATIONS SECURITY; AMENDING SECTION 18-6701, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-6702, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATIONS, TO PROHIBIT THE INTENTIONAL DISCLOSURE OR ENDEAVOR TO DISCLOSE CONTENTS OF INTERCEPTED WIRE, ELECTRONIC OR ORAL COMMUNICATIONS IN CERTAIN CIRCUMSTANCES, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE THAT CERTAIN CONDUCT RELATING TO THE INTERCEPTION AND ACCESS OF COMMUNICATIONS SHALL NOT BE UNLAWFUL, TO ALLOW PROVIDERS OF ELECTRONIC COMMUNICATION SERVICES TO RECORD THE FACT THAT WIRE OR ELECTRONIC COMMUNICATION WAS INITIATED OR COMPLETED IN ORDER TO PROTECT CERTAIN PERSONS FROM THE FRAUDULENT, UNLAWFUL OR ABUSIVE USE OF SUCH SERVICE, TO PROVIDE THAT PERSONS OR ENTITIES PROVIDING ELECTRONIC COMMUNICATION SERVICE TO THE PUBLIC SHALL NOT INTENTIONALLY DIVULGE THE CONTENTS OF COMMUNICATIONS OTHER THAN TO SPECIFIED PERSONS, TO PROVIDE EXCEPTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-6703, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATIONS AND TO A PROVIDER OF WIRE OR ELECTRONIC COMMUNICATION SERVICE AND TO PROVIDE THAT IT SHALL NOT BE UNLAWFUL TO ADVERTISE FOR SALE CERTAIN DEVICES IF SUCH ADVERTISEMENT IS MAILED, SENT OR CARRIED SOLELY TO A DOMESTIC PROVIDER OF WIRE OR ELECTRONIC COMMUNICATION SERVICE OR TO AGENCIES AND POLITICAL SUBDIVISIONS OF THE FEDERAL OR STATE GOVERNMENTS THAT ARE AUTHORIZED TO USE SUCH DEVICES; AMENDING SECTION 18-6704, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATION INTERCEPTING DEVICES; AMENDING SECTION 18-6705, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-6706, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-6707, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATIONS; AMENDING SECTION 18-6708, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATIONS, TO PROVIDE CODE REFERENCES, TO PROVIDE THAT A JUDGE MAY ENTER AN EX PARTE ORDER AUTHORIZING INTERCEPTION OF CERTAIN COMMUNICATIONS WITHIN THE STATE OF IDAHO, TO PROVIDE REFERENCES TO PROVIDERS OF WIRE OR ELECTRONIC COMMUNICATION SERVICE, TO PROVIDE THAT CERTAIN PERSONS FURNISHING FACILITIES OR TECHNICAL ASSISTANCE SHALL BE COMPENSATED FOR REASONABLE EXPENSES, TO PROVIDE THAT THE THIRTY DAY PERIOD FOR AN ORDER AUTHORIZING INTERCEPTION OF CERTAIN COMMUNICATIONS BEGINS ON THE EARLIER OF THE DAY ON WHICH THE INVESTIGATIVE OR LAW ENFORCEMENT OFFICER BEGINS TO CONDUCT AN INTERCEPTION UNDER THE ORDER OR TEN DAYS AFTER THE ORDER IS ENTERED, TO PROVIDE THAT IF AN INTERCEPTED COMMUNICATION IS IN A CODE OR FOREIGN LANGUAGE AND AN EXPERT IN THAT FOREIGN LANGUAGE OR CODE IS NOT REASONABLY AVAILABLE MINIMIZATION MAY BE ACCOMPLISHED AS SOON AS PRACTICABLE AFTER THE INTERCEPTION, TO PROVIDE THAT AN INTERCEPTION MAY BE CONDUCTED BY SPECIFIC PERSONS ACTING UNDER THE SUPERVISION OF OFFICERS AUTHORIZED TO CONDUCT THE INTERCEPTION, TO MAKE A GRAMMATICAL CORRECTION, TO MAKE TECHNICAL CORRECTIONS, TO PROVIDE THAT REMEDIES AND SANCTIONS SET FORTH IN THE SECTION ARE THE ONLY JUDICIAL REMEDIES AND SANCTIONS FOR NONCONSTITUTIONAL VIOLATIONS OF THE CHAP-

TER INVOLVING THE INTERCEPTION OF ELECTRONIC COMMUNICATIONS, TO PROVIDE THAT CERTAIN REQUIREMENTS RELATING TO THE SPECIFICATION OF FACILITIES FROM WHICH OR THE PLACE WHERE A COMMUNICATION IS TO BE INTERCEPTED DO NOT APPLY IN CERTAIN CIRCUMSTANCES, TO PROVIDE THAT AN INTERCEPTION OF A COMMUNICATION UNDER AN ORDER DOES NOT BEGIN UNTIL THE PLACE WHERE THE COMMUNICATION IS TO BE INTERCEPTED IS ASCERTAINED BY THE PERSON IMPLEMENTING THE ORDER, TO PROVIDE THAT PROVIDERS OF WIRE OR ELECTRONIC COMMUNICATIONS SERVICES MAY MOVE THE COURT TO MODIFY OR QUASH AN ORDER ON THE GROUND THAT ASSISTANCE CANNOT BE PERFORMED IN A TIMELY OR REASONABLE FASHION AND TO PROVIDE THAT THE COURT SHALL DECIDE SUCH A MOTION EXPEDITIOUSLY UPON NOTICE TO THE STATE; AND AMENDING SECTION 18-6709, IDAHO CODE, TO PROVIDE REFERENCE TO ELECTRONIC COMMUNICATIONS.

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

SECTION 1. That Section 18-6701, Idaho Code, be, and the same is hereby amended to read as follows:

18-6701. DEFINITIONS. Definitions as used in this chapter:

(1) "Wire communication" means any ~~communication~~ aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station), furnished or operated by any person engaged ~~as a common carrier~~ in providing or operating such facilities for the transmission of intrastate, interstate or foreign communications.

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying ~~an~~ such expectation ~~that said communication is not subject to interception~~ but such term does not include any electronic communication.

(3) "Intercept" means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical, or other device.

(4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility or any component thereof:

(i) F~~f~~urnished to the subscriber or user by a ~~communications common carrier~~ provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business~~,~~ or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

(ii) B~~b~~eing used by a ~~communications common carrier~~ provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) "Person" means any employee or agent of the state or political subdivision thereof and any individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(6) "Investigative or law enforcement officer" means any officer of the state of Idaho who is empowered by law to conduct investigations of, or to make arrests for, offenses enumerated in this chapter and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

(7) "Contents" when used with respect to any wire, electronic or oral communication includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(8) "Judge of competent jurisdiction" means a justice of the supreme court or a judge of a district court.

(9) "Aggrieved person" means a person who was a party to any illegally intercepted wire, electronic or oral communication or a person against whom the interception was illegally directed.

(10) ~~"Communications--common--carrier" means any person engaged as a common carrier for hire, in intrastate, interstate or foreign communication by wire or radio, or in intrastate, interstate, or foreign radio transmission of energy~~ "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system, but does not include:

(a) Any wire or oral communication;

(b) Any communication made through a tone-only paging device;

(c) Any communication from a tracking device, as defined in 18 U.S.C. section 3117; or

(d) Electronic fund transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(11) "User" means any person or entity who:

(a) Uses an electronic communication service; and

(b) Is authorized by the provider of such service to engage in such use.

(12) "Electronic communications system" means any wire, radio, electromagnetic, photoelectronic or photooptical facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.

(13) "Electronic communication service" means any service that provides to the users thereof the ability to send or receive wire or electronic communications.

(14) "Readily accessible to the general public" means, with respect to a radio communication, that such communication is not:

(a) Scrambled or encrypted;

(b) Transmitted using modulation techniques, the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication;

(c) Carried on a subcarrier or other signal subsidiary to a radio transmission;

(d) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or

(e) Transmitted on frequencies set forth in 18 U.S.C. section 2510(16)(E).

(15) "Electronic storage" means:

(a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

(b) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

(16) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

SECTION 2. That Section 18-6702, Idaho Code, be, and the same is hereby amended to read as follows:

18-6702. INTERCEPTION AND DISCLOSURE OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS PROHIBITED. (1) Except as otherwise specifically provided in this chapter, any person who:

(a) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication; or

(b) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication; or

(c) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this subsection; or

(d) Willfully uses, or endeavors to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this subsection; or

(e) Intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, intercepted by means authorized by subsection (2)(b), (c), (f) or (g) of this section or by section 18-6708, Idaho Code, if that person:

(i) Knows or has reason to know that the information was obtained through the interception of such communication in connection with a criminal investigation; and

(ii) Has obtained or received the information in connection with a criminal investigation with the intent to improperly obstruct, impede or interfere with a duly authorized criminal investigation, shall be guilty of a felony and is punishable by

imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000), or by both fine and imprisonment.

(2) (a) It is lawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of ~~any communication common carrier~~ a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the ~~carrier of such communication; provided, that said communication common carriers~~ provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It is lawful under this chapter for an officer, employee, or agent of the federal communications commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. ch. 5, to intercept a wire, ~~communication~~ electronic or oral communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under this chapter for a law enforcement officer or a person acting under the direction of a law enforcement officer to intercept a wire, electronic or oral communication when such person is a party to the communication or one (1) of the parties to the communication has given prior consent to such interception.

(d) It is lawful under this chapter for a person to intercept a wire, electronic or oral communication when one (1) of the parties to the communication ~~have~~ has given prior consent to such interception.

(e) It is unlawful to intercept any communication for the purpose of committing any criminal act.

(f) It is lawful under this chapter for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by an appropriate law enforcement agency or the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature.

(g) It is lawful under this chapter for an employee of a law enforcement agency, fire department or ambulance service, while acting in the scope of his employment, and while a party to the communication, to intercept and record incoming wire or electronic communications.

(h) It shall not be unlawful under this chapter for any person:

(i) To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) To intercept any radio communication that is transmitted:

(A) By any station for the use of the general public, or that relates to ships, aircraft, vehicles or persons in distress;

(B) By any governmental, law enforcement, civil defense, private land mobile or public safety communications system, including police and fire, readily accessible to the public;

(C) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band or general mobile radio services; or

(D) By any marine or aeronautical communication system;

(iii) To engage in any conduct that:

(A) Is prohibited by 47 U.S.C. section 553 (federal communications act of 1934); or

(B) Is excepted from the application of 47 U.S.C. section 605 (federal communications act of 1934);

(iv) To intercept any wire or electronic communication, the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent it is necessary to identify the source of such interference; or

(v) For other users of the same frequency to intercept any radio communication, if such communication is not scrambled or encrypted, made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system.

(i) It shall be lawful under this chapter for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication or a user of that service from the fraudulent, unlawful or abusive use of such service.

(3) (a) Except as provided in subsection (3)(b) of this section, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication other than to such person or entity or an agent thereof while in transmission on that service, to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:

(i) As otherwise authorized in section 18-6707, Idaho Code, or subsection (2)(a) of this section;

(ii) With the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) If such contents were inadvertently obtained by the service provider and appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

SECTION 3. That Section 18-6703, Idaho Code, be, and the same is hereby amended to read as follows:

18-6703. MANUFACTURE, DISTRIBUTION, POSSESSION, AND ADVERTISING OF WIRE, ELECTRONIC OR ORAL COMMUNICATION INTERCEPTING DEVICES PROHIBITED. (1) Except as otherwise specifically provided in this chapter any person who willfully:

(a) Sends through the mail or sends or carries any electronic, mechanical, or other device, with the intention of rendering it primarily useful for the purpose of the illegal interception of wire, electronic or oral communications as specifically defined by this chapter; or

(b) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device with the intention of rendering it primarily useful for the purpose of the illegal interception of wire, electronic or oral communications as specifically defined by this chapter, shall be guilty of a felony and is punishable by imprisonment in the state penitentiary for a term of five (5) years or by a fine of five thousand dollars ($5,000), or by both such fine and imprisonment.

(2) It is lawful under this section for:

(a) A provider of wire or electronic communication ~~common-carrier~~ service or an officer, agent, or employee of, or a person under contract with, ~~a communication common carrier~~ such a provider, in the normal course of ~~the communication common carrier's~~ business; or

(b) An officer, ~~agent, or employee of, or a person~~ under contract with, bidding upon contracts with, or in the course of doing business with, the United States, a state, or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, electronic or oral communication.

(3) It shall not be unlawful under this section to advertise for sale a device described in subsection (1) of this section if the advertisement is mailed, sent or carried solely to a domestic provider of wire or electronic communication service or to an agency of the United States, any state, or a political subdivision thereof that is duly authorized to use such device.

SECTION 4. That Section 18-6704, Idaho Code, be, and the same is hereby amended to read as follows:

18-6704. CONFISCATION OF WIRE, ELECTRONIC OR ORAL COMMUNICATION INTERCEPTING DEVICES. Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, or sold in violation of this chapter may be seized and forfeited to the state.

SECTION 5. That Section 18-6705, Idaho Code, be, and the same is hereby amended to read as follows:

18-6705. PROHIBITION OF USE AS EVIDENCE OF INTERCEPTED WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. Whenever any wire, electronic or oral communications has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evi-

dence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter.

SECTION 6. That Section 18-6706, Idaho Code, be, and the same is hereby amended to read as follows:

18-6706. AUTHORIZATION FOR INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. The prosecuting attorney of any county is authorized to make application to a judge of competent jurisdiction for an order authorizing or approving the interception of wire, electronic or oral communications and may apply to such judge for, and such judge may grant in conformity with section 2581 of chapter 119, title 18 U.S.C.A., and in conformity with the provisions of this chapter ~~67, title 18, Idaho Code~~, an order authorizing or approving the interception of wire, electronic or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one (1) year, or any conspiracy to commit any of the foregoing offenses.

SECTION 7. That Section 18-6707, Idaho Code, be, and the same is hereby amended to read as follows:

18-6707. AUTHORIZATION FOR DISCLOSURE AND USE OF INTERCEPTED WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. (1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, electronic or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.

(3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, electronic or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of this state, of the United States or of any state or in any political subdivision thereof.

(4) No otherwise privileged wire, electronic or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic or oral communications in the manner authorized herein, intercepts wire, electronic or oral communications relating to offenses other than those specified in the order of authorization, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1), (2) and (3) of this section.

SECTION 8. That Section 18-6708, Idaho Code, be, and the same is hereby amended to read as follows:

18-6708. PROCEDURE FOR INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS. (1) Each application for an order authorizing the interception of a wire, electronic or oral communication shall be made in writing upon oath or affirmation or by means of an oral affidavit as provided for in the Idaho Rules of Criminal Practice & Procedure to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the individual authorized to make application for said order pursuant to section 18-6706~~(1)~~, Idaho Code~~.~~;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11) of this section, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual making the applications, made to any judge for authorization to intercept wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, electronic or oral communications within the ~~territorial jurisdiction of the court in which the judge is sitting~~ state of Idaho if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 18-6706, Idaho Code;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) Except as provided in subsection (11) of this section, t~~T~~here is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing the interception of any wire, electronic or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications, and of the person making the application; and

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(5) An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a ~~communications common carrier~~ provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such ~~communications common carrier~~ service provider, landlord, custodian or person is providing the person whose communications are to be intercepted. Any ~~communications common carrier~~ provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant ~~at the prevailing rates~~ for reasonable expenses incurred in providing such facilities or assistance.

(6) No order entered under this section may authorize the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty (30) days. Such thirty (30) day period begins on the earlier of the day on which the investigative or law

enforcement officer begins to conduct an interception under the order or ten (10) days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The periods of extension shall be no longer than the authorizing court deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty (30) days for each extension. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty (30) days. In the event the intercepted communication is in a code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by government personnel or by an individual operating under a contract with federal, state or local government and acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(7) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge who may require.

(8) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying court and in any event shall be kept for ten (10) years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2) of section 18-6707, Idaho Code, for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic or oral communication or evidence derived therefrom under subsection (3) of section 18-6707, Idaho Code.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge and in any event shall be kept for ten (10) years.

(c) Any violation of the provisions of this subsection may be pun-

ished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety (90) days after the filing of an application for an order of approval under this section ~~18-6708, Idaho Code,~~ which is denied or the termination of the period of an order or extensions thereof, the issuing or ~~denying~~ judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of:

(1) The fact of the entry of the order or the application;

(2) The date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) The fact that during the period wire, electronic or oral communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any intercepted wire, electronic or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a federal or state court unless each party, not less than ten (10) days before the trial, hearing, or proceeding has been furnished with a copy of the court order and accompanying application under which the interception was authorized. This ten (10) day period may be waived by the court if it finds that it was not possible to furnish the party with the above information ten (10) days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a state, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;

2. The order of authorization under which it was intercepted is insufficient on its face; or

3. The interception was not made in conformity with the order of authorization.

Such motion shall be made before the trial, hearing, or proceeding, pursuant to the Idaho rules of criminal or civil procedure or the hearing rules of the respective body, as applicable.

(b) In addition to any other right to appeal, the state of Idaho shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection. Such appeal shall be taken within thirty (30) days after the date the order was entered.

(c) The remedies and sanctions described in this section with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional viola-

tions of this chapter involving such communications.

(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

(i) The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(ii) The judge finds that such specification is not practical; and

(b) In the case of an application with respect to a wire or electronic communication:

(i) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility;

(ii) The judge finds that such showing has been adequately made; and

(iii) The order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11)(a) of this section shall not begin until the place where the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) of this section may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide such a motion expeditiously.

SECTION 9. That Section 18-6709, Idaho Code, be, and the same is hereby amended to read as follows:

18-6709. RECOVERY OF CIVIL DAMAGES AUTHORIZED. Any person whose wire, electronic or oral communication is intercepted, disclosed, or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose, or use such communications, and shall be entitled to recover from any such person:

(a) Actual damages, but not less than liquidated damages computed at the rate of one hundred dollars ($100) a day for each day of violation or one thousand dollars ($1,000), whichever is higher;

(b) Punitive damages; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

A good faith reliance on a court order shall constitute a complete defense to any civil or criminal action under the laws of this state.

Approved March 22, 2002.

CHAPTER 224
(S.B. No. 1389, As Amended)

AN ACT

RELATING TO THE FISH AND GAME COMMISSION; AMENDING SECTION 36-104, IDAHO CODE, TO AUTHORIZE THE FISH AND GAME COMMISSION TO ENTER INTO AGREEMENTS WITH CITIES, COUNTIES, RECREATION DISTRICTS OR OTHER POLITICAL SUBDIVISIONS FOR THE LEASE OF LANDS OR WATERS TO COST-EFFECTIVELY PROVIDE RECREATIONAL OPPORTUNITIES FOR TAXPAYERS OR RESIDENTS OF THOSE LOCAL GOVERNMENTS OR POLITICAL SUBDIVISIONS.

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

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

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

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

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

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the supply

thereof, then it shall make a rule or proclamation embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

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

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

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

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

(C) A nonrefundable fee as specified in section 36-416, Idaho Code, shall be charged each applicant for a controlled hunt permit. Successful applicants for controlled hunt permits shall be charged the fee as specified in section 36-416, Idaho Code. Additionally, a fee may be charged for telephone and credit card orders in accordance with subsection (e)11. of section 36-106, Idaho Code. The department shall include a checkoff form to allow applicants to designate one dollar ($1.00) of such nonrefundable application fee for transmittal to the reward fund of citizens against poaching, inc., an Idaho nonprofit corporation. The net proceeds from the nonrefundable fee shall be deposited in the fish and game account and none of the net proceeds shall be used to purchase lands.

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

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or waters suitable for the purposes hereinafter enumerated in this paragraph. Whenever the commission proposes to purchase a tract of land in excess of fifteen (15) acres, the commission shall notify the board of county commissioners of the county where this land is

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

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

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

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

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

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

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

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

(A) The landowners, with the assistance of the department,

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

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

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

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

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

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

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

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

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

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

Approved March 22, 2002.

CHAPTER 225
(S.B. No. 1390, As Amended, As Amended)

AN ACT

RELATING TO THE DEPARTMENT OF PARKS AND RECREATION; AMENDING SECTION 67-4219, IDAHO CODE, TO PROVIDE ADDITIONAL LEGISLATIVE INTENT; AMENDING SECTION 67-4223, IDAHO CODE, TO AUTHORIZE THE PARKS AND

RECREATION BOARD TO EXPEND MONEYS FOR LEASING OF LANDS AND TO AUTHORIZE THE BOARD TO COOPERATE WITH THE UNITED STATES AND ITS AGENCIES AND LOCAL GOVERNMENTS OF THE STATE FOR THE PURPOSE OF LEASING LANDS, TO AUTHORIZE THE BOARD TO ENTER INTO LEASES OR AGREEMENTS WITH LOCAL GOVERNMENTS FOR THE OPERATION AND MAINTENANCE OF OUTDOOR RECREATIONAL AREAS AND FACILITIES OF THE STATE, TO ALLOW THE BOARD TO APPLY TO AN APPROPRIATE AGENCY OR OFFICER OF THE UNITED STATES FOR PARTICIPATION BY THE DEPARTMENT OF PARKS AND RECREATION OR A POLITICAL SUBDIVISION OF THE STATE FOR FEDERAL AID, AND TO AUTHORIZE THE BOARD TO ENTER INTO AGREEMENTS WITH CITIES, COUNTIES, RECREATION DISTRICTS OR OTHER POLITICAL SUBDIVISIONS OF THE STATE TO COST-EFFECTIVELY PROVIDE RECREATIONAL FACILITIES, OPPORTUNITIES AND SERVICES TO THE CITIZENS OF THE STATE.

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

SECTION 1. That Section 67-4219, Idaho Code, be, and the same is hereby amended to read as follows:

67-4219. INTENT OF LEGISLATURE. It is the intent of the legislature that the department of parks and recreation shall formulate and put into execution a long range, comprehensive plan and program for the acquisition <u>or leasing,</u> planning, protection, operation, maintenance, development and wise use of areas of scenic beauty, recreational utility, historic, archaeological or scientific interest, to the end that the health, happiness, recreational opportunities and wholesome enjoyment of life of the people may be further encouraged. <u>The department may fulfill this mission by operating a statewide system of parks and recreation programs or by entering into agreements with cities, counties, recreation districts or other political subdivisions or agencies of the state, the federal government, tribal governments, private landowners or nonprofit organizations, that further expand the public park and recreation opportunities available to the public.</u> The legislature finds that the state of Idaho and its subdivisions should enjoy the benefits of federal <u>lands and</u> assistance programs for the planning and development of the outdoor recreational resources of the state, including the acquisition <u>or leasing</u> of lands and waters and interests therein <u>in accordance with all other applicable laws, including applicable provisions of titles 42 and 43, Idaho Code.</u> It is the purpose of this act to provide authority to enable the state of Idaho and its subdivisions to participate in the benefits of such <u>lands and</u> programs.

SECTION 2. That Section 67-4223, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

(b) Make expenditures for the acquisition, <u>leasing,</u> care, control, supervision, improvement, development, extension and maintenance of all

lands under the control of the department and to make arrangements, agreements, contracts or commitments, which may or may not involve expenditures or transfer of funds, with the head of any state institution, department or agency for the improvement or development of lands or properties under the control of the board, or any other department or agency of the state of Idaho.

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

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

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

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

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

(h) Prepare, maintain and keep up-to-date a comprehensive plan for the provision of the outdoor recreational resources of the state; to develop, operate and maintain or enter into leases or agreements with local governments for the operation and maintenance of outdoor recreational areas and facilities of the state, and to acquire lands, waters and interests in lands and waters for such areas and facilities.

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

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

(k) Cooperate and contract with and receive and expend aid, donations and matching funds from the government of the United States, receive and expend funds from the STORE and to receive and expend donations from other sources to acquire, develop, operate and maintain outdoor recreational areas and facilities of the state and, when authorized or directed by any act of congress or any rule or regulation of any agency of the government of the United States, to expend funds donated or granted to the state of Idaho by the federal government for such purposes.

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

developed areas will be operated and maintained at the expense of the subdivision or subdivisions for public outdoor recreational use.

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

(m) Enter into agreements with cities, counties, recreation districts or other political subdivisions of the state to cost-effectively provide recreational facilities, opportunities and services to the citizens of the state.

Approved March 22, 2002.

CHAPTER 226
(S.B. No. 1442, As Amended)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-420C, IDAHO CODE, TO ESTABLISH AN IDAHO CORVETTE LICENSE PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing.

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

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

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

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

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

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

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

SECTION 2. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-420C, Idaho Code, and to read as follows:

49-420C. IDAHO CORVETTE PLATES. (1) On and after January 1, 2003, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and upon department approval receive special Idaho corvette license plates in lieu of regular license plates.

(2) The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of Idaho corvette license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

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

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

(5) The Idaho corvette license plate shall be of a color and design comparable to the standard issue of license plates with blue numerals on a red, white and blue background, except that the word "Idaho" shall appear on each plate and the county designator shall be omitted to provide for distinguishing designs and slogans, acceptable to the valley corvettes of Idaho, to be added to the plate. The design shall be approved by the department and shall utilize a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the valley corvettes of Idaho.

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

SECTION 3. This act shall be in full force and effect on and after January 1, 2003.

Approved March 22, 2002.

CHAPTER 227
(S.B. No. 1451, As Amended in the House)

AN ACT
RELATING TO INTENTIONAL DESTRUCTION OF A TELECOMMUNICATION LINE OR TELECOMMUNICATION INSTRUMENT; AMENDING CHAPTER 68, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-6810, IDAHO CODE, TO PROVIDE FOR THE CRIME OF INTENTIONAL DESTRUCTION OF A TELECOMMUNICATION LINE OR TELECOMMUNICATION INSTRUMENT AND TO PROVIDE PENALTIES.

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

SECTION 1. That Chapter 68, 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 18-6810, Idaho Code, and to read as follows:

18-6810. INTENTIONAL DESTRUCTION OF A TELECOMMUNICATION LINE OR TELECOMMUNICATION INSTRUMENT. Any person who intentionally takes down, removes, injures or obstructs in any manner any telecommunication line or, any part thereof, or appurtenances or apparatus connected therewith, or severs any wire thereof or who intentionally takes, withholds, takes down, removes, injures or obstructs any telephone instrument or other instrument that is used or could be used to facilitate the transmission of messages, signals, facsimiles, video images or other communication by means of telephone, telegraph, cable, wire or the projection of energy or waves without physical connection (such as wireless or cellular), with the intent to prohibit, disrupt, inhibit, delay, disconnect or otherwise interfere with a person's ability to make contact with or otherwise communicate with an emergency service provider is guilty of a misdemeanor for a first offense and shall be punished by a fine of up to one thousand dollars ($1,000) or by imprisonment in the county jail for up to one (1) year, or both.

(2) For purposes of this statute, a "telecommunication line" shall be defined as any line used or that could be used for the transmission of any type of message or information, regardless of form or content.

(3) For purposes of this statute, an "emergency service provider" includes law enforcement, emergency medical service providers (including, but not limited to, ambulance, EMS, or paramedic service providers), fire suppression service providers, dispatch centers, dispatch personnel, and any person, entity, or security business (including private business) that has the authority to dispatch such service providers or that otherwise makes available the service of requesting a response, or providing notification of the need for a response, by any of the foregoing emergency service providers. The term "emergency service provider" shall also include any personnel, service or entity that can be contacted, either directly or indirectly, by dialing "911."

Approved March 22, 2002.

CHAPTER 228
(S.B. No. 1462, As Amended)

AN ACT

RELATING TO VETERANS; AMENDING CHAPTER 2, TITLE 65, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 65-208, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT AND TO CREATE THE VETERANS TRANSPORTATION FUND.

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

SECTION 1. That Chapter 2, Title 65, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 65-208, Idaho Code, and to read as follows:

65-208. TRANSPORTATION OF WHEELCHAIR-BOUND VETERANS -- CREATION OF VETERANS TRANSPORTATION FUND. (1) Legislative intent. A transportation network operated by volunteers provides veterans in the state of Idaho with van transportation to and from medical appointments. Due to insurance and liability issues, this network is unable to transport disabled veterans who are confined to wheelchairs. As a result, wheelchair-bound veterans must hire private vans with wheelchair lifts in order to obtain medical treatment. As provided in this section, the veterans transportation fund is intended to financially assist these disabled veterans in obtaining necessary transportation.

(2) Veterans transportation fund. There is hereby created and established in the state treasury a fund to be known as the "veterans transportation fund," which shall consist of such funds as may be appropriated for that purpose by the legislature, grants, donations or moneys from other sources. The fund shall be administered by the division of veterans services, as created in section 65-201, Idaho Code, in order to provide moneys for a voucher system for transportation services for wheelchair-bound veterans who need transportation to and from medical appointments. Moneys in the fund may be expended pursuant to appropriation. Any interest earned on the investment of idle moneys in the fund shall be returned to the fund.

Approved March 22, 2002.

CHAPTER 229
(S.B. No. 1486)

AN ACT

APPROPRIATING MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 2003; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE SPECIAL LITIGATION PROGRAM.

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 expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. STATE LEGAL SERVICES:			
FROM:			
General Fund	$12,596,500	$ 676,400	$13,272,900
Federal Grant Fund	119,600	54,500	174,100
Consumer Protection Fund	65,500	75,300	140,800
TOTAL	$12,781,600	$ 806,200	$13,587,800
II. SPECIAL LITIGATION:			
FROM:			
General Fund		$ 839,400	$ 839,400
GRAND TOTAL	$12,781,600	$1,645,600	$14,427,200

SECTION 2. 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 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 eighty-three and fifteen-hundredths (183.15) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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. Notwithstanding the provisions of Section 67-3521, Idaho Code, it is legislative intent that General Fund moneys appropriated and reappropriated in the Special Litigation Program for fiscal year 2002 shall be deemed encumbered if on or before June 30, 2002, the Attorney General certifies to the Division of Financial Management that such funds are necessary to represent the state of Idaho in ongoing active natural resource litigation. In the event revenue is insufficient to satisfy encumbrances, the Board of Examiners is authorized to satisfy these encumbrances from other available sources.

Approved March 22, 2002.

CHAPTER 230
(S.B. No. 1512)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT REGARDING FUNDING FOR THE TEX CREEK/WILLOW CREEK PILOT PROJECT.

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

SECTION 1. There is hereby appropriated to the Department of Fish and Game the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
Fish and Game Fund (Licenses)	$ 2,455,200	$ 1,750,400	$2,829,700	$364,500	$ 7,399,800
Fish and Game Fund (Other)		17,500			17,500
Fish and Game Set-aside Fund	100	20,400			20,500
Fish and Game Primary Depredation Fund		900			900
Fish and Game Secondary Depredation Fund		900			900
Fish and Game Expendable Trust Fund		5,000			5,000
Fish and Game Nonexpendable Trust Fund		1,800			1,800
Fish and Game Fund (Federal)	2,576,600	2,301,000	91,200		4,968,800
TOTAL	$ 5,031,900	$ 4,097,900	$2,920,900	$364,500	$12,415,200
II. ENFORCEMENT:					
FROM:					
Fish and Game Fund (Licenses)	$ 6,270,800	$ 1,526,500	$ 298,200		$ 8,095,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Fund (Other)	81,900	17,000			98,900
Fish and Game Set-aside Fund		10,500			10,500
Fish and Game Expendable Trust Fund		20,800			20,800
TOTAL	$ 6,352,700	$ 1,574,800	$ 298,200		$ 8,225,700
III. FISHERIES:					
FROM:					
Fish and Game Fund (Licenses)	$ 2,799,700	$ 1,731,500	$ 820,400		$ 5,351,600
Fish and Game Fund (Other)	1,161,400	692,600	22,500		1,876,500
Fish and Game Set-aside Fund	144,400	229,800	140,000		514,200
Fish and Game Expendable Trust Fund	216,400	50,400			266,800
Fish and Game Nonexpendable Trust Fund		32,700			32,700
Fish and Game Fund (Federal)	8,445,600	4,806,400	3,266,400		16,518,400
TOTAL	$12,767,500	$ 7,543,400	$4,249,300		$24,560,200
IV. WILDLIFE:					
FROM:					
Fish and Game Fund (Licenses)	$ 2,939,700	$ 3,616,800	$ 216,600		$ 6,773,100
Fish and Game Fund (Other)		107,800			107,800
Fish and Game Set-aside Fund	448,500	309,600			758,100
Fish and Game Expendable Trust Fund	356,400	488,500	72,500		917,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Nonexpendable Trust Fund	9,400	2,300			11,700
Fish and Game Fund (Federal)	2,949,800	1,426,600	8,600		4,385,000
TOTAL	$ 6,703,800	$ 5,951,600	$ 297,700		$12,953,100
V. INFORMATION AND EDUCATION:					
FROM:					
Fish and Game Fund (Licenses)	$ 1,182,400	$ 464,200	$ 13,200		$ 1,659,800
Fish and Game Fund (Other)	78,100	34,900	60,000		173,000
Fish and Game Set-aside Fund	66,000	117,600			183,600
Fish and Game Expendable Trust Fund		25,000			25,000
Fish and Game Fund (Federal)	549,500	352,400	100,800		1,002,700
TOTAL	$ 1,876,000	$ 994,100	$ 174,000		$ 3,044,100
VI. ENGINEERING:					
FROM:					
Fish and Game Fund (Licenses)	$ 779,300	$ 129,500	$ 143,500		$ 1,052,300
VII. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund (Licenses)	$ 512,200	$ 85,600	9,600		$ 607,400
Fish and Game Fund (Other)	94,400	4,200			98,600
Fish and Game Set-aside Fund	13,700				13,700
Fish and Game Fund (Federal)	1,492,500	368,300	6,400		1,867,200
TOTAL	$ 2,112,800	$ 458,100	$ 16,000		$ 2,586,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VIII. WINTER FEEDING AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund (Licenses)	$ 404,400	$ 646,900			$ 1,051,300
Fish and Game Set-aside Fund	33,300	1,444,500	$ 243,700		1,721,500
Fish and Game Primary Depredation Fund				$200,000	200,000
Fish and Game Secondary Depredation Fund				200,000	200,000
TOTAL	$ 437,700	$ 2,091,400	$ 243,700	$400,000	$ 3,172,800
GRAND TOTAL	$36,061,700	$22,840,800	$8,343,300	$764,500	$68,010,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Fish and Game is authorized no more than five hundred eighteen (518) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 funding provided for the Tex Creek/Willow Creek Pilot Project be used over a two year period by the Fish and Game Commission to improve hunting opportunities. The Commission shall review available information and conduct a survey of sportsmen, landowners and others that would have knowledge of the current status of the trophy deer hunt in Unit 69. It is also legislative intent that the Commission consider available information from other states that would be beneficial in determining the potential for restoring and enhancing Unit 69 as a premier trophy deer hunt area.

Whereas the Idaho Fish and Game Commission has developed a predator management policy, the Commission is directed to use all elements of the predator management plan the Commission adopted including, habitat manipulation, cooperation with private property owners and other land managers, and predator removal, to achieve greater hunting opportunities in the short-term and the long-term. The Commission is directed to monitor the populations of deer, game birds and trophy predator species in an effort to achieve greater hunting opportunities on all species. The department is directed to report back to the Joint Finance-Appropriations Committee at its fall meeting and at the regular budget hearing during the First Regular Session of the Fifty-seventh Idaho Legislature.

The Commission is authorized to use any reasonable means likely to effect the purpose of this legislative directive including, but not limited to, cooperative agreements with landowners and land managers, cooperative agreements with sportsmen and sportsmen organizations, and contractual agreements with outside specialists.

The Commission is authorized to use funds from its current appropriation to begin this project immediately.

Approved March 22, 2002.

CHAPTER 231
(H.B. No. 483)

AN ACT

RELATING TO ADULTERATED DRUGS; AMENDING SECTION 37-117, IDAHO CODE, TO PROVIDE PENALTIES FOR A PERSON WHO INTENTIONALLY ADULTERATES A DRUG THAT IS HELD FOR SALE OR DISTRIBUTION, TO PROVIDE PENALTIES FOR HEALTH CARE PROVIDERS WHO, WITH KNOWLEDGE THAT A DRUG HAS BEEN ADULTERATED, PERMIT THAT DRUG TO BE ADMINISTERED OR DISPENSED TO A PERSON, TO DEFINE TERMS AND TO PROVIDE A DETERMINATION WHETHER A DRUG HAS BEEN ADULTERATED, TO PROVIDE A CORRECT CITATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-126, IDAHO CODE, TO PROVIDE THAT NOTHING IN THE STATUTE PROHIBITING DISPENSING ADULTERATED DRUGS OR DEVICES SHALL BE DEEMED TO PROHIBIT A CHANGE IN THE STRENGTH, QUALITY OR PURITY OF A DRUG, IF THE CHANGE IS MADE BY OR PURSUANT TO THE ORDERS OF A PRACTITIONER PRESCRIBING THE DRUG FOR THE PURPOSE OF ADMINISTERING THE DRUG TO A PATIENT AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 37-117, Idaho Code, be, and the same is hereby amended to read as follows:

37-117. VIOLATIONS ~~A MISDEMEANOR~~ -- PENALTY -- EXCEPTIONS.

(1) (a) Any person who intentionally adulterates a drug that is held for sale or distribution, or that is to be administered or dispensed, shall be guilty of a felony and shall, upon conviction thereof, be subject to imprisonment for not more than fifteen (15) years or a fine of not more than fifty thousand dollars ($50,000), or both.

(b) Any health care provider who, with knowledge that a drug has been adulterated, permits that drug to be administered or dispensed to a person shall be guilty of a felony and shall, upon conviction thereof, be subject to imprisonment for not more than fifteen (15) years, or a fine of not more than fifty thousand dollars ($50,000), or both. For the purposes of this subsection, the term "health care provider" shall be defined as any person licensed in this state to prescribe, dispense, conduct research with respect to, or administer drugs in the course of professional practice and any unlicensed person, who, as part of such person's employment or profession, provides health care services.

(c) The determination of whether or not a drug has been adulterated shall be made in accordance with the provisions of section 37-126, Idaho Code.

(2) Any person who violates any of the provisions of this act or of rules ~~and--regulations~~ promulgated by the board of health and welfare thereunder or who interferes with the director of the department of health and welfare or the personnel of the department in the administration of this act shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six (6) months or a fine of not more than five hundred dollars ($500), or both such imprisonment and fine, but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one (1) year, or a fine of not more than one thousand dollars ($1000), or both such imprisonment and fine.

(~~b~~3) No person shall be subject to the penalties of subsection (~~a~~2) of this section, for having violated section 37-115 (a) or (c), Idaho Code, if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of Idaho from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this act, designating this act.

(~~c~~4) No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the director to furnish him the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Idaho who causes him to disseminate such advertisement.

SECTION 2. That Section 37-126, Idaho Code, be, and the same is hereby amended to read as follows:

37-126. DRUGS OR DEVICES DEEMED ADULTERATED. A drug or device shall be deemed to be adulterated:--(a) (1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified under the authority of the federal act.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or in the absence of or inadequacy of such tests or methods of assay, these prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulter-

ated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the ~~Homoeopathic~~ Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia. Nothing in this subsection shall be deemed to prohibit a change in the strength, quality or purity of a drug, if the change is made by or pursuant to the orders of a practitioner prescribing the drug for the purpose of administering the drug to a patient.

(c) If it is not subject to the provisions of ~~paragraph~~ subsection (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess. Nothing in this subsection shall be deemed to prohibit a change in the strength, quality or purity of a drug, if the change is made by or pursuant to the orders of the practitioner prescribing the drug for the purpose of administering the drug to a patient.

(d) If it is a drug and any substance has been: (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor. Nothing in this subsection shall be deemed to prohibit a change in the strength, quality or purity of a drug, if the change is made by or pursuant to the orders of the practitioner prescribing the drug for the purpose of administering the drug to a patient.

Approved March 22, 2002.

CHAPTER 232
(H.B. No. 577)

AN ACT

RELATING TO CHILD CUSTODY; AMENDING SECTION 32-717, IDAHO CODE, TO REVISE RELEVANT FACTORS THE COURT MAY CONSIDER, TO PROVIDE THAT IF A PARENT HAS A DISABILITY, THE PARENT SHALL HAVE THE RIGHT TO PROVIDE EVIDENCE AND INFORMATION REGARDING THE MANNER IN WHICH THE USE OF ADAPTIVE EQUIPMENT OR SUPPORTIVE SERVICES WILL ENABLE THE PARENT TO CARRY OUT THE RESPONSIBILITIES OF PARENTING, TO PROVIDE DUTIES OF THE COURT, TO PROVIDE APPLICATION TO LOCAL GOVERNMENTS, TO DEFINE TERMS, TO PROVIDE FOR NO DISCRIMINATION ON THE BASIS OF DISABILITY, TO PROVIDE FOR FINDINGS BY A COURT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 32-1005, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR NO DISCRIMINATION ON THE BASIS OF DISABILITY, TO PROVIDE THAT IF A PARENT HAS A DISABILITY, THE PARENT SHALL HAVE THE RIGHT TO PROVIDE EVIDENCE AND INFORMATION REGARDING THE MANNER IN WHICH THE USE OF ADAPTIVE EQUIPMENT OR SUPPORTIVE SERVICES WILL ENABLE THE PARENT TO CARRY OUT THE RESPONSIBILITIES OF PARENTING, TO PROVIDE DUTIES OF THE COURT, TO PROVIDE APPLICATION TO LOCAL GOVERNMENTS, TO PROVIDE FOR FINDINGS BY A COURT AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 32-717, Idaho Code, be, and the same is hereby amended to read as follows:

32-717. CUSTODY OF CHILDREN — BEST INTEREST. ~~A.~~(1) In an action for divorce the court may, before and after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper in the best interests of the children. The court shall consider all relevant factors which may include:

~~1.~~(a) The wishes of the child's parent or parents as to his or her custody;

~~2.~~(b) The wishes of the child as to his or her custodian;

~~3.~~(c) The interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;

~~4.~~(d) The child's adjustment to his or her home, school, and community;

~~5.~~(e) The ~~mental--and--physical-health-and-integrity~~ character and circumstances of all individuals involved;

~~6.~~(f) The need to promote continuity and stability in the life of the child; and

~~7.~~(g) Domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child.

(2) If the parent has a disability as defined in this section, the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Evaluations of parental fitness shall take into account the use of adaptive equipment and supportive services for parents with disabilities and shall be conducted by, or with the assistance of, a person who has expertise concerning such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

~~B.~~(3) In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interests of the child.

(4) As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined

without consideration of the affect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(5) Nothing in this chapter shall be construed to allow discrimination on the basis of disability. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what affect, if any, the court finds the disability has on the best interests of the child.

SECTION 2. That Section 32-1005, Idaho Code, be, and the same is hereby amended to read as follows:

32-1005. CUSTODY OF CHILDREN AFTER SEPARATION OF PARENTS. (1) When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the welfare of the child.

(2) As used in this chapter:

(a) "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain or improve the parenting capabilities of a parent with a disability.

(b) "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, substance use disorders, compulsive gambling, kleptomania or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the affect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as braille texts or sign language interpreters.

(3) Nothing in this chapter shall be construed to allow discrimina-

tion on the basis of disability. If a parent has a disability as defined in this chapter the parent shall have the right to provide evidence and information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The court shall advise the parent of such right. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. In any case where the disability of a parent is found by the court to be relevant to an award of custody of a child, the court shall make specific findings concerning the disability and what affect, if any, the court finds the disability has on the best interests of the child.

Approved March 22, 2002.

CHAPTER 233
(H.B. No. 579, As Amended)

AN ACT

RELATING TO PARENTAL RIGHTS OF INDIVIDUALS WITH A DISABILITY; AMENDING SECTION 15-1-201, IDAHO CODE, TO DEFINE DISABILITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-5-202, IDAHO CODE, TO STRIKE A REFERENCE TO INCAPACITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 15-5-204, IDAHO CODE, TO INCLUDE DISABILITY AS A FACTOR WHICH IS NOT TO BE A DISQUALIFICATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1501, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 15, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1501B, IDAHO CODE, TO SPECIFY THE RIGHT OF A PROSPECTIVE PARENT WITH A DISABILITY TO PRESENT EVIDENCE AND INFORMATION; AMENDING SECTION 16-1504, IDAHO CODE, TO STRIKE A REFERENCE TO DISABILITY FROM CONDITIONS WHICH RELIEVE THE REQUIREMENT TO OBTAIN PERMISSION FOR AN ADOPTION AND TO STRIKE AN INCORRECT CODE REFERENCE; AMENDING SECTION 16-1506, IDAHO CODE, TO REQUIRE THE OPPORTUNITY TO PRESENT INFORMATION REGARDING ADAPTIVE EQUIPMENT OR SUPPORTIVE SERVICES; AMENDING SECTION 16-2001, IDAHO CODE, TO PROHIBIT DISCRIMINATION IN FAVOR OF, OR AGAINST, ON THE BASIS OF DISABILITY; AMENDING SECTION 16-2002, IDAHO CODE, TO DEFINE ADDITIONAL TERMS AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 16-2005, IDAHO CODE, TO REQUIRE AN OPPORTUNITY TO PRESENT EVIDENCE AND TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 16-2007, IDAHO CODE, TO CLARIFY A REFERENCE TO COMPETENCY; AND AMENDING SECTION 16-2008, IDAHO CODE, TO REQUIRE AN OPPORTUNITY TO PRESENT INFORMATION REGARDING ADAPTIVE EQUIPMENT OR SUPPORTIVE SERVICES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 15-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

15-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters which are applicable to specific

chapters or parts, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the registrar for an order of informal probate or appointment under part 3 of chapter 3 of this code.

(2) "Augmented estate" means the estate described in section 15-2-202, ~~of this~~ Idaho Code.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(4) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(5) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, other tax obligations arising from activities or transactions of the estate, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(6) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents, minors, incapacitated and disabled persons. This court in this state is known as the district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person and includes limited conservators as described by section 15-5-420, Idaho Code.

(8) "Determination of heirship of community property" shall mean that determination required by the provisions of section 15-3-303, ~~of this~~ Idaho Code, upon an application for informal probate not accompanied by presentation of a will.

(9) "Determination of heirship" shall mean that determination of heirship required by section 15-3-409, ~~of this~~ Idaho Code, upon a finding of intestacy.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability," ~~means--cause for a protective order as described by subsection (b)(1) of section 15-5-401 of this code~~ with respect to an individual, means any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism,

voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(13) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purpose of this provision "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Emancipated minor" shall mean any male or female who has been married.

(15) "Estate" means all property of the decedent, including community property of the surviving spouse subject to administration, property of trusts, and property of any other person whose affairs are subject to this code as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate which is described in section 15-2-403, ~~of this~~ Idaho Code.

(17) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(18) "Foreign personal representative" means a personal representative of another jurisdiction.

(19) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment and includes limited guardians as described by section 15-5-304, Idaho Code, but excludes one who is merely a guardian ad litem.

(21) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" is as defined in section 15-5-101, ~~of this~~ Idaho Code.

(23) "Informal proceedings" means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(26) "Lease" includes an oil, gas, or other mineral lease.

(27) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(28) "Minor" means a male under eighteen (18) years of age or a female under eighteen (18) years of age.

(29) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(30) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(31) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(32) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(33) "Person" means an individual, a corporation, an organization, or other legal entity.

(34) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(35) "Petition" means a written request to the court for an order after notice.

(36) "Proceeding" includes action at law and suit in equity.

(37) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(38) "Protected person" is as defined in section 15-5-101, ~~of this~~ Idaho Code.

(39) "Protective proceeding" is as defined in section 15-5-101, ~~of this~~ Idaho Code.

(~~39~~40) "Quasi-community property" is the property defined by section 15-2-201, ~~of this~~ Idaho Code.

(40~~1~~) "Registrar" refers to magistrates or judges of the district court who shall perform the functions of registrar as provided in section 15-1-307, ~~of this~~ Idaho Code.

(41~~2~~) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(42~~3~~) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(43~~4~~) "Special administrator" means a personal representative as described by sections 15-3-614 through 15-3-618, ~~of this~~ Idaho Code.

(44~~5~~) "State" includes any state of the United States, the District

of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(~~45~~6) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(~~46~~7) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(~~47~~8) "Supervised administration" refers to the proceedings described in part 5, chapter 3, of this code.

(~~48~~9) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(~~49~~50) "Trust" includes any express trust, private or charitable, with additions thereto, wherever created and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 6 of this code, custodial arrangements pursuant to chapter 8, title 68, Idaho Code, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(~~50~~1) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(~~51~~2) "Ward" is as defined in section 15-5-101, ~~of this~~ Idaho Code.

(~~52~~3) "Will" is a testamentary instrument and includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

(~~53~~4) "Separate property" includes all property of either the husband or the wife owned by him or her before marriage, and that acquired afterward either by gift, bequest, devise or descent, or that which either he or she acquires with proceeds of his or her separate property, by way of moneys or other property.

(~~54~~5) "Community property" includes all other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, unless, by the instrument by which any such property is acquired by the wife, it is provided that the rents and profits thereof be applied to her sole and separate use. Real property conveyed by one (1) spouse to the other shall be presumed to be the sole and separate estate of the grantee.

SECTION 2. That Section 15-5-202, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-202. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR. The parent of a minor may appoint by will a guardian ~~or~~ of an unmarried minor. Subject to the right of the minor under section 15-5-203, ~~of this Part~~ Idaho Code, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead. ~~or the surviving parent is adjudged incapacitated.~~ If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a

testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Written notice of acceptance of the appointment must be given by the guardian to the minor and to the person having his care or to his nearest adult relation immediately upon acceptance of appointment.

SECTION 3. That Section 15-5-204, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR — CONDITIONS FOR APPOINTMENT. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated by prior court order or upon a finding that the child has been neglected, abused, abandoned, or whose parents are unable to provide a stable home environment. "Abandoned" means the failure of the parent to maintain a normal parental relationship with the child including, but not limited to, reasonable support or regular contact. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. In all cases, the court shall consider the best interests of the child as the primary factor in the determination whether to appoint, and whom to appoint, as a guardian for such child. In determining the choice of a guardian for an unmarried minor, the advanced age or disability of a potential guardian shall not, in and of itself, be used as a criterion of the suitability of the potential guardian so long as the potential guardian is otherwise suitable. A guardian appointed by will as provided in section 15-5-202, ~~of this part~~ Idaho Code, whose appointment has not been prevented or nullified under section 15-5-203, ~~of this part~~ Idaho Code, has priority over any guardian who may be appointed by the court but the court may proceed with an appointment nonetheless upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty (30) days after notice of the guardianship proceeding.

SECTION 4. That Section 16-1501, Idaho Code, be, and the same is hereby amended to read as follows:

16-1501. MINORS AND ADULTS MAY BE ADOPTED. Any minor child may be adopted by any adult person residing in and having residence in Idaho, in the cases and subject to the rules prescribed in this chapter.

(1) Persons not minors may be adopted by a resident adult in cases where the person adopting has sustained the relation of parent to such adopted person:

(~~i~~a) ~~f~~For a period in excess of one (1) year while the person was a minor; or

(~~ii~~b) ~~f~~For such period of time or in such manner that the court after investigation finds a substantial family relationship has been created.

(2) Adoptions shall not be denied solely on the basis of the disability of a prospective adoptive parent.

(a) "Adaptive equipment," for purposes of this chapter, means any piece of equipment or any item that is used to increase, maintain, or improve the parenting capabilities of a parent with a disability.

(b) "Disability," for purposes of this chapter, means, with respect

to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

(c) "Supportive services," as used in this chapter, means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

SECTION 5. That Chapter 15, Title 16, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 16-1501B, Idaho Code, and to read as follows:

16-1501B. RIGHT OF PARENT WITH DISABILITY TO PRESENT EVIDENCE AND INFORMATION. If the prospective adoptive parent has a disability as defined in this chapter, the prospective adoptive parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this chapter shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

SECTION 6. That Section 16-1504, Idaho Code, be, and the same is hereby amended to read as follows:

16-1504. NECESSARY CONSENT TO ADOPTION. (1) Consent to adoption is required from:

(a) The adoptee, if he is more than twelve (12) years of age, unless he does not have the mental capacity to consent;

(b) Both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is eighteen (18) years of age or older;

(c) The mother of an adoptee born outside of marriage;

(d) Any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent;

(e) An unmarried biological father of an adoptee only if the requirements and conditions of subsection (2)(a) or (b) of this section have been proven;

(f) Any legally appointed custodian or guardian of the adoptee;

(g) The guardian or conservator of an ~~disabled or~~ incapacitated adult, if one has been appointed;

(h) The adoptee's spouse, if any; and

(i) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(j) The father of an illegitimate child who has adopted the child by acknowledgment. ~~pursuant to section 16-1510, Idaho Code.~~

(2) In accordance with subsection (1) of this section, the consent of an unmarried biological father is necessary only if the father has strictly complied with the requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six (6) months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

1. Visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

2. Have regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet the requirements of this subsection.

(iii) An unmarried biological father who openly lived with the child for a period of six (6) months within the one (1) year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and who openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met the requirements of this subsection.

(b) With regard to a child who is under six (6) months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection prior to the placement for adoption of the child in the home of prospective parents or prior to the date of commencement of any proceeding to terminate the parental rights of the birth mother, whichever event occurs first. The father shall:

(i) Commence proceedings to establish paternity under section

7-1111, Idaho Code, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for the care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) File a notice of his commencement of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare pursuant to section 16-1513, Idaho Code; and

(iii) If he had actual knowledge of the pregnancy, pay a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried biological father whose consent is required under subsection (1) or (2) of this section may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of the termination of parent and child relationship act, sections 16-2001 through 16-2015, Idaho Code, that his rights should be terminated, based on the petition of any party as set forth in section 16-2004, Idaho Code.

(4) If there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of notices from putative fathers, of a child born out of wedlock, and that the putative father involved has not filed notice of his commencement of proceedings to establish his paternity, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to the entrance of the final decree of adoption.

(5) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

(6) A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as a consent executed by an adult parent. A minor parent, having executed a consent, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

(7) No consent shall be required of, nor notice given to, any person whose parental relationship to such child shall have been terminated in accordance with the provisions of either chapter 16 or 20, title 16, Idaho Code, or by a court of competent jurisdiction of a sister state under like proceedings; or in any other manner authorized by the laws of a sister state. Where a voluntary child placement agency licensed by the state in which it does business is authorized to place a child for adoption and to consent to such child's adoption under the laws of such state, the consent of such agency to the adoption of such child in a

proceeding within the state of Idaho shall be valid and no further consents or notices shall be required.

(8) The legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of, and strictly comply with, the requirements of this chapter. Therefore when all of the following requirements have been met, that unmarried biological father may contest an adoption, prior to finalization of the decree of adoption, and assert his interest in the child:

(a) The unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;

(b) The mother left that state without notifying or informing the unmarried biological father that she could be located in the state of Idaho;

(c) The unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the state of Idaho; and

(d) The unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located, in order to protect and preserve his parental interest and rights in the child in cases of adoption.

(9) Notwithstanding section 7-1107, Idaho Code, a proceeding to establish paternity filed pursuant to this section may be filed prior to the birth of the child.

SECTION 7. That Section 16-1506, Idaho Code, be, and the same is hereby amended to read as follows:

16-1506. PROCEEDINGS ON ADOPTION. (1) Proceedings to adopt a child shall be commenced by the filing of a petition together with a copy thereof. Said petition shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the county in which said person or persons reside. The petitioners shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the name and address of the petitioner or petitioners, the name of the child proposed to be adopted and the name by which the person to be adopted shall be known if and when adopted, the degree of relationship of the child, if any, to the petitioner or petitioners and the names of any person or agency whose consent to said adoption is necessary. At the time fixed for hearing such petition the person adopting a child, and the child adopted, and the spouse of petitioner if a natural parent of the child, must appear before the court of the county wherein the petition was filed. Petitioner shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

(2) Any person or persons whose consent is required shall execute such consent in writing, in a form consistent with the provisions of subsection e. of section 16-2005, Idaho Code, which consent being filed in the court where the application is made, shall be deemed a sufficient appearance on the part of such person or persons. If any adoptive parent, or a person not a minor being adopted by a resident adult under the provisions of section 16-1501, Idaho Code, is a member of the armed ser-

vices and is unable to attend the hearing, his appearance and testimony shall be received by means of deposition, which shall be filed in the court at the time of the hearing.

(3) Prior to the placement for adoption of any child in the home of prospective adoptive parents, it shall be required that a thorough social investigation of the prospective adoptive family and all of its members, consistent with the rules regarding such investigations promulgated by the department of health and welfare, shall be completed and that a positive recommendation for adoptive placement shall have been made. The social investigation may be performed by any individual who meets the requirements of the law. If the prospective adoptive parent has a disability as defined in this chapter, the prospective adoptive parent shall have the right, as a part of the social study, to provide information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The person performing the social investigation shall advise the prospective adoptive parent of such right and shall consider all such information in any findings or recommendations. The social investigation of any prospective adoptive parent with a disability shall be conducted by, or with the assistance of, an individual with expertise in the use of such equipment and services. Nothing in this chapter shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. A copy of the study must be submitted to the department and the department may impose a reasonable fee, not to exceed fifty dollars ($50.00), for oversight of such privately conducted studies. In those instances where the prospective adoptive parent is married to the birth parent or is the grandparent of the child to be adopted, such social investigation shall be completed with regard to the prospective adoptive parent only upon order of the court. In exigent circumstances where the prospective adoptive parents are determined by the court to have been unable to complete a social investigation of the family with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines the best interests of the child are served by other placement. If exigent circumstances exist, a social investigation shall be initiated within five (5) days of placement. Once initiated, all studies shall be completed within sixty (60) days. Upon the filing of a petition to adopt a minor child by a person unrelated to the child or unmarried to a natural parent of the child and at the discretion of the court upon the filing of any other petition for adoption, a copy of such petition, together with a statement containing the full names and permanent addresses of the child and the petitioners, shall be served by the court receiving the petition within five (5) days on the director of the department of health and welfare by registered mail or personal service. If no private investigation is conducted, it shall then be the duty of the said director, through the personnel of the department or through such qualified child-placing children's adoption agency incorporated under chapter 3, title 30, Idaho Code, as the director may designate, to verify the allegations of the petition, and as soon as possible not exceeding thirty (30) days after service of the petition on the director to make a thorough investigation of the matter to include in all cases information as to the alleged date and place of birth and as to parentage of the child to be adopted as well as the

source of all such information and report his findings in writing to the court. The investigative report shall include reasonably known or available medical and genetic information regarding both natural parents and sources of such information as well as reasonably known or available providers of medical care and services to the natural parents. A copy of all medical and genetic information compiled in the investigation shall be made available to the adopting family by the department or other investigating children's adoption agency prior to entry of the final order of adoption. The petition, statement and all other papers, records or files relating to the adoption, including the preplacement investigation and recommendation, shall be returned to the court with the investigative report. The department of health and welfare or other children's adoption agency may require the petitioner to pay all or any part of the costs of the investigation. If the report disapproves of the adoption of the child, motion may be made to the court to dismiss the petition.

(4) Proceedings for termination of parent-child relationship in accordance with chapter 20, title 16, Idaho Code, and proceedings for adoption may be consolidated and determined at one (1) hearing provided that all of the requirements of this chapter as well as chapter 20, title 16, Idaho Code, be fully complied with. Nothing in either chapter shall be construed as limiting the initiation of any petition for approval of a verified financial plan for adoption expenses pursuant to section 18-1511, Idaho Code, prior to the birth of the child which is the subject of any adoption proceeding. In all disputed matters under this chapter or chapter 20, title 16, Idaho Code, the paramount criterion for consideration and determination by the court shall be the best interests of the child.

(5) Proceedings for the adoption of an adult shall be as provided in subsection (1) of this section and any consents required shall be executed as provided in subsection (2) of this section. Upon a finding by the court that the consent of all persons for whom consent is required has been given and that the requirements of section 16-1501, Idaho Code, have been proven to the satisfaction of the court, the court shall enter an order granting the adoption. In cases where the adult proposed to be adopted is incapacitated or disabled, the court may require that an investigation be performed. The form and extent of the investigation to be undertaken may be as provided in subsection (3) of this section, or as otherwise ordered by the court. If an investigation is performed, the court must review and approve the findings of the investigation before issuing an order approving the adoption.

SECTION 8. That Section 16-2001, Idaho Code, be, and the same is hereby amended to read as follows:

16-2001. PURPOSE. The purpose of this act is to provide for voluntary and involuntary severance of the parent and child relationship and for substitution of parental care and supervision by judicial process, thereby safeguarding the rights and interests of all parties concerned and promoting their welfare and that of the state of Idaho. Implicit in this act is the philosophy that wherever possible family life should be strengthened and preserved and that the issue of severing the parent and child relationship is of such vital importance as to require a judicial determination in place of attempts at severance by contractual arrange-

ments, express or implied, for the surrender and relinquishment of children. Nothing in this chapter shall be construed to allow discrimination in favor of, or against, on the basis of disability.

SECTION 9. That Section 16-2002, Idaho Code, be, and the same is hereby amended to read as follows:

16-2002. DEFINITIONS. When used in this act, unless the text otherwise requires:

a. "Court" means the district court.

b. "Child" or "minor" means a person less than eighteen (18) years of age.

c. The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of the act.

d. "Neglected" used with respect to a child refers to those situations in which the child lacks proper support or parental care necessary for his health, morals, and well-being.

e. "Abuse" used with respect to a child refers to those situations in which physical cruelty in excess of that required for reasonable disciplinary purposes has been inflicted by a parent or other person in whom legal custody of the child has been vested.

f. "Legal custody" means status created by court order embodying the following rights and responsibilities:

(1) The right to physical possession of the child;

(2) The right and duty to protect, train and discipline the child; and

(3) The responsibility to provide the child with food, shelter, education and medical care;

provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person.

g. "Guardianship of the person" means those rights and duties imposed upon a person appointed as guardian of a minor under the laws of Idaho. It includes but is not necessarily limited either in number or kind to:

(1) The authority to consent to marriage, to enlistment in the armed forces of the United States, and to major medical, psychiatric and surgical treatment; to represent the minor in legal actions; and to make other decisions concerning the child of substantial legal significance;

(2) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(3) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized child placement agency;

(4) When the parent and child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

h. "Guardian ad litem" means a person appointed as such pursuant to law, by the court to protect the interest of a minor or an incompetent in a case before the court.

i. "Authorized agency" means the state department of health and welfare or a voluntary child placement agency licensed to care for and place children by the state department of health and welfare.

j. "Parent" means:

(1) The birth mother or the adoptive mother;

(2) The adoptive father;

(3) The biological father of a child conceived or born during the father's marriage to the birth mother;

(4) The unmarried biological father whose consent to an adoption of the child is required pursuant to section ~~15-1504~~ 16-1504, Idaho Code;

(5) A man whose paternity is established by court decree; and

(6) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(7) The father of an illegitimate child who has adopted the child by acknowledgment pursuant to section 16-1510, Idaho Code.

k. "Presumptive father" means a man who is or was married to the birth mother and the child is born during the marriage or within three hundred (300) days after the marriage is terminated.

l. "Parent and child relationship" includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights, and shall be construed to include adoptive parents.

m. "Protective supervision" means a legal status created by court order in proceedings not involving violations of the law but where the legal custody of the child is subject to change, whereby the child is permitted to remain in his home under the supervision of an authorized agency designated by the court and is subject to return to the court during the period of protective supervision.

n. "Parties" includes the child and the petitioners.

o. "Rape," (18-6101, Idaho Code); "lewd conduct with a minor child under sixteen," (18-1508, Idaho Code); "sexual abuse of a child under the age of sixteen years," (18-1506, Idaho Code); and "incest" (18-6602, Idaho Code) shall be defined as provided in the applicable provisions of title 18, Idaho Code, but for purposes of this chapter shall not include any circumstance where the parents of the child in question were married at the time of conception.

p. "Unmarried biological father," as used in this chapter and chapter 15, title 16, Idaho Code, means the biological father of a child, which biological father was not married to the child's mother at the time the child was conceived or born.

q. "Unmarried biological mother," as used in this chapter, means the biological mother of a child, which biological mother was not married to the child's biological father at the time the child was conceived or born.

r. "Disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking, seeing, hearing, speaking, learning, or working, or a record of such an impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling,

kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

s. "Adaptive equipment" means any piece of equipment or any item that is used to increase, maintain, or improve the parenting abilities of a parent with a disability.

t. "Supportive services" means services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities. The term includes specialized or adapted training, evaluations, or assistance with effective use of adaptive equipment, and accommodations which allow a parent with a disability to benefit from other services, such as Braille texts or sign language interpreters.

SECTION 10. That Section 16-2005, Idaho Code, be, and the same is hereby amended to read as follows:

16-2005. CONDITIONS UNDER WHICH TERMINATION MAY BE GRANTED. The court may grant an order terminating the relationship where it finds one (1) or more of the following conditions exist:

a. The parent has abandoned the child by having willfully failed to maintain a normal parental relationship including, but not limited to, reasonable support or regular personal contact; failure of the parent to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment under this section. Provided further, that where termination is sought by a grandparent seeking to adopt the child, willful failure of the parent to maintain a normal parental relationship as provided herein, without just cause, for six (6) months shall constitute prima facie evidence of abandonment.

b. The parent has neglected or abused the child. Neglect as used herein shall mean a situation in which the child lacks parental care necessary for his health, morals and well-being.

c. The presumptive parent is not the natural parent of the child.

d. The parent is unable to discharge parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child.

e. If termination is found to be in the best interest of the parent and child, where the petition has been filed by a parent or through an authorized agency, or interested party.

f. Where a consent to termination in the manner and form prescribed by this act has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held. Consents required by this act must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall

be substantially in the following form:

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ....

In the Matter of the termination)
of the parental rights of)
.....)
.....)

I (we), the undersigned, being the .... of ...., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said ...., who was born ...., ..., unto ...., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said ...., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition to terminate my (our) parental relationship with the said ...., and respectfully request the petition be granted.

DATED: ...., 20...

.....

STATE OF IDAHO)
) ss.
COUNTY OF ....)

On this .... day of ...., 20.., before me, the undersigned ...., ... (Judge or Magistrate) of the District Court of the .... Judicial District of the state of Idaho, in and for the county of ...., personally appeared ...., known to me (or proved to me on the oath of ....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

The court shall accept a consent or a surrender and release executed in another state if:

(1) It is witnessed by a magistrate or district judge of the state where signed; or

(2) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed; or

(3) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings; or in any other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits, if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.

g. Unless a consent to termination signed by the parent(s) of the

child has been filed by an adoption agency licensed in the state of Idaho, or unless the consent to termination was filed in conjunction with a petition for adoption of the child, the court shall hold a hearing.

h. The court may grant termination as to a parent:

(1) Who caused the child to be conceived as a result of rape, incest, lewd conduct with a minor child under sixteen (16) years, or sexual abuse of a child under the age of sixteen (16) years, as defined in section 16-2002 no., Idaho Code; or

(2) Who murdered or intentionally killed the other parent of the child; or if the court determines the parent has been convicted of murder or voluntary manslaughter of another sibling of the child or has aided, abetted, conspired or solicited to commit such murder or voluntary manslaughter and/or if the court determines the parent has been convicted of a felony assault or battery which resulted in serious bodily injury to the child or a sibling; or

(3) Who has been incarcerated and has no possibility of parole; or

(4) If a court determines the child to be an abandoned infant.

There is a rebuttable presumption that termination of the parent-child relationship in any of the circumstances provided in subsection hg. of this section is in the best interest of the child.

i. If the parent has a disability, as defined in this chapter, the parent shall have the right to provide evidence to the court regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. Nothing in this section shall be construed to create any new or additional obligation on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities.

SECTION 11. That Section 16-2007, Idaho Code, be, and the same is hereby amended to read as follows:

16-2007. NOTICE -- WAIVER -- GUARDIAN AD LITEM. After a petition has been filed, the court shall set the time and place for hearing, and shall cause notice thereof to be given to the petitioner, the parents of the child if married, the mother of the child if unmarried, those persons entitled to notice pursuant to section 16-1513, Idaho Code, the guardian of the person of the child, the person having legal custody of the child, any individual standing in loco parentis to the child, and the guardian ad litem of any party, or if service cannot be had on the parent or guardian, then upon the nearest blood relative named in the petition. The division of welfare of the Idaho department of health and welfare shall be given notice of the hearing if the petition for termination was not filed in conjunction with a petition for adoption or by an adoption agency licensed by the state of Idaho. Notice shall be given by personal service on the parents or guardian. Where reasonable efforts to effect personal service have been unsuccessful, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than ten (10) days after service of notice, or where service is by registered or certified mail and publication, the

hearing shall take place no sooner than ten (10) days after the date of last publication. Notice and appearance may be waived by a parent in writing before the court or in the presence of, and witnessed by, a clerk of court or a representative of an authorized agency, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the termination action. Where the parent resides outside the state, the waiver shall be acknowledged before a notary of the state and shall contain the current address of the parent. The parent who has executed such a waiver shall not be required to appear. When the termination of the parent and child relationship is sought ~~under section 16-2005d., Idaho Code~~ and the parent is determined to be incompetent to participate in the proceeding, the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may in any other case appoint a guardian ad litem, as may be deemed necessary or desirable, for any party. Where the putative father has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare, notice of his commencement of proceedings to establish his paternity of the child born out of wedlock, notice under this section is not required unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code. If a parent fails to file a claim of parental rights pursuant to the provisions of chapter 81, title 39, Idaho Code, for a child left with a safe haven pursuant thereto, prior to entry of an order terminating their parental rights, that parent is deemed to have abandoned the child and waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the termination of parental rights.

SECTION 12. That Section 16-2008, Idaho Code, be, and the same is hereby amended to read as follows:

16-2008. INVESTIGATION PRIOR TO DISPOSITION. a. If a petition for adoption is not filed in conjunction with a petition for termination, or the petition for termination was not filed by a children's adoption agency licensed by the state of Idaho upon the filing of a petition for termination, the court shall direct the department of health and welfare, bureau of child support enforcement to submit a written financial analysis report within thirty (30) days from date of notification, detailing the amount of any unreimbursed public assistance moneys paid by the state of Idaho on behalf of the child. The financial analysis shall include recommendations regarding repayment of unreimbursed public assistance and provisions for future support for the child, and the reasons therefor.

b. Upon the filing of a petition, the court may direct, in all cases where written consent to termination has not been given as provided in this act, that an investigation be made by the department of health and welfare, division of family and children's services, or a licensed children's adoption agency, and that a report in writing of such study be submitted to the court prior to the hearing, except that where the department of health and welfare or a licensed children's adoption agency is a petitioner, either in its own right or on behalf of a parent, a report in writing of the investigation made by such agency shall accompany the petition. The department of health and welfare or

the licensed children's adoption agency shall have thirty (30) days from notification by the court during which it shall complete and submit its investigation unless an extension of time is granted by the court upon application by the agency. The court may order additional investigation as it deems necessary. The social study shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent and child relationship should be terminated. If the parent has a disability as defined in this chapter, the parent shall have the right, as a part of the social study, to provide information regarding the manner in which the use of adaptive equipment or supportive services will enable the parent to carry out the responsibilities of parenting the child. The person performing the social investigation shall advise the parent of such right and shall consider all such information in any findings or recommendations. The social study shall be conducted by, or with the assistance of, an individual with expertise in the use of such equipment and services. Nothing in this section shall be construed to create any new or additional obligations on state or local governments to purchase or provide adaptive equipment or supportive services for parents with disabilities. Where the parent is a minor, if the report does not include a statement of contact with the parents of said minor, the reasons therefor shall be set forth. The purpose of the investigation is to aid the court in making disposition of the petition and shall be considered by the court prior thereto.

c. No social study or investigation as provided for in ~~paragraph~~ subsection b. of this section shall be directed by the court with respect to the putative father who has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare, notice of his commencement of proceedings to establish his paternity of the child, unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code.

Approved March 22, 2002.

CHAPTER 234
(H.B. No. 604)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-306, IDAHO CODE, TO PROVIDE THAT VENDOR ISSUANCE FEES FOR CERTAIN LICENSES MAY BE WAIVED BY THE DIRECTOR OF THE DEPARTMENT OF FISH AND GAME; AMENDING SECTION 36-404, IDAHO CODE, TO REVISE REFERENCES TO CLASSES OF LICENSES, TO REVISE THE TITLES OF CERTAIN HUNTING, TRAPPING AND FISHING LICENSES, TO PROVIDE FOR YOUTH SMALL GAME LICENSES FOR HUNTING, TO PROVIDE FOR NONRESIDENT JUNIOR MENTORED HUNTING LICENSES, NONRESIDENT YOUTH SMALL GAME LICENSES FOR HUNTING AND YOUTH HUNTER EDUCATION GRADUATE LICENSES FOR HUNTING; AMENDING SECTION 36-406, IDAHO CODE, TO REVISE THE TITLES OF CERTAIN LICENSES AND TO PROVIDE FOR YOUTH SMALL GAME LICENSES; AMENDING SECTION 36-407, IDAHO CODE, TO REVISE THE TITLE

OF A CERTAIN TYPE OF LICENSE, TO STRIKE CERTAIN RESTRICTIONS FOR JUNIOR NONRESIDENT FISHING LICENSES, TO PROVIDE FOR NONRESIDENT JUNIOR MENTORED HUNTING LICENSES, TO PROVIDE FOR APPLICATION FOR CONTROLLED HUNT PERMITS, TO PROVIDE FOR NONRESIDENT YOUTH SMALL GAME LICENSES FOR HUNTING AND TO PROVIDE FOR YOUTH HUNTER EDUCATION GRADUATE LICENSES FOR HUNTING; AMENDING SECTION 36-409, IDAHO CODE, TO REVISE THE TITLE OF CERTAIN LICENSES, TO PROVIDE FOR TURKEY TAGS, TO PROVIDE FOR CERTAIN JUNIOR MENTORED TAGS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-410, IDAHO CODE, TO PROVIDE FOR CERTAIN FISH PERMITS; AMENDING SECTION 36-412, IDAHO CODE, TO PROVIDE FOR YOUTH HUNTER EDUCATION GRADUATE HUNTING LICENSES FOR STUDENTS COMPLETING CERTAIN EDUCATIONAL COURSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-416, IDAHO CODE, TO REVISE LICENSE FEES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-1508, IDAHO CODE, TO PROVIDE THAT CERTAIN CHILDREN MAY POSSESS FIREARMS FOR HUNTING; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 36-306, Idaho Code, be, and the same is hereby amended to read as follows:

36-306. VENDOR FEE. All persons authorized to issue licenses shall charge a vendor issuance fee of one dollar and fifty cents ($1.50) upon all licenses issued, not less than one-half (1/2) to be retained by them as compensation for the issuance of such licenses as may be specified by contract between the license vendor and the department for license issuance services performed by the vendor; provided that the vendor fee for an eighth class license as that license is provided for in section 36-406(f), Idaho Code, shall be equal to one-half (1/2) the total vendor fee had each license, tag, permit or stamp been separately issued; provided further, the director may waive the vendor issuance fee for a license not issued by the department's computerized licensing system. The amount of the vendor fee retained by the department shall be deposited in the fish and game account and shall be used to help offset the cost of the computerized licensing system. Such vendor fee shall be charged in addition to the regular cost of the license. However, in the case of crayfish or minnow traps, beaver, bobcat or lynx tags the vendor fee shall be charged for each issuance of tags for each species regardless of the number of tags issued in said transaction. Proceeds from department issued licenses may be set aside for the department's special operations program, including citizens against poaching.

SECTION 2. That Section 36-404, Idaho Code, be, and the same is hereby amended to read as follows:

36-404. CLASSES OF LICENSES. The licenses required by the provisions of this title shall be of eight (8) classes. ~~Licenses of the first five (5) c~~Classes ~~mentioned~~ one (1) through five (5) and eight (8) in this section may be purchased or obtained only by persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code, or who are valid holders of a lifetime license certificate.

Class 1: Adult Combination -- Hunting -- Fishing -- Trapping Licenses. Licenses to be issued only to persons who are residents of the state of Idaho.

Class 2: ~~Youth~~ Junior Hunting -- Trapping -- Youth Small Game Licenses.

(a) Junior hHunting license. Licenses to be issued only to persons who are residents of the state of Idaho and are between twelve (12) and seventeen (17) years of age, inclusive. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age.

(b) Junior t~~T~~rapping licenses. Licenses to be issued only to persons who are residents of the state of Idaho and are seventeen (17) years of age or younger.

(c) Youth small game licenses. Licenses to be issued only to qualified persons who are residents of the state of Idaho and are ten (10) or eleven (11) years of age to hunt upland game birds (including turkeys), migratory game birds, cottontail rabbits, pygmy rabbits, and unprotected and predatory birds and animals of this state while accompanied in the field by an adult licensed to hunt in the state of Idaho.

Class 3: ~~Youth~~ Junior Combination -- Fishing Licenses. Licenses to be issued only to persons who are residents of the state of Idaho between fourteen (14) and seventeen (17) years of age, inclusive.

Class 4: Senior Resident Combination License. Licenses to be issued only to persons over sixty-five (65) years of age who have been bona fide residents of the state of Idaho for a continuous period of not less than five (5) years last preceding application.

Class 5: Resident Lifetime Combination -- Hunting -- Fishing License. Licenses to be issued only to persons who are valid holders of a lifetime license certificate.

Class 6: Nonresident Combination -- Hunting -- Fishing -- Trapping -- Junior Mentored Hunting -- Youth Small Game -- Youth Hunter Education Graduate -- Licenses. Licenses required of persons who are nonresidents.

Class 7: Duplicate License -- Tag. A license or tag to be issued as a replacement for an original license or tag lost or mutilated. Said license or tag shall be issued in the same class and type as the original and upon issuance of such duplicate license or tag the original license or tag shall become null and void.

Class 8: Resident Hunting and Fishing License with Tags, Permits and Stamps. Licenses to be issued only to persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code.

SECTION 3. That Section 36-406, Idaho Code, be, and the same is hereby amended to read as follows:

36-406. RESIDENT FISHING, HUNTING AND TRAPPING LICENSES -- FEES. (a) Adult Licenses -- Combination -- Fishing -- Hunting -- Trapping. A license of the first class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to hunt and fish for game animals, game birds, unprotected and predatory animals and fish of the state, a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser

to fish in the public waters of the state, a fee as specified in section 36-416, Idaho Code, for a hunting license entitling the purchaser to hunt game animals, game birds, unprotected and predatory animals of the state, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to trap furbearers, unprotected and predatory animals of the state.

(b) ~~Youth~~ Junior Licenses -- Hunting -- Trapping. A license of the second class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a hunting license, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(c) ~~Youth~~ Junior Combination -- Fishing Licenses. A license of the third class may be purchased by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(d) Senior Resident Combination. A license of the fourth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(e) Lifetime Licenses -- Combination -- Hunting -- Fishing. A license of the fifth class may be obtained at no additional charge by a person possessing the qualifications therein described for a combined hunting and fishing license, for a hunting license, or for a fishing license, entitling the person to the same privileges as the corresponding license of the first class provides. Lifetime licensees must be certified under the provisions of section 36-411, Idaho Code, before being issued a license to hunt.

(f) A license of the eighth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, entitling the purchaser to hunt and fish for game animals, game birds, fish, and unprotected and predatory animals of the state. With payment of the required fee, a person shall receive with this license a deer tag, an elk tag, a bear tag, a turkey tag, a mountain lion tag, an archery hunt permit, a muzzleloader permit, a steelhead trout permit and an anadromous salmon permit. The director shall promptly transmit to the state treasurer all moneys received pursuant to this subsection for deposit as follows:

(i) Four dollars ($4.00) in the set-aside account for the purposes of section 36-111(1)(a), Idaho Code;

(ii) Two dollars ($2.00) in the set-aside account for the purposes of section 36-111(1)(b), Idaho Code;

(iii) One dollar and fifty cents ($1.50) in the set-aside account for the purposes of section 36-111(1)(c), Idaho Code; and

(iv) The balance in the fish and game account.

All persons purchasing a license pursuant to this subsection shall observe and shall be subject to all rules of the commission regarding the fish and wildlife of the state.

If the purchaser of this license does not meet the archery education

requirements of section 36-411(b), Idaho Code, then, notwithstanding the provisions of section 36-304, Idaho Code, the archery hunt permit portion of this license is invalid. The fee for this license will not change and the license must be issued without the archery permit validation.

(g) Disabled Persons Licenses -- Combination -- Fishing. A license of the first class may be had by any resident disabled person on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license, entitling the purchaser to the same privileges as the corresponding license of the first class provides. A disabled person means a person who is deemed disabled by the railroad retirement board pursuant to title 45 of the United States Code, or certified as eligible for federal supplemental security income (SSI); social security disability income (SSDI); a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability.

(h) Military Furlough Licenses -- Combination -- Fishing. A license of the first class may be had by a resident person engaged in the military service of the United States, while on temporary furlough or leave, possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and as specified in section 36-416, Idaho Code, for a fishing license.

(i) Youth Small Game Licenses -- Hunting. A license of the second class may be had by a resident of ten (10) or eleven (11) years of age on payment of a fee as specified in section 36-416, Idaho Code, provided that the license shall be valid only for hunting upland game birds (including turkeys), migratory game birds, cottontail rabbits, pygmy rabbits, and unprotected and predatory birds and animals of this state while accompanied in the field by the holder of an adult Idaho hunting license.

SECTION 4. That Section 36-407, Idaho Code, be, and the same is hereby amended to read as follows:

36-407. NONRESIDENT COMBINATION, FISHING, HUNTING, AND TRAPPING LICENSES -- FEES -- RIGHTS UNDER. Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) Nonresident Hunting License. A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(b) Nonresident Season Fishing License. A license entitling a person to fish in the public waters of the state. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(c) Nonresident Trapping License. A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of this

kind may be had upon payment of a fee as specified in section 36-416, Idaho Code, providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) Nonresident Nongame License. A license entitling a person to carry a shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. This license shall be valid only during the period of January 1 to August 31 of the calendar year in which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Two Day Small Game Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, and pygmy rabbits. A person holding this license shall purchase the appropriate required tags and permits, and may not hunt pheasants in an area during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(f) Falconry Meet Permit. The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of a fee as specified in section 36-416, Idaho Code. Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) Daily Fishing License -- Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of a fee as specified in section 36-416, Idaho Code, for the first effective day and a fee as specified in section 36-416, Idaho Code, for each consecutive day thereafter.

(h) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for any fish, including steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of a fee as specified in section 36-416, Idaho Code. The three (3) day license holder may fish for any species of fish, steelhead trout and anadromous salmon subject to the limitations prescribed in rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so.

(i) Nonresident ~~Juvenile~~ Junior Fishing License. A license entitling a nonresident who is less than eighteen (18) years of age to fish in the waters of this state ~~at any lawful time and during any open season, except for steelhead trout or anadromous salmon,~~ may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(j) Nonresident Combination Licenses. A license entitling the person to hunt and fish for game animals, game birds, fish and unprotected and predatory animals of the state may be had by a person twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. A license may be issued to a qualified person who is

eleven (11) years of age to allow the application for a controlled hunt permit; however, the person shall not hunt until he is twelve (12) years of age.

(k) Nonresident Junior Mentored Hunting License. A license entitling a nonresident between twelve (12) and seventeen (17) years of age, inclusive, to hunt game animals, upland game birds (including turkeys), migratory game birds, cottontail rabbits, pygmy rabbits, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required tags as provided in section 36-409(b), Idaho Code, and permits. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(l) Nonresident Youth Small Game Licenses -- Hunting. A license entitling a nonresident of ten (10) or eleven (11) years of age to hunt upland game birds (including turkeys), migratory game birds, cottontail rabbits, pygmy rabbits, and unprotected and predatory birds and animals of this state only while accompanied in the field by the holder of an adult Idaho hunting license may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(m) Youth Hunter Education Graduate Licenses -- Hunting -- Resident May Purchase. A license entitling a person between ten (10) and seventeen (17) years of age, inclusive, to hunt upland game birds (except turkeys), migratory game birds, cottontail rabbits, pygmy rabbits, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required permits. A license of this kind may be issued to a resident or nonresident person, notwithstanding the provisions of section 36-405, Idaho Code, upon payment of a fee as specified in section 36-416, Idaho Code.

SECTION 5. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- PERMITS -- FEES -- PENALTY. (a) Resident Game Tags. A resident who has obtained a permit to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that any person who holds a senior resident combination license or any person who holds a ~~youth~~ junior combination or hunting license or any disabled American veteran who holds a disabled combination license, may be issued a bear, deer, ~~or~~ elk, or turkey tag for a fee as specified in section 36-416, Idaho Code; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (s) of section 36-202, Idaho Code. In the event an emergency is declared to open a season to protect private property as provided in

section 36-106(e)6.(B), Idaho Code, the affected landowner or his designee shall be eligible to receive a resident deer, elk or antelope tag without charge; provided further, that resident game tags may be issued only to persons who qualify as residents pursuant to section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a license to hunt, as provided in section 36-407(a) or (k), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, or a resident who has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further that a nonresident who has purchased a license to hunt, as provided in section 36-407(k), Idaho Code, shall be eligible to receive a junior mentored deer, elk, bear, or turkey tag for a fee as specified in section 36-416, Idaho Code.

(c) Game Tags Required. The appropriate tag must be had for the hunting or taking of each and every one ~~(1)~~ of the aforementioned wildlife. Provided, however, that the requirements for a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. Provided further, that the commission may promulgate rules to allow a nonresident deer tag to be used to hunt and kill either a bear or a mountain lion during the open season for deer in that area, unit or zone as may be specified by the commission. All of said tags are to bear and have serial numbers.

(d) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission rule.

(e) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased at a fee as specified in section 36-416, Idaho Code.

(f) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased at a fee as specified in section 36-416, Idaho Code.

(g) Hound Hunter Permit -- Resident -- Nonresident. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased by resident and nonresident license holders for a fee as specified in section 36-416, Idaho Code.

(h) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be as specified in section 36-416, Idaho Code, and the per-

mit shall be issued under the condition that the nonresident's home state allows reciprocal raptor capturing privileges for Idaho falconers.

(i) Wildlife Management Area (WMA) Pheasant Permit. The commission may, under rules as it may prescribe, issue a wildlife management area pheasant permit that must be purchased by all persons over sixteen (16) years of age prior to hunting pheasants on state wildlife management areas designated by the commission. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(j) Bear Baiting Permit. The commission may, under rules as it may prescribe, issue a bear baiting permit. Any person placing or using bait as may be allowed by rule for the purpose of attracting bear must have in his possession a valid bear baiting permit which may be purchased by a license holder for a fee as specified in section 36-416, Idaho Code.

(k) Migratory Bird Harvest Information Program Permit. The commission may, as provided by federal laws or regulations and under rules as it may prescribe, issue a migratory bird harvest information program permit that must be purchased by all persons prior to hunting migratory game birds as required by federal law or regulations. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(l) Dog Field Trial Permit. The commission may, under rules as it may prescribe, issue a dog field trial permit to any person using birds for dog field trials or training as may be allowed by rule. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(m) Idaho Nursing Home Facility Resident Fishing Permit. The commission may, under rules as it may prescribe, issue an Idaho nursing home facility resident fishing permit that must be purchased by an Idaho nursing home facility to allow residents of its facility to fish during the open season. Facilities eligible to purchase this permit are: intermediate care facilities providing twenty-four (24) hour skilled nursing care, assisted living facilities providing twenty-four (24) hour extensive assistance and skilled nursing facilities providing twenty-four (24) hour skilled nursing. By purchasing this permit the facility assumes full responsibility for and control over the facility residents while using the permit. All laws, rules and proclamations apply to the use of this permit and it is the responsibility of the facility to assure compliance with all laws, rules and proclamations. In case of a violation the facility shall be held accountable and any citations shall be issued to the facility. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

SECTION 6. That Section 36-410, Idaho Code, be, and the same is hereby amended to read as follows:

36-410. STEELHEAD TROUT -- ANADROMOUS SALMON PERMITS. No person shall fish for steelhead trout or anadromous salmon except as herein provided:

(a) Permits Required -- Fee. Any person holding a valid fishing or combined fishing and hunting license of a class and kind mentioned in section 36-406 or in subsections (b) <u>and (i)</u> of section 36-407, Idaho Code, may purchase one (1) steelhead trout permit or one (1) anadromous salmon permit at a fee as specified in section 36-416, Idaho Code, for each kind of permit. The person to whom such permits are issued shall then be entitled to fish for and take steelhead trout and/or anadromous salmon subject to the limitations prescribed in this title and rules

promulgated by the commission. Permits shall be valid only during the period of time that the corresponding basic license is valid.

(b) Unlicensed Resident. Bona fide residents of Idaho who are expressly exempt from license requirements to fish in the public waters of the state may choose one (1) of the following options:

1. Purchase and use such permits as an individual; or

2. May fish for and take steelhead trout and/or anadromous salmon without having permits therefor if accompanied by a properly licensed permit holder, provided that any such fish caught shall be included in the daily, seasonal and possession limit of the accompanying licensed permit holder.

(c) Unlicensed Nonresident Children. Unlicensed nonresident children under the age of fourteen (14) years shall not be eligible to obtain a steelhead trout or anadromous salmon permit, but may take such fish if accompanied by a holder of a valid license and permit, provided that any steelhead trout or anadromous salmon caught by such children shall be included in the daily, seasonal and possession limit of the accompanying licensed permit holder.

SECTION 7. That Section 36-412, Idaho Code, be, and the same is hereby amended to read as follows:

36-412. EDUCATION PROGRAMS — INSTRUCTOR QUALIFICATIONS -- FEE. (a) The fish and game commission shall prescribe and administer education programs in hunting and archery. Such programs shall provide instruction in the safe handling of lawful hunting equipment. The programs shall also include instruction on wildlife and natural resource conservation, good conduct and respect for the rights and property of others, and survival in the outdoors. The commission may enter into agreements with public or private agencies and individuals in carrying out the provisions of this subsection.

(b) The department of fish and game shall recruit competent volunteer instructors. The department shall provide training for the instructors in the safe handling of legal hunting equipment, conservation of wildlife and natural resources, good conduct and respect for the rights and property of others, outdoor survival, and other appropriate subjects for training instructors. Instructors shall be issued certificates and shall on a voluntary basis, give instruction in education programs as established by the department of fish and game, to all eligible applicants.

(c) The commission shall establish fees for each program not to exceed eight dollars ($8.00) for persons who are age seventeen (17) years and under and not to exceed eight dollars ($8.00) for persons age eighteen (18) years and older, to be assessed each individual obtaining instruction in hunter education for reimbursement for furnished materials. All students successfully completing the course of instruction shall be issued a certificate of completion in hunter safety and good hunting conduct. The department may also issue a youth hunter education graduate hunting license to students successfully completing the course or allow the student to purchase a junior hunting license at a reduced fee pursuant to rules adopted by the commission.

SECTION 8. That Section 36-416, Idaho Code, be, and the same is hereby amended to read as follows:

36-416. SCHEDULE OF LICENSE FEES.

(a) Sport Licenses

License	Resident	Non-Resident
Combination License	$ 29.00	$ 180.00
Hunting License	10.00	127.00
Fishing License	22.00	73.00
Sr. Combination License (65 and Older)	3.00	N/A
Sportsman's Pak License	99.50	N/A
Jr. Combination License	14.50	N/A
Jr. Hunting License	5.00	N/A
Jr. Mentored Hunting License	N/A	5.00
Youth Small Game License	5.00	5.00
Youth Hunter Education Graduate Hunting License	3.00	3.00
Jr. Fishing License	11.00	~~36.50~~ 11.00
Disabled Combination License	3.00	N/A
Disabled Fishing License	3.00	N/A
Military Furlough Combination License	14.50	N/A
Military Furlough Fishing License	14.50	N/A
Small Game Hunting License	N/A	72.00
Daily Fishing (1st-day) License	9.00	9.00
Consecutive Day Fishing License	4.00	4.00
3 Day Fishing with Salmon/Steelhead Permit	N/A	27.00
~~Non-Game~~ Nongame Hunting License	N/A	25.00

(b) Sport Tags

Deer Tag	$ 16.50	$ 233.50
Jr. or Sr. or Disabled American Veteran Deer Tag	8.25	N/A
Jr. Mentored Deer Tag	N/A	8.25
Elk Tag	27.00	337.00
Jr. or Sr. or Disabled American Veteran Elk Tag	13.50	N/A
Jr. Mentored Elk Tag	N/A	13.50
Bear Tag	9.00	233.50
Jr. or Sr. or Disabled American Veteran Bear Tag	4.50	N/A
Jr. Mentored Bear Tag	N/A	4.50
Turkey Tag	16.50	60.00
Jr. or Sr. or Disabled American Veteran Turkey Tag	8.25	N/A
Jr. Mentored Turkey Tag	N/A	8.25
Mountain Lion Tag	9.00	233.50
Antelope Tag	27.00	~~233.50~~
Moose Tag	150.00	1,500.00
Sheep Tag	150.00	1,500.00
Goat Tag	150.00	1,500.00
Sandhill Crane Tag	16.50	60.00

(c) Sport Permits

Bear Baiting Permit	$ 10.00	$ 10.00
Hound Hunter Permit	10.00	127.00
WMA Pheasant Permit	20.00	20.00
Archery Permit	15.00	15.00
Muzzleloader Permit	15.00	15.00
Salmon Permit	10.00	10.00

Steelhead Permit	10.00	10.00
Federal Migratory Bird Harvest Info. Permit	0.00	0.00
Handicapped Archery Permit	0.00	0.00
2-Pole Fishing Permit	11.00	11.00
Controlled Hunt Permit	5.00	5.00
(d) Commercial		
Raptor Captive Breeding Permit	$ 60.00	$ 60.00
Falconry Permit	25.00	N/A
Falconry Capture Permit	N/A	127.00
Jr. Trapping License	5.00	N/A
Trapping License	25.00	250.00
Taxidermist-Fur Buyer License	35.00	125.00
Shooting Preserve Permit	300.00	N/A
Commercial Wildlife Farm License	125.00	N/A
Commercial Fishing License	100.00	200.00
Wholesale Steelhead License	150.00	150.00
Retail Steelhead Trout Buyer's License	30.00	30.00
(e) Commercial Tags		
Bobcat Tag (Not to exceed)	$ 7.50	$ 7.50
Lynx Tag (Not to exceed)	7.50	7.50
Beaver Tag (Not to exceed)	5.00	5.00
Net Tag	50.00	50.00
Crayfish/Minnow Tag	1.00	1.00
(f) Miscellaneous-Other Licenses		
Duplicate License	$ 5.00	$ 5.00
Shooting Preserve License	10.00	10.00
Captive Wolf License	20.00	N/A
(g) Miscellaneous-Other Tags		
Duplicate Tag	$ 5.00	$ 5.00
Wild Bird Shooting Preserve Tag	5.00	5.00
(h) Miscellaneous-Other Permits		
Falconry In-State Transfer Permit	$ 5.00	$ N/A
Falconry Meet Permit	N/A	20.00
Private Park Permit	20.00	20.00
Wildlife Import Permit	20.00	20.00
Wildlife Export Permit	10.00	10.00
Wildlife Release Permit	10.00	10.00
Captive Wildlife Permit	20.00	20.00
Fishing Tournament Permit	20.00	20.00
Dog Field Trial Permit	30.00	30.00
Live Fish Transport Permit	20.00	20.00
Controlled Hunt Application Fee	5.00	5.00
Nursing Home Fishing Permit	30.00	N/A

SECTION 9. That Section 36-1508, Idaho Code, be, and the same is hereby amended to read as follows:

36-1508. SHOOTING FROM PUBLIC HIGHWAY -- CHILDREN IN POSSESSION OF FIREARMS. No person shall:

(a) Shoot from Public Highway. Discharge any firearm from or across a public highway.

(b) Children with Firearms. No person under the age of twelve (12) years shall have in his possession any shotgun, rifle or other firearm while in the fields or forests or in any tent, camp, auto or any other

vehicle in the state of Idaho, except that the holder of a youth small game license or youth hunter education graduate license, if accompanied by an adult licensed to hunt in the state of Idaho, may possess a firearm for hunting while in the fields or forests.

SECTION 10. This act shall be in full force and effect on and after January 1, 2003.

Approved March 22, 2002.

CHAPTER 235
(H.B. No. 610, As Amended, As Amended in the Senate)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-301, IDAHO CODE, TO PROVIDE AN EXCEPTION FOR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS; AMENDING SECTION 49-303, IDAHO CODE, TO PROVIDE AN EXCEPTION FOR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS; AMENDING SECTION 49-306, IDAHO CODE, TO PROVIDE FOR APPLICATIONS AND A FEE FOR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS; AMENDING CHAPTER 3, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-307A, IDAHO CODE, TO PROVIDE FOR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS; AMENDING SECTION 49-310, IDAHO CODE, TO PROVIDE FOR ADULT SIGNATURES ON APPLICATIONS FOR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS AND TO PROVIDE THAT CERTAIN OFFICIALS SHALL SIGN APPLICATIONS FOR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS VERIFYING THAT REQUIRED CONDITIONS FOR ISSUANCE HAVE BEEN MET; AMENDING SECTION 49-313, IDAHO CODE, TO PROVIDE FOR EXAMINATION OF APPLICANTS FOR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-318, IDAHO CODE, TO PROVIDE FOR SUBSTITUTE RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS; AND AMENDING SECTION 49-322, IDAHO CODE, TO PROVIDE FOR CANCELLATION OF RESTRICTED SCHOOL ATTENDANCE DRIVING PERMITS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-301, Idaho Code, be, and the same is hereby amended to read as follows:

49-301. DRIVERS TO BE LICENSED. (1) No person, except those expressly exempted by the provisions of this chapter, shall drive any motor vehicle upon a highway unless the person has a valid Idaho driver's license. Provided however, that those persons holding a restricted school attendance driving permit may drive upon a highway pursuant to the restrictions set forth in section 49-307A, Idaho Code. No person shall operate a motorcycle upon a highway unless he has a motorcycle endorsement on his valid driver's license. No person shall operate a commercial motor vehicle as defined in section 49-123, Idaho Code, upon a highway unless he has a seasonal or class A, B or C driver's license with required endorsements. No person shall operate a motor vehicle in violation of any valid restriction identified on or

attached to, his valid driver's license. No person shall receive a class D driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction for use within the United States, or any identification cards issued by any other jurisdiction within the United States, or until he executes an affidavit that he does not possess a driver's license or any identification cards. No person shall be permitted to have more than one (1) driver's license issued for use within the United States at any time.

(2) Any holder of a class A, B or C commercial driver's license issued by a jurisdiction other than Idaho shall apply for an Idaho-issued commercial driver's license within thirty (30) days of establishing a domicile in Idaho. In accordance with the federal motor carrier safety regulations, no person shall receive a class A, B or C driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction.

A violation of this section is a misdemeanor.

SECTION 2. That Section 49-303, Idaho Code, be, and the same is hereby amended to read as follows:

49-303. WHAT PERSONS SHALL NOT BE LICENSED. The department shall not issue any driver's license, any instruction permit, privileges or right to drive and if issued, may revoke or cancel the driver's license of a person who:

(1) As an operator of a vehicle requiring a class D driver's license, is under the age of seventeen (17) years, except that the department may issue a driver's license to any person who has successfully completed an approved driver training course, has completed the requirements of a class D supervised instruction permit, and who is at least fifteen (15) years of age, with driving privileges restricted to daylight hours only, and with full privileges at sixteen (16) years of age. The restriction of daylight hours only shall mean that period of time one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset. If a person who is at least fifteen (15) years but is under seventeen (17) years of age has successfully completed an approved driver's training course and has been issued a driver's license in another state, he may be issued a class D driver's license in this state. Provided however, that a restricted school attendance driving permit may be issued to those persons meeting the criteria set forth in section 49-307A, Idaho Code.

(2) As an operator of a vehicle requiring a class D driver's license, is under the age of seventeen (17) years and has not successfully completed an approved driver training course and has not satisfied the requirements of a class D supervised instruction permit. Provided however, that a restricted school attendance driving permit may be issued to those persons meeting the criteria set forth in section 49-307A, Idaho Code.

(3) As an operator of a commercial vehicle requiring a class A, B or C driver's license is under the age of eighteen (18) years.

(4) Applicants with less than one (1) year of driving experience, as evidenced by a previous driver's license shall not be issued a class A, B or C driver's license or a class A, B or C instruction permit.

(5) As a driver has had his license, class D instruction permit, restricted school attendance driving permit, privileges or right to drive suspended for the duration of the suspension, nor to any person who has had his class D driver's training instruction permit or class D supervised instruction permit canceled for the duration of the cancellation, nor to any person whose license has been revoked, suspended, canceled or disqualified by this state or any other jurisdiction; provided however, where a driver's license has been revoked, suspended, canceled or disqualified in any other jurisdiction, and the driver has completed the period of revocation, suspension, cancellation or disqualification as specified by the jurisdiction, that person may be granted a class D driver's license in this state if five (5) years have elapsed from the time of eligibility for reinstatement in the other jurisdiction, even though the driver has not fulfilled the requirements for reinstatement in the other jurisdiction.

(6) Is an habitual drunkard, or is addicted to the use of narcotic drugs.

(7) Has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

(8) Is required by the provisions of this chapter to take an examination, unless that person shall have successfully passed such examination.

(9) May be required under any law of this state to furnish proof of financial responsibility and who has not furnished that proof.

(10) The department has good cause to believe that the operation of a motor vehicle on the highways by that person would be harmful to public safety or welfare.

(11) Is disqualified for a class A, B or C license, except he may be issued a class D driver's license.

(12) Is under eighteen (18) years of age and is not enrolled in school, has not received a waiver pursuant to or has not satisfactorily completed school as provided in section 49-303A, Idaho Code.

(13) Is not a resident of the state of Idaho.

SECTION 3. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE, ~~OR~~ INSTRUCTION PERMIT, OR RESTRICTED SCHOOL ATTENDANCE DRIVING PERMIT. (1) Every application for any instruction permit, restricted school attendance driving permit, or for a driver's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. Officers and employees of the department and sheriffs and their deputies are authorized to administer the oaths without charge. Every application for a permit, extension or driver's license shall be accompanied by the following fee, none of which is refundable:

(a) Class A, B, C (4-year) license with endorsements - age 21 years and older $28.50

(b) Class A, B, C (3-year) license with endorsements - age 18 to 21 years $20.50

(c) Class A, B, C (1-year) license with endorsements - age 20 years $12.25

(d) Class D (3-year) license - under age 18 years $20.50
(e) Class D (3-year) license - age 18 to 21 years $20.50
(f) Class D (1-year) license - age 17 years or age 20 years $12.25
(g) Four-year Class D license - age 21 years and older $24.50
(h) Eight-year Class D license - age 21 to 63 years $45.00
(i) Class A, B, C instruction permit $19.50
(j) Class D instruction permit or supervised instruction permit $11.50
(k) Duplicate driver's license or permit issued under section 49-318, Idaho Code $11.50
(l) Driver's license extension issued under section 49-319, Idaho Code ..... $ 6.50
(m) License classification change (upgrade) $15.50
(n) Endorsement addition $11.50
(o) Class A, B, C skills tests ..... not more than $55.00
(p) Class D skills test $15.00
(q) Motorcycle endorsement skills test ..... $ 5.00
(r) Knowledge test ..... $ 3.00
(s) Seasonal driver's license $27.50
(t) One time motorcycle "M" endorsement $11.50
(u) Motorcycle endorsement instruction permit $11.50
(v) Restricted driving permit or restricted school attendance driving permit $35.00

(2) Every application shall state the true and full name, date of birth, sex, declaration of Idaho residency, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and the applicant's social security number as verified by the applicant's social security card or by the social security administration.

(a) The requirement that an applicant provide a social security number as verified by his social security card or by the social security administration shall apply only to applicants who have been assigned a social security number.

(b) An applicant who has not been assigned a social security number shall:

(i) Present written verification from the social security administration that the applicant has not been assigned a social security number; and

(ii) Submit a birth certificate, passport or other documentary evidence issued by an entity other than a state or the United States; and

(iii) Submit such proof as the department may require that the applicant is lawfully present in the United States.

A driver's license or any instruction permit issued on and after January 1, 1993, shall not contain an applicant's social security number. Applications on file shall be exempt from disclosure except as provided in sections 49-202, 49-203, 49-203A and 49-204, Idaho Code.

Every application shall also state whether the applicant has previously been licensed as a driver, and if so, when and by what state or country, and whether a driver's license or privileges have ever been suspended, revoked, denied, disqualified, canceled or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, denial, disqualification, cancellation or

refusal and the applicant's oath that all information is correct as signified by the applicant's signature.

The applicant may be required to submit proof of identity acceptable to the examiner or the department and date of birth as set forth in a certified copy of his birth certificate when obtainable, or another document which provides satisfactory evidence of a person's date of birth acceptable to the examiner or the department.

(3) Whenever an application is received from a person previously licensed in another jurisdiction, the department shall request a copy of the driver's record from the other jurisdiction and shall contact the national driver register. When received, the driver's record from the previous jurisdiction shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(4) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(5) The department shall contact and notify the commercial driver license information system of the proposed application for a class A, B or C driver's license to insure identification of the person and to obtain clearance to issue the license.

(6) When the fees required under this section are collected by a county officer, they shall be paid over to the county treasurer not less often than monthly, who shall immediately:

(a) Deposit an amount equal to five dollars ($5.00) from each driver's license except an eight-year class D license, or any class D instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal driver's license and additional endorsement, and ten dollars ($10.00) from each eight-year class D driver's license, in the current expense fund; and

(b) Deposit two dollars and fifty cents ($2.50) from each motorcycle endorsement and motorcycle endorsement instruction permit fee in the current expense fund; and

(c) Deposit an amount equal to three dollars ($3.00) from each fee for a knowledge test in the current expense fund; and

(d) Deposit an amount equal to five dollars ($5.00) from each fee for a motorcycle endorsement skills test in the current expense fund; provided however, if a contractor administers the skills test he shall be entitled to the five dollar ($5.00) fee; and

(e) Remit the remainder to the state treasurer; and

(f) Deposit eleven dollars and fifty cents ($11.50) from each fee for a class D skills test into the county current expense fund, unless the test is administered by a department-approved contractor, in which case the contractor shall be entitled to eleven dollars and fifty cents ($11.50) of each fee.

(7) When the fees required under this section are collected by a state officer or agency, they shall be paid over to the state treasurer.

(8) The state treasurer shall distribute the moneys received from fees imposed by the provisions of this section, whether collected by a county officer or by a state officer or agency as follows:

(a) Two dollars ($2.00) of each fee for a four-year driver's license or seasonal driver's license, and four dollars ($4.00) of each fee for an eight-year class D driver's license, and one dollar

and fifty cents ($1.50) of each fee charged for driver's licenses pursuant to subsections (1)(b), (d) and (e) of this section, and fifty cents (50¢) of each fee charged for driver's licenses pursuant to subsections (1)(c) and (f) of this section, shall be deposited in the emergency medical services fund II created in section 56-1018A, Idaho Code, and four dollars ($4.00) of each fee charged pursuant to subsections (1)(a), (g) and (s) of this section and eight dollars ($8.00) of each fee charged pursuant to subsection (1)(h) of this section and three dollars ($3.00) of each fee for driver's licenses pursuant to subsections (1)(b), (d) and (e) of this section, and one dollar ($1.00) of each fee charged for driver's licenses pursuant to subsections (1)(c) and (f) of this section shall be deposited in the emergency medical services fund III created in section 56-1018B, Idaho Code; and

(b) Sixteen dollars and fifty cents ($16.50) of each fee for a seasonal or class A, B or C driver's license, and ten dollars ($10.00) of each fee charged for a license pursuant to subsection (1)(b) of this section, and five dollars and forty-one cents ($5.41) of each fee charged for a license pursuant to subsection (1)(c) of this section shall be deposited in the state highway fund; and

(c) Ten dollars and fifty cents ($10.50) of each fee for a class A, B or C instruction permit or driver's license classification change shall be deposited in the state highway fund; and

(d) Four dollars ($4.00) of each fee for a class A, B or C instruction permit shall be deposited in the emergency medical services fund III created in section 56-1018B, Idaho Code; and

(e) Six dollars and fifty cents ($6.50) of each fee for a duplicate seasonal or class A, B or C driver's license, class A, B or C driver's license extension, or additional endorsement shall be deposited in the state highway fund; and

(f) Four dollars ($4.00) of each fee for a motorcycle endorsement and motorcycle endorsement instruction permit shall be deposited in the state highway fund; and

(g) Five dollars and thirty cents ($5.30) of each fee for a four-year class D driver's license, and ten dollars and sixty cents ($10.60) of each fee for an eight-year class D driver's license, and four dollars ($4.00) of each fee charged for a license pursuant to subsections (1)(d) and (e) of this section, and one dollar and thirty-three cents ($1.33) of each fee charged for a license pursuant to subsection (1)(f) of this section shall be deposited in the driver training fund; and

(h) Seven dollars and twenty cents ($7.20) of each fee for a four-year class D driver's license, and ten dollars and forty cents ($10.40) of each fee for an eight-year class D driver's license, and six dollars ($6.00) of each fee charged for a license pursuant to subsections (1)(d) and (e) of this section, and four dollars and eight cents ($4.08) of each fee charged for a license pursuant to subsection (1)(f) of this section shall be deposited in the highway distribution fund; and

(i) Two dollars and sixty cents ($2.60) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the driver training fund; and

(j) Three dollars and ninety cents ($3.90) of each fee for a class

D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the highway distribution fund; and

(k) Five dollars ($5.00) of each fee for a class A, B or C skills test shall be deposited in the state highway fund; and

(l) One dollar ($1.00) of each fee for a class A, B, C or four-year D driver's license, and two dollars ($2.00) of each fee for an eight-year class D driver's license, and one dollar ($1.00) of each fee charged for a license pursuant to subsections (1)(b), (d) and (e) of this section, and thirty-four cents (34¢) of each fee charged for a license pursuant to subsections (1)(c) and (f) of this section shall be deposited in the motorcycle safety program fund established in section 33-4904, Idaho Code; and

(m) Three dollars and fifty cents ($3.50) of each fee for a class D skills test shall be deposited into the state highway fund.

(9) The contractor administering a class A, B or C skills test shall be entitled to not more than fifty dollars ($50.00) of the skills test fee. A contractor administering a class A, B or C skills test may collect an additional fee for the use of the contractor's vehicle for the skills test.

(10) Thirty-five dollars ($35.00) of each restricted driving permit and each restricted school attendance driving permit shall be deposited in the state highway fund.

(11) The department may issue seasonal class B or C driver's licenses to drivers who are employees of agri-chemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders that:

(a) Will only be valid for driving commercial vehicles that normally require class B or C commercial driver's licenses;

(b) Will be valid for seasonal periods that begin on the date of issuance and that are not to exceed one hundred eighty (180) days in a twelve (12) month period;

(c) May only be obtained twice in a driver's lifetime;

(d) Are valid only within a one hundred fifty (150) mile radius of the place of business or farm being serviced; and

(e) Will be valid only in conjunction with valid Idaho class D driver's licenses.

(12) The department may issue seasonal class B or C driver's licenses to drivers who:

(a) Have not violated the single license provisions of applicable federal regulations;

(b) Have not had any license suspensions, revocations or cancellations;

(c) Have not had any convictions in any vehicle for any offense listed in section 49-335(1) or (2), Idaho Code, or any one (1) serious traffic offense;

(d) Have at least one (1) year of driving experience with a class D or equivalent license in any type motor vehicle; and

(e) Are at least sixteen (16) years old.

SECTION 4. That Chapter 3, 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 49-307A, Idaho Code, and to read as follows:

49-307A. RESTRICTED SCHOOL ATTENDANCE DRIVING PERMIT. Notwithstanding any other provision of this chapter applying to licenses or permits, and notwithstanding the minimum age requirement for a driver training course specified in section 33-1703, Idaho Code, other than those provisions specifically applying to restricted school attendance driving permits:

(1) The department may issue a restricted school attendance driving permit to a minor fourteen (14) years of age, but less than sixteen (16) years of age, provided the following:

(a) The minor resides in an Idaho school district with a population of less than one hundred fifty (150) people;

(b) The minor attends an educational program as identified in section 49-303A, Idaho Code, and complies with the provisions of section 49-303A, Idaho Code, including submission of verification of attendance compliance by the school district to the department; and

(c) There is no school bus service provided to transport the minor to and from school, as verified by the school district to the department.

(2) The permit, if issued, shall only entitle the minor to drive to and from school, and school sponsored activities occurring at the school where enrolled, between the hours of 6:00 a.m. and 9:00 p.m.

(3) The minor must have completed a driver training course and comply with section 49-310, Idaho Code, as a condition of issuance of a permit pursuant to the provisions of this section.

(4) The restricted school attendance driving permit shall be canceled for conviction of any traffic offense and shall not be reissued.

(5) In the event the student terminates their school enrollment in the district in which they have qualified for a restricted school attendance driving permit, the permit shall be canceled.

SECTION 5. That Section 49-310, Idaho Code, be, and the same is hereby amended to read as follows:

49-310. APPLICATIONS OF PERSONS UNDER THE AGE OF EIGHTEEN YEARS. (1) The application of any person under the age of eighteen (18) years for any class D instruction permit, restricted driver's license, restricted school attendance driving permit, or driver's license shall be signed and verified before a person authorized to administer oaths by either the father or mother of the applicant, if both are living and have custody of him; or if either be dead, then by the surviving parent who has custody of him; or by the Idaho resident host of a foreign exchange student, or in the event neither parent is living, or if living and does not have the custody of the applicant, then by the person or guardian having such custody, with verifiable custody or guardianship documents, or by an employer of the applicant. In the event there is no guardian or employer then some other responsible person willing to assume the obligation for the applicant may sign the application. Any person who signs the applicant's application shall attest that the applicant is in compliance with the school attendance provisions of section 49-303A, Idaho Code, and when signing for a class D driver's training permit or a class D supervised instruction permit, shall attest that the minor person has satisfied the requirements and conditions applicable to the class D supervised instruction permit pursuant to section 49-307, Idaho Code, when the minor person applies for a class D driver's

license. The person willing to assume responsibility for the applicant must be at least eighteen (18) years of age. When signing for a restricted school attendance driving permit, the person signing the applicant's application shall attest that the conditions set forth within section 49-307A, Idaho Code, are met. Each application for a restricted school attendance driving permit shall also be signed by the local county sheriff, the president of the board of trustees of the local school district, and the school principal of the applicant's school, verifying that the conditions set forth within section 49-307A, Idaho Code, are met.

(2) Any negligence or willful misconduct of a person under the age of eighteen (18) years when operating a motor vehicle upon a highway shall be imputed to the person who signed the application of that person for a permit or driver's license, and that person shall be jointly and severally liable with the permit or driver's license holder for any damage caused by negligence or willful misconduct, except as otherwise provided by law.

(3) In the event a permit or driver's license holder under the age of eighteen (18) years deposits, or there is deposited upon his behalf, proof of financial responsibility in respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, or by the director if the form and amount is not fixed by law, then the department may accept the application when signed by one (1) parent or guardian of the applicant, and while that proof is maintained the parent or guardian shall not be subject to the liability imposed under subsection (2) of this section.

(4) Any person who has signed the application of a minor for a permit or driver's license shall be liable civilly for the payment of any court penalty imposed because the minor has been found to have committed an infraction violation. The provisions of this section shall not apply or create any civil liability for the person signing the application in connection with any pedestrian or bicycle infraction, and provided this subsection shall not apply to any civil action where the plaintiff is other than the state of Idaho.

SECTION 6. That Section 49-313, Idaho Code, be, and the same is hereby amended to read as follows:

49-313. EXAMINATION OF APPLICANTS. (1) The sheriff, his deputy or authorized agents of the department shall examine every applicant for an instruction permit, restricted school attendance driving permit, seasonal driver's license, or a driver's license or a motorcycle endorsement, except as otherwise provided by law. The examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic. A skills test shall be required for an applicant who has not been previously licensed for the class of license requested, or who holds a license issued by another country unless a reciprocal agreement is in force. However, a skills test may be required for any and all other applicants at the discretion of the examiner or department for a class A, B, C or D driver's license or a motorcycle endorsement. In addition, the applicant's knowledge of traffic laws of this state and when a motorcycle endorsement is applied for, the applicant's knowledge of safe motorcycle operating

practices and traffic laws specifically relating to motorcycle operation shall be tested by a written examination, except as provided in section 49-319, Idaho Code. At the discretion of the examiner, the prescribed written examination may be conducted orally.

(2) The knowledge and skills examinations for applicants for driver's licenses in class A, B or C shall be conducted in compliance with 49 CFR part 383.

(3) The skills test for a class A, B, C or D driver's license or for any endorsement shall be given by the department or its authorized agents. The skills examiner for a motorcycle endorsement shall be certified by the department of education.

(4) 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.

(5) Any person failing to pass a knowledge or skills test for a class A, B, C or D driver's license, or a knowledge test for a seasonal driver's license, or any endorsement may not retake the test within three (3) business days of the failure.

(6) Any person retaking a knowledge or skills test for a driver's license shall pay the appropriate testing fee as specified in section 49-306, Idaho Code.

(7) The motorcycle skills test for a motorcycle endorsement shall be waived by the department:

(a) On and after September 1, 1998, if the applicant presents satisfactory evidence of successful completion of a recognized motorcycle rider training course approved by the department of education;

(b) On and after September 1, 1998, if the applicant presents evidence of a motorcycle endorsement on his current license by a state or province which requires a motorcycle skills test equivalent to that required by Idaho law as determined by the department of education;

(c) Until September 1, 1998.

(8) At the discretion of the department, an alternate skills test for the motorcycle endorsement may be administered when the endorsement is for operation of a three-wheeled motorcycle only.

(9) The department or its authorized agents may refuse to give an applicant a skills test if there are reasonable grounds to believe that the safety of the applicant, public, or the examiner would be jeopardized by doing so. Reasonable grounds would include, but not be limited to, the applicant's inability to pass the eye test, written tests, or a statement by a licensed physician stating the applicant is not physically able to drive a motor vehicle.

(10) 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.

(11) Skills examinations for seasonal driver's licenses shall be waived.

SECTION 7. That Section 49-318, Idaho Code, be, and the same is hereby amended to read as follows:

49-318. DUPLICATE DRIVER LICENSES AND SUBSTITUTE PERMITS. (1) The holder of any instruction permit, class A, B, C or D, restricted school attendance driving permit, or seasonal driver's license which is lost or destroyed, or a licensee whose name is legally changed, may apply for a duplicate driver's license or substitute permit. A duplicate driver's license or substitute permit will be issued upon:

(a) Payment of the fee as provided in section 49-306, Idaho Code;

(b) Furnishing satisfactory proof that the permit, class A, B, C or D, restricted school attendance driving permit, or seasonal driver's license has been lost or destroyed, or that the licensee's name has been legally changed; and

(c) Furnishing proof of the applicant's identity acceptable to the examiner or the department and date of birth as set forth in a certified copy of his birth certificate when obtainable, or another document which provides evidence of a person's date of birth acceptable to the examiner or department. In the case of a name change, the applicant shall provide legal documentation acceptable to the department to verify the change.

(2) A duplicate driver's license or substitute permit shall not be issued, as provided in subsection (1) of this section, if the license or permit is suspended, revoked, canceled or disqualified in this state or any other jurisdiction or if the applicant has applied for, or has been issued, a license or permit in another jurisdiction.

(3) The holder of any instruction permit, class A, B, C or D, restricted school attendance driving permit, or seasonal driver's license who requests a duplicate driver's license or substitute permit as provided in subsection (1) of this section, may request that the notation "permanently disabled" be imprinted on the permit or license and the department shall imprint "permanently disabled" on the permit or license if:

(a) The person has a permanent disability; and

(b) The person presents written certification from a licensed physician verifying that the person's stated impairment qualifies as a permanent disability as provided in section 49-117, Idaho Code; and

(c) The department determines that the person meets the requirements for issuance of a permit or license as specified in section 49-313, Idaho Code.

SECTION 8. That Section 49-322, Idaho Code, be, and the same is hereby amended to read as follows:

49-322. AUTHORITY OF DEPARTMENT TO CANCEL DRIVER'S LICENSE OR INSTRUCTION PERMIT. (1) The department shall cancel any driver's license, restricted school attendance driving permit, or instruction permit upon determining that the licensee or permittee was not entitled to the issuance of the driver's license or instruction permit, or that the licensee or permittee failed to give the required or correct information in his application, or committed fraud in making the application.

(2) Upon a cancellation, the licensee or permittee shall surrender the ~~cancelled~~ canceled driver's license or ~~cancelled~~ canceled instruction permit to the department.

(3) The department shall cancel a person's commercial driver's license upon determining that the class A, B, or C licensee has falsified information. Upon cancellation of a class A, B, or C driver's

license, the licensee shall be disqualified from operating a commercial motor vehicle for a period of sixty (60) days.

(4) When a driver's license has been ~~cancelled~~ canceled for reasons of impairment, incompetence or inability of the licensed driver to operate a motor vehicle safely as provided in section 49-303 or 49-326, Idaho Code, and the licensee has voluntarily surrendered his driver's license, or when a licensed driver requests cancellation of his license for any of the same reasons stated in this subsection and he voluntarily surrenders his license, the licensee may be eligible for a no-fee identification card as provided in section 49-2444, Idaho Code.

Approved March 22, 2002.

CHAPTER 236
(H.B. No. 612)

AN ACT

RELATING TO ABSENTEE VOTING; AMENDING SECTION 34-1002, IDAHO CODE, TO PROVIDE PROCEDURES FOR MAIL-IN ABSENTEE BALLOTS AND TO PROVIDE PROCEDURES FOR IN PERSON ABSENTEE VOTING AT THE ABSENT ELECTOR'S VOTING PLACE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-1007, IDAHO CODE, TO PROVIDE THAT IN THOSE COUNTIES WHICH COUNT BALLOTS AT A CENTRAL LOCATION, ABSENTEE BALLOTS THAT ARE RECEIVED ON ELECTION DAY MAY, IN THE DISCRETION OF THE COUNTY CLERK, BE RETAINED IN A SECURE PLACE IN THE CLERK'S OFFICE AND THE BALLOTS SHALL BE ADDED TO THE PRECINCT RETURNS AT THE TIME OF BALLOT TABULATION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 50-443, IDAHO CODE, TO PROVIDE PROCEDURES FOR MAIL-IN ABSENTEE BALLOTS, TO PROVIDE PROCEDURES FOR IN PERSON ABSENTEE VOTING AT THE ABSENT ELECTOR'S VOTING PLACE 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 34-1002, Idaho Code, be, and the same is hereby amended to read as follows:

34-1002. APPLICATION FOR ABSENTEE BALLOT. Any registered elector may make written application to the county clerk, or other proper officer charged by law with the duty of issuing official ballots for such election, for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address, county, and address to which such ballot shall be forwarded.

The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be ~~filed--with~~ received by the county clerk not later than 5:00~~P.M.~~p.m. on the sixth day before the election. An application for in person absentee voting at the absent elector's polling place described in section 34-1006, Idaho Code, shall be received by the county clerk not later than 5:00p.m. on the day before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated

polling place on the day of election because of an emergency situation which rendered him physically unable, he may nevertheless apply for an absent elector's ballot on the day of election by notifying the county clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the closing of the polls.

A person may make application for an absent elector's ballot by use of a properly executed federal ~~post-card~~ postcard application as provided for in the laws of the United States known as Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff, et seq.). A properly executed federal ~~post-card~~ postcard application (F.P.C.A.), if received prior to the primary election, shall be considered as a request for an absent elector's ballot for both the primary and general election. The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

SECTION 2. That Section 34-1007, Idaho Code, be, and the same is hereby amended to read as follows:

34-1007. TRANSMISSION OF ABSENTEE BALLOTS TO POLLS. On receipt of such absent elector's ballot or ballots, the officer receiving them shall forthwith inclose the same, unopened in a carrier envelope ~~indorsed~~ endorsed with the name and official title of such officer and the words: "absent electors' ballot to be opened only at the polls." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which the elector resides and shall deliver the ballot or ballots to the judges with such official ballots.

In those counties which count ballots at a central location, absentee ballots that are received on election day may, in the discretion of the county clerk, be retained in a secure place in the clerk's office and such ballots shall be added to the precinct returns at the time of ballot tabulation.

SECTION 3. That Section 50-443, Idaho Code, be, and the same is hereby amended to read as follows:

50-443. APPLICATION FOR ABSENTEE BALLOT. Any registered elector may make written application to the city clerk for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address and address to which such ballot shall be forwarded. The application for an absent elector's ballot shall be signed personally by the applicant. The application for a mail-in absentee ballot shall be ~~filed with~~ received by the city clerk not later than 5:00~~P.M.~~p.m. on the sixth day before the election. ~~nor earlier than sixty (60) days before the election.~~ An application for in person absentee voting at the absent elector's polling place described in section 50-448, Idaho Code, shall be received by the city clerk not later than 5:00p.m. on the day before the election. Application for an absentee ballot may be made by using a facsimile machine. In the event a registered elector is unable to vote in person at his designated polling place on the day of election because of an emergency situ-

ation which rendered him physically unable, he may nevertheless apply for an absent elector's ballot on the day of election by notifying the city clerk. No person, may, however, be entitled to vote under an emergency situation unless the situation claimed rendered him physically unable to vote at his designated polling place within forty-eight (48) hours prior to the closing of the polls.

A person in the United States service may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as "Federal Voting Assistance Act of 1955." The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery or mailing to and receipt of returned ballot.

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

Approved March 22, 2002.

CHAPTER 237
(H.B. No. 613)

AN ACT

RELATING TO ELECTIONS; AMENDING CHAPTER 9, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-916, IDAHO CODE, TO CREATE THE DEMOCRACY FUND IN THE STATE TREASURY, TO PROVIDE PURPOSES OF THE FUND, TO PROVIDE OF WHAT MONEYS THE FUND CONSISTS, TO PROVIDE FOR EXPENDITURE OF MONEYS AND TO PROVIDE FOR RETURN OF INTEREST TO THE FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 9, 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 67-916, Idaho Code, and to read as follows:

67-916. DEMOCRACY FUND. (1) There is hereby created in the state treasury in the office of the secretary of state the "Democracy Fund." The purpose of the democracy fund is to provide funding for improving the election systems for the benefit of Idaho's voters including, but not limited to:

(a) Establishing and maintaining accurate lists of eligible voters;
(b) Encouraging eligible voters to vote;
(c) Improving verification and identification of voters at the polling place;
(d) Improving equipment and methods for casting and counting votes;
(e) Recruiting and training election officials and poll workers;
(f) Improving the quantity and quality of available polling places;
(g) Educating voters about their rights and responsibilities;
(h) Assuring access for voters with physical disabilities;

(i) Carrying out other activities to improve the administration of elections in the state.

(2) The democracy fund shall consist of all moneys appropriated by the legislature, federal moneys that may be available for the purpose of improving Idaho's election system and funds from any other source.

(3) Moneys in the democracy fund may be expended pursuant to appropriation and all interest earned on the investment of idle moneys in the fund by the state treasurer shall be returned to the fund.

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

Approved March 22, 2002.

CHAPTER 238
(H.B. No. 683)

AN ACT

RELATING TO THE APPROPRIATION FOR PUBLIC SCHOOL SUPPORT FOR FISCAL YEAR 2003; PROVIDING THE AMOUNT TO BE EXPENDED FROM STATE SOURCES; APPROPRIATING GENERAL FUND MONEYS FOR TRANSFER TO THE PUBLIC SCHOOL INCOME FUND; APPROPRIATING A TOTAL AMOUNT FROM THE PUBLIC SCHOOL INCOME FUND; PROVIDING MONEYS FOR THE UNEMPLOYMENT INSURANCE PROGRAM; PROVIDING THAT THE STATE DEPARTMENT OF EDUCATION SHALL HAVE CERTAIN AUTHORITY; DIRECTING THAT $3,100,000 IN ONGOING EXPENDITURES AND $5,000,000 IN ONE-TIME EXPENDITURES BE EXPENDED FOR THE PUBLIC SCHOOL TECHNOLOGY GRANT PROGRAM, AND $300,000 FOR TRANSFER TO THE LIBRARY SERVICES IMPROVEMENT FUND; DIRECTING THAT NOT MORE THAN $173,000 BE EXPENDED FOR IDAHO COUNCIL FOR TECHNOLOGY IN LEARNING EXPENSES; DIRECTING THAT $4,475,000 BE ALLOCATED FOR PROGRAMS FOR STUDENTS WITH NON-ENGLISH OR LIMITED ENGLISH PROFICIENCY; DIRECTING THAT $2,000,000 BE DISTRIBUTED FOR A TEACHER MENTORING AND PEER ASSISTANCE PROGRAM; DIRECTING THAT $4,700,000 OF THE MONEYS ACCRUING PURSUANT TO SECTIONS 63-2506 AND 63-2552A, IDAHO CODE, AND SUCH OTHER MONEYS WHICH MAY BECOME AVAILABLE PURSUANT TO SECTION 67-7439, IDAHO CODE, BE EXPENDED FOR THE IDAHO SAFE AND DRUG-FREE SCHOOLS PROGRAM; DIRECTING THE DISTRIBUTION OF FUNDS FOR THE IDAHO SAFE AND DRUG-FREE SCHOOLS PROGRAM; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO FEATURES OF THE IDAHO SAFE AND DRUG-FREE SCHOOLS PROGRAM; PROVIDING DIRECTION REGARDING THE EXPENDITURE AND DISTRIBUTION OF $1,000,000 FOR EMPLOYMENT AND TRAINING FOR WORKING WITH CHILDREN WITH DISABILITIES; DIRECTING THAT $500,000 BE ALLOCATED FOR TRAINING TO SERVE THE NEEDS OF GIFTED AND TALENTED STUDENTS; APPROPRIATING THE AMOUNT OF GENERAL FUND MONEY NECESSARY AS DETERMINED BY SECTION 33-1002D, IDAHO CODE, FOR PROPERTY TAX REPLACEMENT; DIRECTING THAT UP TO $560,000 BE DISTRIBUTED FOR MASTER TEACHER AWARD PAYMENTS; DIRECTING THAT $3,300,000 BE USED FOR THE IDAHO READING INITIATIVE AND EXPRESSING LEGISLATIVE INTENT THAT THE STATE DEPARTMENT OF EDUCATION SEEK ADDITIONAL FEDERAL GRANT FUNDS TO SUPPORT THE PROGRAM; DIRECTING THAT $4,000,000 BE DISTRIBUTED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND USED FOR THE IMPLEMENTATION OF ACHIEVEMENT

STANDARDS AND EXPRESSING LEGISLATIVE INTENT THAT THE STATE DEPARTMENT OF EDUCATION SEEK ADDITIONAL FEDERAL GRANT FUNDS TO SUPPORT THE PROJECT; DIRECTING THAT ANY UNANTICIPATED FUNDS IN THE FISCAL YEAR 2002 BUDGET, UP TO $10,000,000, BE RETAINED IN THE PUBLIC SCHOOL INCOME FUND FOR SUBSEQUENT APPROPRIATION; DIRECTING THAT CERTAIN DISCRETIONARY FUNDS BE DISTRIBUTED IN JULY 2002; DIRECTING THAT $2,000,000 BE DISTRIBUTED FOR THE PURPOSES OF PURCHASING CLASSROOM SUPPLIES; AND DECLARING AN EMERGENCY FOR SECTION 19 OF THIS ACT.

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

SECTION 1. The following amount shall be expended from state sources for public schools for the period July 1, 2002, through June 30, 2003:

FROM:

General Fund	$920,000,000
Public School Endowment Earnings Reserve Fund Transfer	43,313,000
Federal Mineral Royalties	2,000,000
Liquor Control Fund	1,200,000
Cigarette/Tobacco and Lottery Income Taxes	4,700,000
Miscellaneous Receipts/Balances	14,300,000
TOTAL	$985,513,000

SECTION 2. There is hereby appropriated from the General Fund the following amount to be transferred to the Public School Income Fund for the period July 1, 2002, through June 30, 2003:

FROM:

General Fund	$920,000,000

SECTION 3. There is hereby appropriated from the Public School Income Fund to be expended for the Educational Support Program pursuant to law and the provisions of this act, an amount not to exceed $985,513,000 for the period July 1, 2002, through June 30, 2003.

SECTION 4. Of the moneys appropriated in Section 3 of this act, the amount necessary for the Unemployment Insurance Program shall be expended according to Section 72-1349A, Idaho Code, for the period July 1, 2002, through June 30, 2003.

SECTION 5. The State Department of Education shall have the authority to monitor and evaluate the use of funds appropriated to public school districts for enhancement programs.

SECTION 6. Of the moneys appropriated in Section 3 of this act, $8,400,000 shall be expended by the Superintendent of Public Instruction as follows: $3,100,000 for ongoing expenditures and $5,000,000 for one-time expenditures for the Public School Technology Grant Program upon direction of the Idaho Council for Technology in Learning, for software purchases, technology equipment repairs and maintenance, and equipment necessary to administer state-required assessments; and $300,000 to be transferred to the Library Services Improvement Fund for the State Library's "Libraries Linking Idaho" (LiLI) statewide database licensing project.

SECTION 7. Of the $8,400,000 referred to in Section 6 of this act, an amount not to exceed $173,000 shall be expended by the Superintendent of Public Instruction for staff support and various expenses related to the Idaho Council for Technology in Learning as approved by the State Board of Education.

SECTION 8. Of the moneys appropriated in Section 3 of this act, $4,475,000 shall be distributed for support of programs for students with non-English or limited-English proficiency, allocated to school districts pro rata based upon the population of limited-English proficient students under criteria established by the State Department of Education.

SECTION 9. Of the moneys appropriated in Section 3 of this act, $2,000,000 shall be distributed by the State Superintendent of Public Instruction for a program of administrative and supervisory support, mentoring, peer assistance and professional development. Payment shall be distributed to school districts pro rata pursuant to the provisions of Sections 33-514 and 33-514A, Idaho Code.

SECTION 10. Of the moneys appropriated in Section 3 of this act, $4,700,000 shall be expended by the Superintendent of Public Instruction for the Idaho Safe and Drug-Free Schools Program, from funds determined by available revenues accruing pursuant to Sections 63-2506 and 63-2552A, Idaho Code, and other such moneys which may become available pursuant to Section 67-7439, Idaho Code, for the period July 1, 2002, through June 30, 2003.

SECTION 11. The funds allocated for the Idaho Safe and Drug-Free Schools Program in Section 10 of this act shall be distributed as follows: $250,000 shall be remitted to the Idaho State Police pursuant to Section 63-2552A(3), Idaho Code; $100,000 may be utilized by the Superintendent of Public Instruction for program administration, technical assistance and evaluation. Of the remaining amount, ninety-five percent (95%) shall be distributed to each school district through a combination of a base amount of $1,500 and a prorated amount based on the prior year's average daily attendance. Of the remaining five percent (5%), $80,000 shall be distributed on a one-time basis to the Commission on Hispanic Affairs and used to encourage and direct Hispanic youth away from the habitual use of tobacco, alcohol and other drugs by developing programs for schools, families and communities, with the remainder used to make discretionary grants as determined by the Drug-Free Schools and Communities Advisory Board.

SECTION 12. It is legislative intent that the Idaho Safe and Drug-Free Schools Program shall include the following:

(1) Districts will develop a policy and plan which will provide a guide for their substance abuse program.

(2) Districts will have an advisory board to assist each district in making decisions relating to the program.

(3) The districts' substance abuse programs will be comprehensive to meet the needs of all students. This will include prevention programs, student assistance programs that address early identification and referral, and aftercare.

(4) Districts shall submit an annual evaluation of their program to the State Department of Education as to the effectiveness of their program.

SECTION 13. Of the moneys appropriated in Section 3 of this act, $1,000,000 shall be distributed for the following:

(1) Training of regular classroom teachers in working with children with disabilities;

(2) Employing and training aides to assist regular classroom teachers in working with children with disabilities;

(3) Employing substitute teachers whose employment allows regular classroom teachers to be involved in college planning, parent contact, Individual Education Plan (IEP) development, curriculum and modification, or other necessary activities directly related to meeting the needs of students in regular education classrooms;

(4) Moneys in this section shall be distributed pro rata to the districts as follows: fifty percent (50%) on the basis of the prior year's December 1 child count and fifty percent (50%) on the basis of the prior year's average daily attendance.

These funds shall be used to supplement rather than supplant existing efforts in the training of regular classroom teachers and the employment and training of aides. The State Department of Education shall create a one (1) page report to be provided to the Legislature showing current individual district expenditures in this area, as well as a breakdown of how these appropriated moneys were spent. These funds shall not be used in any calculation or report to the federal government that obligates a future appropriation of this amount or any other amount.

SECTION 14. Of the moneys appropriated in Section 3 of this act, $500,000 shall be distributed to train general education teachers, gifted/talented (G/T) facilitators, administrators and/or parents to better meet the needs of gifted/talented students. One-half (1/2) of these funds shall be allocated pro rata based on each district's prior year total student enrollment compared to the prior year total statewide enrollment. One-half (1/2) of these funds shall be allocated based on the number of gifted/talented students identified and served as indicated on the prior year's December 1 child count. The number of gifted/talented students identified for purposes of this section shall not exceed seven percent (7%) of the district's total student enrollment. No district shall receive less than $500. Funds shall be distributed upon submission and approval of an application submitted to the State Department of Education demonstrating how in-service training will establish or improve identification and service of gifted/talented students in the five (5) mandated talent areas. The Superintendent of Public Instruction may reallocate any gifted/talented funds that are left unrequested by school districts to all other school districts that have requested gifted/talented funds, according to the distribution formula outlined in this section.

SECTION 15. Of the moneys appropriated in Section 3 of this act, there is hereby appropriated the amount necessary for property tax replacement, to be expended according to Section 33-1002D, Idaho Code, for the period July 1, 2002, through June 30, 2003.

SECTION 16. Of the moneys appropriated in Section 3 of this act, an amount up to $560,000 shall be awarded to those instructional staff members who have been recognized as master teachers by the National Board for Professional Teaching Standards, according to the provisions of Section 33-1004E, Idaho Code.

SECTION 17. Of the moneys appropriated in Section 3 of this act, $3,300,000 shall be used for literacy programs, as outlined in Sections 33-1614, 33-1615 and 33-1207A(2), Idaho Code. This appropriation acknowledges that up to $1,000,000 in federal grant funds may become available to support these literacy programs. It is legislative intent that the State Department of Education seek such funds to supplement the $3,300,000 appropriated for such literacy programs by this act.

SECTION 18. Of the moneys appropriated in Section 3 of this act, $4,000,000 shall be used for the second of three (3) phases in the implementation of Achievement Standards established under the provisions of the rules of the State Board of Education, IDAPA 08.02.03. These funds shall be distributed according to formulas and criteria established by the Superintendent of Public Instruction. This appropriation acknowledges that up to $2,000,000 in federal grant funds may become available to support achievement standards implementation. It is legislative intent that the State Department of Education seek such funds to supplement the $4,000,000 appropriated for achievement standards implementation by this act.

SECTION 19. Any other provision of law notwithstanding, the first $10,000,000 of any unanticipated discretionary funds that would normally be distributed to public schools as part of the final fiscal year 2002 distribution to public schools, pursuant to Section 33-1009(3), Idaho Code, shall instead be retained in the Public School Income Fund for appropriation in the subsequent fiscal year.

SECTION 20. Any other provision of law notwithstanding, the State Department of Education shall distribute $23,324,200 of the discretionary moneys appropriated in Section 3 of this act in July 2002. This distribution of funds shall be allocated by school district in a like manner as the executive holdbacks ordered in August 2001 and November 2001.

SECTION 21. Of the moneys appropriated in Section 3 of this act, $2,000,000 shall be distributed to teachers for the purchase of classroom supplies. The State Department of Education shall distribute such funds to school districts in July 2002, based on the final support unit calculations at the end of fiscal year 2002. These funds shall be used to supplement rather than supplant existing efforts in this area.

SECTION 22. An emergency existing therefor, which emergency is hereby declared to exist, Section 19 of this act shall be in full force and effect on and after passage and approval.

Approved March 22, 2002.

CHAPTER 239
(H.B. No. 700)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF VETERANS SERVICES WITHIN THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; APPROPRIATING ADDITIONAL MONEYS TO THE DIVISION OF VETERANS SERVICES WITHIN THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR FISCAL YEAR 2002; AND DECLARING AN EMERGENCY FOR SECTION 3 OF THIS ACT.

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

SECTION 1. There is hereby appropriated to the Division of Veterans Services within the Department of Self-Governing Agencies the following amount to be expended from the listed funds for the period July 1, 2002, through June 30, 2003:

DIVISION OF VETERANS SERVICES:

FROM:	
General Fund	$ 2,034,700
Miscellaneous Revenue Fund	6,406,500
Veterans Services Endowment Income Fund	678,300
Federal Grant Fund	7,024,300
TOTAL	$16,143,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Veterans Services is authorized no more than two hundred ninety-nine and thirty-two hundredths (299.32) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. In addition to the appropriation made in Section 1, Chapter 243, Laws of 2001, there is hereby appropriated $1,400,000 from the General Fund to the Division of Veterans Services within the Department of Self-Governing Agencies for the period July 1, 2001, through June 30, 2002.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 3 of this act shall be in full force and effect on and after passage and approval.

Approved March 22, 2002.

CHAPTER 240
(H.B. No. 707)

AN ACT

RELATING TO REPORTS OF CONTRIBUTIONS AND EXPENDITURES IN ELECTIONS; AMENDING SECTION 67-6607, IDAHO CODE, TO REVISE REPORTING DEADLINES

FOR ALL POLITICAL COMMITTEES SUPPORTING OR OPPOSING MEASURES, FOR A STATEMENT OF ALL CONTRIBUTIONS RECEIVED AND ALL EXPENDITURES OR ENCUMBRANCES MADE BY OR ON BEHALF OF THE MEASURE OR ANY CANDIDATE OR MADE BY OR AGAINST THE MEASURE OR ANY CANDIDATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-6607, Idaho Code, be, and the same is hereby amended to read as follows:

67-6607. REPORTS OF CONTRIBUTIONS AND EXPENDITURES. (a) The political treasurer for each candidate and the political treasurer of each political committee shall file with the secretary of state:

(1) Not more than fourteen (14) days and not less than seven (7) days before the date of a primary election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee prior to the fifteenth day before the primary election;

(2) Not more than thirty (30) days after the date of a primary election in which a candidate or a political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee to cover the period since the fifteenth day before the primary election to and including the tenth day after the primary election;

(3) For all political committees supporting or opposing measures, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the measure or any candidate or made by or against the measure or any candidate shall be filed on ~~April 30 and July 30 of each year to cover the period since the preceding report, if any, has been filed. Such committees shall also file the statements required in subsections (4), (5) and (6) of this section; provided, that the statement required in subsection (4) shall cover the period from July 1 to and including September 30~~ the same dates provided in paragraphs (1), (2), (4), (5) and (6) of this subsection;

(4) Not later than October 10 immediately preceding a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee since and including the eleventh day after the date of the primary election and to and including September 30;

(5) Not more than fourteen (14) days and not less than seven (7) days before the date of a general election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee since and including October 1 and to and including the sixteenth day before the general election, together with a cumulative statement showing all such contributions and expenditures or encumbrances to and including the sixteenth day before the general election; and

(6) Not more than thirty (30) days after the date of a general

election in which the candidate or political committee is involved, a statement of all contributions received and all expenditures or encumbrances made by or on behalf of the candidate or political committee to cover the period since the fifteenth day before the general election to and including the tenth day after the general election.

(b) For the first report under this section the reporting period shall cover the period beginning with the first contribution, expenditure, or encumbrance.

(c) Notwithstanding any other reports required under this section, the political treasurer for each candidate and any political committee supporting or opposing a measure shall notify the secretary of state, in writing, of any contribution of one thousand dollars ($1,000) or more, received by the political treasurer after the sixteenth day before, but more than forty-eight (48) hours before, any primary or general election. This notification shall be made within forty-eight (48) hours after the receipt of such contribution and shall include the name of the candidate or measure, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions in the post election report.

(d) For all reports required pursuant to this section the secretary of state shall accept the date of a postmark as the date of receipt except for the seven (7) day pre-election reports which must be received by no later than 5:00 p.m. on the seventh day preceding the primary or general election.

(e) Any reports required to be filed under the provisions of this section may also be filed by means of an electronic facsimile transmission machine.

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

Approved March 22, 2002.

CHAPTER 241
(H.B. No. 708)

AN ACT

APPROPRIATING MONEYS TO THE SECRETARY OF STATE FOR THE COMMISSION ON THE ARTS FOR FISCAL YEAR 2003; 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 for the Commission on the Arts, the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	$297,100	$190,300	$398,400	$ 885,800
Federal Grant Fund	245,700	131,900	185,700	563,300
Miscellaneous Revenue Fund		55,200	16,300	71,500
TOTAL	$542,800	$377,400	$600,400	$1,520,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on the Arts is authorized no more than eleven (11) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 242
(H.B. No. 709)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF BUILDING SAFETY FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Division of Building Safety in the Department of Self-Governing Agencies the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. ADMINISTRATION:				
FROM:				
Electrical Fund	$ 215,300	$ 23,500		$ 238,800
Building Fund	53,300	5,700		59,000
Plumbing Fund	138,500	15,200		153,700
Manufactured Housing Fund	5,500	600		6,100
Public Works Contractors Licensing Fund	21,600	2,800		24,400
Miscellaneous Revenue/ Industrial Safety Fund	47,100	5,200		52,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
Miscellaneous Revenue/ Logging Fund	19,100	2,100		21,200
Miscellaneous Revenue/ Building Bureau NCSBCS Fund	1,400	100		1,500
Federal Grant Fund	7,400	800		8,200
TOTAL	$ 509,200	$ 56,000		$ 565,200
II. BUILDING SAFETY: FROM:				
Electrical Fund	$2,625,600	$ 714,000	$164,500	$3,504,100
Building Fund	642,000	242,600	65,200	949,800
Plumbing Fund	1,652,300	613,300	117,800	2,383,400
Manufactured Housing Fund	47,400	25,600	100	73,100
Public Works Contractors Licensing Fund	146,900	159,800	700	307,400
Miscellaneous Revenue/ Industrial Safety Fund	565,000	288,300	93,500	946,800
Miscellaneous Revenue/ Logging Fund	256,500	91,500	400	348,400
Miscellaneous Revenue/ Building Bureau NCSBCS Fund	11,000	6,800		17,800
Miscellaneous Revenue Energy Program Fund	106,600	16,000		122,600
Federal Grant Fund		38,100	300	38,400
TOTAL	$6,053,300	$2,196,000	$442,500	$8,691,800
GRAND TOTAL	$6,562,500	$2,252,000	$442,500	$9,257,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Building Safety in the Department of Self-Governing Agencies is authorized no more than one hundred nineteen and one-tenth (119.1) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 243
(H.B. No. 710)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Commerce the following amounts from the listed funds to be expended according to the designated expense classes for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DEPARTMENT OF COMMERCE:					
FROM:					
General Fund	$2,004,100	$1,033,800		$ 3,650,000	$ 6,687,900
Tourism and Promotion Fund	518,400	2,504,600	$ 5,000	2,802,000	5,830,000
Federal Grant Fund	428,100	129,200	5,000	15,329,500	15,891,800
Miscellaneous Revenue Fund	114,700	104,900			219,600
Seminars and Publications Fund		371,200			371,200
TOTAL	$3,065,300	$4,143,700	$10,000	$21,781,500	$29,000,500
II. IDAHO RURAL PARTNERSHIP:					
FROM:					
Miscellaneous Revenue Fund		$ 24,300			$ 24,300
Federal Grant Fund	91,200	50,200			141,400
TOTAL	$ 91,200	$ 74,500			$ 165,700
GRAND TOTAL	$3,156,500	$4,218,200	$10,000	$21,781,500	$29,166,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Commerce is authorized no more than fifty-four (54) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 244
(H.B. No. 711)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Finance the following amount, to be expended according to the designated expense classes from the listed fund for the period July 1, 2002, through June 30, 2003:

FOR:	
Personnel Costs	$2,589,300
Operating Expenditures	673,600
Capital Outlay	86,700
TOTAL	$3,349,600
FROM:	
State Regulatory Fund	$3,349,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than forty-three (43) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 245
(H.B. No. 712)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Insurance the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INSURANCE REGULATION:					
FROM:					
Self-Governing Operating Fund	$3,103,900	$1,694,900	$ 95,800		$4,894,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	38,300	8,900			47,200
Federal Grant Fund	103,700	48,600		$2,500	154,800
TOTAL	$3,245,900	$1,752,400	$ 95,800	$2,500	$5,096,600
II. STATE FIRE MARSHAL:					
FROM:					
Self-Governing State Fire Marshal Fund	$ 550,200	$ 267,400	$ 15,700		$ 833,300
GRAND TOTAL	$3,796,100	$2,019,800	$111,500	$2,500	$5,929,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Insurance is authorized no more than sixty-eight and one-half (68.5) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 246
(H.B. No. 713)

AN ACT

APPROPRIATING MONEYS FOR THE MILITARY DIVISION FOR FISCAL YEAR 2003; GRANTING A CONTINUOUS APPROPRIATION FOR THE BUREAU OF HAZARDOUS MATERIALS' MISCELLANEOUS REVENUE FUND FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Military Division, the following amounts to be expended for the following programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MILITARY MANAGEMENT:				
FROM:				
General Fund	$ 1,408,600	$1,027,800	$100,000	$ 2,536,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Federal Grant Fund		164,100		164,100
Miscellaneous Revenue Fund		38,800		38,800
Armory Revenue Fund		75,000		75,000
TOTAL	$ 1,408,600	$1,305,700	$100,000	$ 2,814,300
II. FEDERAL AND STATE CONTRACTS:				
FROM:				
General Fund	$ 599,700	$ 515,600		$ 1,115,300
Federal Grant Fund	6,647,700	5,515,800		12,163,500
Professional Services Fund	522,600			522,600
TOTAL	$ 7,770,000	$6,031,400		$13,801,400
III. DISASTER SERVICES:				
FROM:				
General Fund	$ 783,500	$ 88,400		$ 871,900
Federal Grant Fund	608,600	644,100	$487,400	1,740,100
Indirect Cost Recovery Fund		68,300		68,300
TOTAL	$ 1,392,100	$ 800,800	$487,400	$ 2,680,300
IV. BUREAU OF HAZARDOUS MATERIALS:				
FROM:				
General Fund	$ 238,000	$ 92,400		$ 330,400
Federal Grant Fund		674,400	$182,500	856,900
TOTAL	$ 238,000	$ 766,800	$182,500	$ 1,187,300
GRAND TOTAL	$10,808,700	$8,904,700	$769,900	$20,483,300

SECTION 2. The Military Division is hereby granted continuous appropriation authority for the Bureau of Hazardous Materials' Miscellaneous Revenue Fund for the period July 1, 2002, through June 30, 2003.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Military Division is authorized no more than one hundred ninety and eighty-hundredths (190.80) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the program speci-

fied in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 247
(H.B. No. 714)

AN ACT

APPROPRIATING MONEYS TO THE SECRETARY OF STATE FOR FISCAL YEAR 2003; 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 expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. ADMINISTRATION:			
FROM:			
General Fund	$1,589,000	$708,200	$2,297,200
II. COMMISSION ON UNIFORM LAWS:			
FROM:			
General Fund		$ 26,700	$ 26,700
GRAND TOTAL	$1,589,000	$734,900	$2,323,900

SECTION 2. 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 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 thirty-two (32) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 248
(H.B. No. 715)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 2003; DIRECTING THE STATE CONTROLLER TO TRANSFER FUNDS; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Division of Financial Management the following amounts to be expended for the following programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. DIVISION OF FINANCIAL MANAGEMENT:			
FROM:			
General Fund	$1,854,400	$242,900	$2,097,300
Miscellaneous Revenue Fund	23,300	7,500	30,800
TOTAL	$1,877,700	$250,400	$2,128,100

SECTION 2. The State Controller is hereby directed to transfer, on June 28, 2002, any remaining unencumbered cash balance in the Natural Resource Restoration Fund to the Environmental Remediation Fund.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Division of Financial Management is authorized no more than twenty-five (25) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 249
(H.B. No. 716)

AN ACT

APPROPRIATING MONEYS TO THE SUPREME COURT FOR FISCAL YEAR 2003; APPROPRIATING MONEYS FROM THE GENERAL FUND TO THE GUARDIAN AD LITEM FUND; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; CAPPING THE AMOUNT ALLOCATED FOR ADMINISTRATIVE OVERHEAD IN THE GUARDIAN AD LITEM PROGRAM; AND ENCOURAGING PRESERVATION OF THE DRUG COURTS AND FAMILY COURT SERVICES PROGRAMS.

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, 2002, through June 30, 2003:

FROM:

General Fund	$25,242,300
Guardian Ad Litem Fund	446,500
ISTARS Technology Fund	1,807,100
Federal Grant Fund	418,800
Miscellaneous Revenue Fund	312,500
TOTAL	$28,227,200

SECTION 2. There is hereby appropriated $446,500 from the General Fund to be deposited in the Guardian Ad Litem Fund for the period July 1, 2002, through June 30, 2003.

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 in accordance with rules set by the Supreme Court, 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 in accordance with rules set by the Supreme Court 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 the amount allocated for administrative overhead to the administrative agency selected by the Idaho Supreme Court for the Guardian Ad Litem Program be capped at $30,000 for the period July 1, 2002, through June 30, 2003.

SECTION 5. The Legislature joins the Supreme Court in the recognition that Drug Courts and Family Court Services preserve families, increase public safety and provide cost-effective alternatives to incarceration. The Legislature encourages the Supreme Court to preserve, to the extent possible, these programs as envisioned by the Supreme Court and the Legislature in the face of budget reductions.

Approved March 22, 2002.

CHAPTER 250
(H.B. No. 720)

AN ACT

APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES TO THE OFFICE OF THE GOVERNOR FOR THE STATE LIQUOR DISPENSARY.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the State Liquor Dispensary the following amounts, to be expended according to the designated expense classes from the listed fund for the period July 1, 2002, through June 30, 2003:

FOR:	
Personnel Costs	$ 6,776,600
Operating Expenses	2,917,300
Capital Outlay	396,200
TOTAL	$10,090,100
FROM:	
Liquor Control Fund	$10,090,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Liquor Dispensary is authorized no more than one hundred forty-eight (148) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. There is hereby reappropriated to the Office of the Governor for the State Liquor Dispensary any unexpended and unencumbered balance of the Liquor Control Fund appropriated for the Enterprise Accounting System for fiscal year 2002, to be used for the same purpose for the period July 1, 2002, through June 30, 2003. The reappropriation is limited to $850,000 from the Liquor Control Fund.

Approved March 22, 2002.

CHAPTER 251
(H.B. No. 721)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO WOMEN'S COMMISSION FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Idaho Women's Commission the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$30,500	$ 9,100	$39,600
Miscellaneous Revenue Fund		6,700	6,700
TOTAL	$30,500	$15,800	$46,300

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, 2002, through June 30, 2003, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 22, 2002.

CHAPTER 252
(H.B. No. 739)

AN ACT

APPROPRIATING AND TRANSFERRING MONEYS TO THE VETERANS TRANSPORTATION FUND FOR FISCAL YEAR 2003; AND APPROPRIATING MONEYS TO THE DIVISION OF VETERANS SERVICES FOR FISCAL YEAR 2003.

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

SECTION 1. There is hereby appropriated and the State Controller is hereby directed to transfer $30,000 from the General Fund to be deposited in the Veterans Transportation Fund for the period July 1, 2002, through June 30, 2003.

SECTION 2. There is hereby appropriated to the Division of Veterans Services within the Department of Self-Governing Agencies $30,000 from the Veterans Transportation Fund for the period July 1, 2002, through June 30, 2003.

Approved March 22, 2002.

CHAPTER 253
(S.B. No. 1421)

AN ACT

RELATING TO PERSONS UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES; AMENDING SECTION 18-8004, IDAHO CODE, TO PROVIDE REFERENCES TO COMBINATIONS OF ALCOHOL, DRUGS AND OTHER INTOXICATING SUBSTANCES AND TO PROVIDE THAT THE FACT THAT A PERSON CHARGED WITH DRIVING UNDER THE INFLUENCE OF A DRUG IS OR HAS BEEN LEGALLY ENTITLED TO USE SUCH DRUG SHALL NOT CONSTITUTE A DEFENSE AGAINST CERTAIN CHARGES AND TO MAKE A TECHNICAL CORRECTION.

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 any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08, 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 any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.04 or higher but less than 0.08, 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.

(c) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08 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) years who has an alcohol concentration of at least 0.02 but less than 0.08, 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 0.08, 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 0.08, 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 state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(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 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~~6) 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).

(7) The fact that any person charged with a violation of the provisions of this chapter involving being under the influence of any drug, or any combination of drugs with alcohol or any other intoxicating substance, is or has been entitled to use such drug under the laws of this state or of any other jurisdiction shall not constitute a defense against any charge of a violation of the provisions of this chapter.

Approved March 22, 2002.

CHAPTER 254
(H.B. No. 477)

AN ACT

RELATING TO MOTOR VEHICLE REGISTRATION; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A REFERENCE TO FEES FOR AN APPALOOSA LICENSE PLATE; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-420C, IDAHO CODE, TO PROVIDE FOR AN APPALOOSA LICENSE PLATE AND TO GOVERN ADMINISTRATION OF THE APPALOOSA PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

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

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

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

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

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

(6) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96)

hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

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

SECTION 2. That Chapter 4, Title 49, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 49-420C, Idaho Code, and to read as follows:

49-420C. APPALOOSA LICENSE PLATES. (1) On and after January 1, 2003, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, or registered under any other provision of law for which the purchase of a special license plate is allowed, may apply for and, upon department approval, receive special Appaloosa license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. Availability of Appaloosa license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

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

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

(4) The Appaloosa license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. That portion of the design which features an Appaloosa shall be acceptable to the Appaloosa horse club, and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Appaloosa horse club.

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

SECTION 3. This act shall be in full force and effect on and after January 1, 2003.

Approved March 25, 2002.

CHAPTER 255
(H.B. No. 494)

AN ACT

RELATING TO EXEMPTIONS FROM SALES AND USE TAX; AMENDING SECTION 63-3622O, IDAHO CODE, TO PROVIDE AN EXEMPTION FOR SALES OR PURCHASES BY A QUALIFYING SENIOR CITIZEN CENTER AND TO DEFINE A TERM.

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

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

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

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

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

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

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

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

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

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

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

(a) "Educational institution" shall mean nonprofit colleges, universities, public charter schools organized pursuant to chapter 52,

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

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

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

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

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

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

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

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

(i) "Center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

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

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

(iii) Is cross-disability.

(j) "Political subdivision" means:

(i) A governmental organization which:

1. Embraces a certain territory,

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

3. Has been delegated functions of government, and

4. Has the statutory power to levy taxes; or

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

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

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

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

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

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

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

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

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

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

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

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

Approved March 25, 2002.

CHAPTER 256
(H.B. No. 522)

AN ACT

RELATING TO THE SEED INDEMNITY FUND; AMENDING TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 51, TITLE 22, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR LICENSES, TO PROVIDE FOR BONDS AND IRREVOCABLE LETTERS OF CREDIT, TO DESIGNATE AMOUNTS OF BOND AND TO PROVIDE FOR NOTICE OF CANCELLATION OF A BOND, TO PROVIDE FOR ACTION BY INJURED PERSONS, TO PROVIDE FOR FEES, TO PROVIDE FOR RECEIPTS AND SCALE WEIGHT TICKETS, TO PROVIDE FOR MAINTENANCE OF RECORDS AND EXAMINATION OF RECORDS, TO PROVIDE FOR VIOLATIONS AND PENALTIES AND TO PROVIDE FOR THE DISCRETION OF THE DIRECTOR TO HANDLE CERTAIN VIOLATIONS ADMINISTRATIVELY, TO PROVIDE FOR SUSPENSION OR REVOCATION OF LICENSES, TO PROVIDE THAT PROSECUTORS SHALL HAVE CERTAIN DUTIES TO PROSECUTE REPORTED VIOLATIONS, TO PROVIDE FOR NOTICE OF NONCOMPLIANCE, TO PROVIDE CERTAIN REQUIREMENTS, TO PROVIDE FOR FAILURE TO COMPLY AND TO PROVIDE FOR REMEDIES OF THE DEPARTMENT OF AGRICULTURE, TO REQUIRE CERTAIN INSURANCE, TO PROVIDE AN INSURANCE CANCELLATION PROCEDURE, TO PROVIDE FOR SUSPENSION OF LICENSES AND TO PROVIDE FOR SELF-INSURANCE, TO PROVIDE FOR LICENSE REISSUANCE FOLLOWING REVOCATION, TO AUTHORIZE THE DEPARTMENT TO TAKE CERTAIN ACTION REGARDING SUSPECTED VIOLATIONS, TO PROVIDE FOR LICENSE DENIAL, TO PROHIBIT PAYMENT WITH INSUFFICIENT FUNDS, TO PROVIDE FOR CONFIDENTIAL AND PROTECTED RECORDS, TO PROVIDE FOR THE SEED INDEMNITY FUND, TO PROVIDE FOR ASSESSMENTS, TO PROVIDE FOR COLLECTION AND REMITTANCE OF ASSESSMENTS, TO PROVIDE THAT THE PRINCIPAL AMOUNT OF ASSESSMENTS ARE HELD IN TRUST, TO PROVIDE FOR INTEREST EARNED, TO PROVIDE THAT A SEED BUYER'S FAILURE TO COLLECT OR REMIT ASSESSMENTS CONSTITUTES A VIOLATION AND TO PROVIDE FOR INTEREST AND PENALTIES ON UNPAID ASSESSMENTS, TO PROVIDE FOR FUNDING AND LIMITS OF THE FUND, TO PROVIDE FOR AN ADVISORY COMMITTEE, TO PROVIDE FOR PROOF OF CLAIMS, TO PROVIDE A CLAIMS PROCEDURE AND TO PROVIDE FOR HEARING, TO PROHIBIT CERTAIN CLAIMS ON THE FUND, TO REQUIRE A MINIMUM BALANCE IN THE FUND BEFORE CLAIMS ARE PAID AND TO PROVIDE FOR TERMINATION OF LIABILITY FOR CERTAIN CLAIMS, TO PROVIDE FOR PAYMENT FROM THE FUND, TO PROVIDE THAT CERTAIN PAYMENTS FROM THE FUND CONSTITUTE A DEBT OF THE SEED BUYER OR THEIR SURETY, TO AUTHORIZE AN ACTION FOR REIMBURSEMENT, TO PROVIDE FOR THE ACCRUAL OF CAUSES OF ACTION AND TO AUTHORIZE RULEMAKING.

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

SECTION 1. That Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 51, Title 22, Idaho Code, and to read as follows:

CHAPTER 51
SEED INDEMNITY FUND LAW

22-5101. SHORT TITLE OF ACT. This act shall be known as the "Seed Indemnity Fund Law."

22-5102. DEFINITIONS. As used in this chapter:

(1) "Contract" means an agreement which may include, but is not limited to, those contracts commonly referred to as production, credit sale, bailment, deferred payment, deferred or price later contracts.

(2) "Delivery voucher" means a form, other than a receipt or scale weight ticket, authorized by rules of the department evidencing delivery of a producer's seed crop to a seed buyer.

(3) "Department" means the Idaho state department of agriculture.

(4) "Director" means the director of the Idaho state department of agriculture.

(5) "Failure" means the date that one (1) or more of the following events occurred, as determined by the director:

(a) An inability to financially satisfy producers;

(b) A declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a producer;

(d) A failure to redeliver any seed crop stored for withdrawal or to pay producers for seed crop pursuant to the terms of an agreement; or

(e) A denial of the application for a license renewal.

(6) "Person" means any individual, firm, association, corporation, partnership or limited liability company.

(7) "Producer" means the owner, tenant or operator of land in this state who has an interest in the proceeds from the sale of seed crops grown on that same land. Producer does not include growers of seed crop who deposit their seed crop in a seed facility in which they have a financial or management interest, except members of a cooperative marketing association qualified under chapter 26, title 22, Idaho Code.

(8) "Production summary" means records that include, but are not limited to, the kind and type of seed crop, producer name and address, location and number of acres, clean seed per acre, value per pound and, when applicable, the contract number and lot identity.

(9) "Receipt" means a warehouse receipt.

(10) "Scale weight ticket" means a load slip, other than a receipt, given to a producer by a seed buyer, for transfer of the seed crop to the seed buyer. Each scale weight ticket shall be sequentially numbered, shall be recorded in triplicate and shall set forth the following:

(a) Name and address of seed buyer;

(b) Date of weighing;

(c) Producer of seed crop weighed;

(d) Kind of seed crop weighed;

(e) Gross delivery weight;

(f) Tare;

(g) Net delivery weight; and

(h) Full signature of weigher or name of supervisor of scale.

(11) "Seed buyer" means any person having a commercial operation, its agents and employees, together with its elevators, mills, buildings, or other structures who owes or has any financial obligation to the producer for seed crop grown by that producer and transferred to the seed buyer.

(12) "Seed crops" means any seed crop regulated by chapter 4, title 22, Idaho Code.

(13) "Seed facility" means:

(a) That portion of the commercial operation of a seed buyer where

seed crop transferred to it from an unpaid producer is stored; or

(b) Where seed crop is stored for withdrawal.

(14) "Stored for withdrawal" means the deposit of seed crop with a seed facility by the producer for the subsequent withdrawal by that producer of the same seed crop or similar seed crop, as agreed to by the parties.

(15) "Transfer" means, unless otherwise defined by the parties in writing, the event when a producer or his agent delivers seed crop to the seed buyer who then gives the producer or his agent a scale weight ticket, receipt, or other written evidence of transfer.

(16) "Written evidence of transfer" means:

(a) A delivery voucher;

(b) A receipt; or

(c) A scale weight ticket.

22-5103. LICENSES. (1) Prior to beginning operation, a person intending to operate as a seed buyer shall first procure a license from the department. Each license issued pursuant to this chapter, shall be issued for a period of one (1) year and the license or legible copy thereof shall be prominently displayed in each place of business.

(2) A seed facility endorsement showing the location of each seed facility in Idaho shall be attached to the seed buyer's license.

(3) The department is authorized to issue or renew a seed buyer license in accordance with this chapter, and the rules promulgated by the department providing each applicant meets the following conditions:

(a) Pay an application fee of up to five hundred dollars ($500) pursuant to criteria established by rule, with the exception of those persons holding a license issued pursuant to chapter 4, title 22, Idaho Code;

(b) Submit a completed application form provided by the department, with required exhibits. The application shall include:

(i) The name of the applicant;

(ii) The names of the officers and directors if the applicant is a corporation or association;

(iii) The names of the partners if the applicant is a partnership or a limited liability company;

(iv) The location of the principal place of business;

(v) Information relating to any judgment against the applicants; and

(vi) Any other reasonable information the department finds necessary to carry out the provisions and purposes of this chapter.

(c) Provide a sufficient and valid bond as required by this chapter;

(d) Provide a current, sufficient policy of insurance covering losses as required by this chapter;

(e) Provide the location of its seed facilities in Idaho;

(f) Provide a written schedule of conditioning, bagging and testing charges; and

(g) Have on file a test report pursuant to sections 71-113 and 71-117, Idaho Code, from the Idaho state department of agriculture bureau of weights and measures showing approved status for any scales used for weighing received seed crops and any scales used for weighing clean weight of seed crops.

(4) All fees collected, pursuant to this chapter, for license application and renewal shall be deposited in the seed indemnity fund.

(5) All materials required for renewal of a license shall be received by the department prior to the expiration date of the current license. A license which has expired may be reinstated by the department upon receipt of all necessary licensing materials required by the provisions of this chapter and a reinstatement fee in an amount up to one thousand dollars ($1,000) pursuant to criteria established by rule, providing that this material is filed within thirty (30) days from the date of expiration of the current license.

(6) A delivery of seed crop between producers, none of whom are seed buyers, shall be exempt from the provisions of this chapter.

22-5104. BONDS -- IRREVOCABLE LETTERS OF CREDIT. Every person applying for a license shall execute and file with the department a good and sufficient bond issued by an insurer authorized to transact such insurance in this state. The bond shall be in favor of the seed indemnity fund to secure the faithful performance of the applicant's obligations under this chapter, and of such additional unpaid obligations assumed under agreements with producers of seed crops transferred to or deposited with the applicant. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department determines that a previously approved bond is insufficient, it may require an additional bond or bonds conforming with the requirements of this chapter. Unless the additional bond is given within the time fixed by a written demand therefor, the license may be suspended or revoked.

Seed buyers with common ownership or management, operated as separate entities, shall have individual bonds for each separate entity in an amount conforming to the provisions of this chapter.

At the discretion of the director, any person required to submit a bond to the department may give to the department an irrevocable letter of credit payable to the seed indemnity fund in lieu of the bond required herein. The principal amount of the letter of credit shall be the same as that required for a surety bond pursuant to this chapter. The letter of credit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the letter of credit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the seed buyer license. The provisions of this chapter that apply to a bond apply to each letter of credit given in lieu of such bond. Under the provisions of this chapter, an irrevocable letter of credit shall not be accepted unless it is issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation.

22-5105. AMOUNT OF BOND — NOTICE OF CANCELLATION. The amount of bond to be furnished for each seed buyer will be fixed at a rate of six percent (6%) of the total seed buyer indebtedness paid or owed to producers for seed crop stored for withdrawal or transferred during the previous license year or estimated current calendar year seed crop indebtedness owed to producers, whichever is greater. In any case, the

amount of the bond shall not be less than twenty-five thousand dollars ($25,000) and shall not be more than five hundred thousand dollars ($500,000). This bond shall run concurrently with the seed buyer's license. A ninety (90) day written notice, by registered or certified mail, return receipt requested, shall be given to the director by the bonding company before it may amend or cancel any bond.

22-5106. ACTION BY PERSONS INJURED. Any person injured by the breach of any financial obligation for which a bond or letter of credit is written under this chapter, must petition the director to make demand upon the seed buyer, the letter of credit, or on the bond to enforce payment of claims.

22-5107. FEES. (1) The department shall assess and collect a fee of one hundred dollars ($100) for each inspection of a licensee, which is done for the purpose of amending a seed buyer license.

(2) The department may assess and collect a fee of two hundred fifty dollars ($250) per day or fraction thereof for maintaining each employee of the department at a seed buyer's location to oversee the correction of a violation of the provisions of this chapter or department rules.

22-5108. RECEIPTS — SCALE WEIGHT TICKETS. Warehouse receipts or scale weight tickets shall be issued by the seed buyer to the producer:

(1) At the time of deposit for storage for withdrawal of the seed crop; or

(2) At the time of transfer of the seed crop.

22-5109. MAINTENANCE OF RECORDS — EXAMINATION OF RECORDS. The seed buyer shall maintain current and complete records at all times with respect to all seed crops handled, deposited, shipped or merchandised by it, including seed crops owned by it. Such records shall include, but are not limited to, records showing the total quantity of each kind and class of seed crop received and loaded out and the amount remaining on deposit at the close of each business day.

Records required by this section shall be legible and kept in a place of safety in this state for a period of five (5) years. If a person operates at more than one (1) location, records of each location's transactions must be identifiable.

The department is authorized to examine records to confirm the proper collection and remittance of seed indemnity fund assessments and payments. The records subject to examination shall include, but are not limited to, receipts, scale weight tickets, conditioning records, production summaries, and payments to producers.

22-5110. VIOLATIONS — PENALTIES — DISCRETION OF DIRECTOR TO HANDLE ADMINISTRATIVELY. (1) Any person who violates any provision of this chapter or the rules promulgated hereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the director or his duly authorized representative in the performance of his duty in connection with the provisions of this chapter shall be guilty of a misdemeanor and be punished by imprisonment in a county jail not to exceed six (6) months, or by a fine of not more than one thousand dollars ($1,000), or by both.

(2) Any person operating as a seed buyer without a license or in any way representing, by actions or words, that they are so licensed when they are not, or any person who shall misrepresent, forge, alter, counterfeit or falsely represent a license as required by the provisions of this chapter shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars ($10,000), or by both.

(3) Any person who shall issue, utter, or aid in the issuance or utterance or attempt to issue or utter a false or fraudulent receipt or scale weight ticket for any seed crop shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars ($10,000), or by both.

(4) Any person violating any provision of this chapter, or rules promulgated under this chapter, may be assessed a civil penalty by the department equal to the loss for each offense or five hundred dollars ($500) a day for continuing violations. Persons against whom civil penalties are assessed shall be liable for the department's reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Moneys collected for violations of this section or rules promulgated under this section shall be deposited in the state treasury and credited to the seed indemnity fund.

(5) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. The director shall maintain a record of any administrative action involving a seed buyer with that seed buyer's license file.

22-5111. SUSPENSION OR REVOCATION OF LICENSE. Pursuant to chapter 52, title 67, Idaho Code, the department may suspend or revoke any license issued under the provisions of this chapter, for any violation of, or failure to comply with, any provision of this chapter or chapter 7, title 28, Idaho Code, including, but not limited to, sections 28-7-101 through 28-7-603, Idaho Code. Pending investigation, the department, whenever it deems necessary, may suspend a license temporarily without a hearing.

22-5112. DUTY TO PROSECUTE. It shall be the duty of each prosecuting attorney to whom a violation is reported by the department, to cause appropriate proceedings to be instituted and prosecuted without delay in a court of competent jurisdiction.

22-5113. NOTICE OF NONCOMPLIANCE -- REQUIREMENTS — FAILURE TO COMPLY -- REMEDIES OF DEPARTMENT. (1) Whenever a seed buyer is not meeting its obligations to producers, does not have the ability to pay producers, or refuses to submit records and papers to lawful inspection, the department shall give written notice to the seed buyer and direct the seed buyer to comply with all or any of the following requirements:

(a) The department may require additional security or the posting of a bond in an amount sufficient to satisfy any financial obligation to producers. The additional security may exceed the maximum bonding requirements of this chapter. Failure to timely post the additional bond or other security constitutes grounds for suspension

or revocation of a license. The seed buyer may request a hearing regarding the decision to increase the amount of security required or the revocation or suspension of a license and may appeal such decisions pursuant to chapter 52, title 67, Idaho Code.

(b) Submit to such inspection as the department may deem necessary.

(2) If the seed buyer fails to comply with the terms of such notice within twenty-four (24) hours from the date of issuance of the notice, or within such further time as the department may allow, the department may petition the district court in the county where the seed buyer's principal place of business is located, as shown by the license application, for an order, according to section 22-106, Idaho Code.

(3) The department may give written notice of its action to the seed buyer's surety.

(4) The department may require an audited or reviewed financial statement.

(5) If at any time the department has evidence that the seed buyer is insolvent or is unable to satisfy the claims of producers, the department may petition the district court for the appointment of a receiver to operate or liquidate the business of the seed buyer.

(6) All court costs, attorney's fees, other professional fees, and necessary expenses incurred by the department in carrying out the provisions of this chapter may be recovered in any civil action brought by the department.

22-5114. INSURANCE — CANCELLATION PROCEDURE — SUSPENSION OF LICENSE — SELF-INSURANCE. (1) Every seed buyer who has a seed facility where seed crops are stored for withdrawal or transferred, shall maintain a "commercial property policy" of insurance, or its equivalent, issued by a company qualified to do business in the state in which the facility is located. The amount of insurance shall be sufficient to cover the property loss of the insured and such additional amounts that are: (a) greater than or equal to the total seed buyer indebtedness and the value of seed crop stored for withdrawal during the previous license year, or (b) estimated current calendar year seed crop indebtedness to producers and the value of seed crop to be stored for withdrawal. The department rules shall enumerate the perils to be covered by the policy.

(2) The insurance company issuing the policy of insurance shall give ninety (90) days' advance notice to the department by registered or certified mail, return receipt requested, of cancellation of the policy.

(3) When the insurance policy of a seed buyer is canceled, the department shall immediately suspend the license of the seed buyer, and the suspension shall be in effect until satisfactory evidence exists that an effective policy of insurance complying with the requirements of this chapter has been submitted to the department.

(4) Seed buyers desiring to be self-insured shall apply to the department for authorization to self-insure. Application shall be made on forms prescribed by the department.

22-5115. LICENSE REISSUANCE FOLLOWING REVOCATION. A seed buyer license shall not be issued to any person whose license has been revoked within a period of three (3) years from the date of such revocation. Upon application for a license following revocation, the department shall hold a hearing within thirty (30) days from receipt of the application to determine if such license shall be issued. A change in a

person's business name shall not absolve that person of a prior revocation of his seed buyer license.

22-5116. DEPARTMENT'S AUTHORITY. The department may, whenever it has reason to believe the provisions of this chapter have been violated or upon verified complaint of any person in writing, investigate the actions of any seed buyer, and if it finds cause to do so, file before the director, a complaint pursuant to chapter 52, title 67, Idaho Code, against the seed buyer requesting relief as authorized by this chapter. Notwithstanding any administrative processes, the director may apply to the appropriate court to enjoin the operations of the seed buyer.

22-5117. LICENSE DENIAL. Any seed buyer against whose bond a claim has been ordered collected or has actually been collected shall not be licensed by the department for a period of three (3) years from the date of such order or collection. License denial may be waived if the person can show, to the satisfaction of the director, that full settlement of all claims against the bond have been made. Full settlement does not include seed indemnity fund settlements. A change in a person's business name shall not absolve any unsettled claim against that person's prior bond.

22-5118. PAYMENT WITH INSUFFICIENT FUNDS A VIOLATION. Any seed buyer that violates the provisions of section 18-3106, Idaho Code, in making payment to the producer for any seed crop without sufficient funds in, or credit with, such bank or other depository, also violates the provisions of this chapter. The word "credit" as used herein shall mean an arrangement or understanding with the bank or depository for such payment.

22-5119. CONFIDENTIAL AND PROTECTED RECORDS. Records required by the department to validate the collection and remittance of assessments, including, but not limited to, production summaries, receiving records, conditioning reports, records relating to the payment of seed crops and seed indemnity fund reporting forms of a seed buyer, and financial records that may be required pursuant to section 22-5113(4), Idaho Code, shall be held confidential and will be protected as production records according to chapter 3, title 9, Idaho Code. These records shall not be subject to disclosure unless specifically authorized in writing by the licensee or as otherwise authorized pursuant to the provisions of chapter 3, title 9, Idaho Code.

22-5120. SEED INDEMNITY FUND. (1) There is hereby established, within the dedicated account, a fund to be known as the seed indemnity fund. The seed indemnity fund shall consist of assessments remitted pursuant to the provisions of this chapter and any interest or earnings on the fund balance.

(2) All assessments shall be paid to the department and shall be deposited in the seed indemnity fund. Assessments shall be paid solely by or on behalf of producers who transfer or deposit for storage a seed crop with a seed buyer. The state treasurer shall be the custodian of the seed indemnity fund. Disbursements shall be authorized by the director. No appropriation is required for disbursements from this fund.

(3) The seed indemnity fund shall be used exclusively for paying

valid claims as authorized by this chapter and the necessary fees and expenses of the department in carrying out its responsibilities under this chapter. If necessary a portion of the fund may be used to defray the cost of reinsuring the fund at the discretion of the director. The state of Idaho shall not be liable for any claims presented against the fund.

22-5121. ASSESSMENTS. Every producer shall pay an assessment for deposit in the seed indemnity fund according to the provisions of this chapter and rules promulgated by the department. A delivery of seed crop between producers, none of whom are seed buyers, is exempt from the collection and payment of assessments. Assessments shall be collected on the gross dollar amount, without any deduction, owed to, or paid, or to be paid, on behalf of the producer of the seed crop.

(1) The initial rate of the assessment shall be five-tenths of one percent (.5%). Changes in the rate will be established by criteria in the rules of the department. However, the producer's annual assessment shall not exceed five-tenths of one percent (.5%).

(2) If seed crop is stored for withdrawal, the assessment shall not exceed one-half cent (1/2¢) per pound, based on clean weight or, if not available, estimated clean weight, per twelve (12) month period, payable at time of withdrawal.

22-5122. COLLECTION AND REMITTANCE OF ASSESSMENTS — PRINCIPAL AMOUNT HELD IN TRUST -- INTEREST EARNED -- FAILURE TO COLLECT OR REMIT ASSESSMENTS CONSTITUTES A VIOLATION -- INTEREST AND PENALTIES FOR UNPAID ASSESSMENTS. (1) The department shall promulgate rules to provide a procedure for the collection and remittance of the producer's assessments. Seed buyers who owe producers for the transfer of seed crop or have stored for withdrawal seed crop shall be responsible for the collection of the producer's assessments and the remittance of the assessments collected to the department.

(2) Seed buyers shall remit to the department assessments collected according to the provisions of this chapter. Payments will be made no later than the twentieth day of the month following the close of the calendar quarter on a form prescribed by the department. There are four (4) calendar quarters in the year, beginning on the first day of the months of January, April, July and October. Assessment reports shall be submitted even though assessments for the period have not been collected. Failure to do so will result in a penalty of one hundred dollars ($100).

(3) The principal amount of assessments paid by, or deducted from, payments to producers by seed buyers, is held in trust for the seed indemnity fund immediately upon collection by seed buyers and is not property of the seed buyer.

(4) Interest earned on assessments prior to remittance to the department belongs to the seed buyer.

(5) If a seed buyer fails to collect or remit assessments as required it shall be considered a violation of the provisions of this chapter and shall subject the seed buyer to suspension or revocation of any license issued to the seed buyer under the provisions of this chapter.

(6) The department shall collect, on assessments unpaid within the time limits specified in this chapter, interest at the rate of ten per-

cent (10%) per annum until the assessments are remitted together with a penalty of five percent (5%) each month on the unpaid assessment due until the maximum penalty of twenty-five percent (25%) is reached.

22-5123. FUNDING AND LIMITS OF FUND. The maximum amount of the seed indemnity fund shall be maintained between ten million dollars ($10,000,000) and twelve million dollars ($12,000,000).

22-5124. ADVISORY COMMITTEE. (1) There is hereby created a seed indemnity fund advisory committee appointed by the director consisting of nine (9) members representing the diversity of the industry. Appointments shall be for up to three (3) year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of seven (7) producers engaged in producing seed crops and two (2) seed buyers or seed buyer representatives.

(3) The terms of the appointees will be staggered and the initial appointments shall be three (3) producers and one (1) seed buyer for one (1) year terms, two (2) producers for two (2) year terms, and two (2) producers and one (1) seed buyer for three (3) year terms.

(4) The committee shall meet annually at such place and time as it determines and may meet as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with section 59-509(i), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the seed indemnity fund.

(5) The committee shall have the power and duty to advise the director concerning assessments, administration of the seed indemnity fund, and payment of claims from the fund. Every two (2) years the committee will review the maximum limits of the fund and give advice to the director.

22-5125. PROOF OF CLAIMS — PROCEDURE — HEARING. After the director has declared a failure, the department shall process the claims of producers having paid or owing assessments who: (a) produce written evidence of transfer together with the amounts of their unpaid claims, and (b) have "stored for withdrawal" and provide written evidence of deposit.

(1) The department shall give written notice to and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days for producers to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and shall notify in writing each claimant, the seed buyer and the advisory committee of the department's determination as to the validity and amount of each claim. A claimant or seed buyer may request a hearing on the department's determination within twenty (20) days of receipt of written notification of the determination pursuant to chapter 52, title 67, Idaho Code. Upon determining the amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim from the seed indemnity fund. Prior to any payment from the fund

to a claimant, the claimant shall be required to subrogate and assign to the department his right to any recovery from any other source. The claimant shall be entitled to seek recovery of the remaining ten percent (10%), which was not assigned to the department. The procedure to determine the value of any claim will be established by rules.

(3) In the event of a shortage or inability to meet financial obligations, the department shall determine each producer's pro rata share of available seed crops and any deficiency shall be the claims of the producers. Each type of seed crop shall be treated separately for the purpose of determining shortages.

(4) The director shall not approve or pay any claim based on losses resulting from transactions with persons unlicensed pursuant to this chapter. The director shall not approve or pay any claim made on the seed indemnity fund if the claim is for the payment of interest, attorney's fees, ancillary costs, or punitive damages.

(5) If a producer's claim reveals that the assessment has not been paid or collected, and the claim is otherwise valid, the amount of the assessment shall be deducted from the claim payment.

22-5126. FAILURE TO FILE — LOSS OF CLAIM ON FUND. No claim shall be paid from the fund to a producer who refuses or neglects to file a verified claim against a seed buyer:

(1) Within ninety (90) days from the date prescribed in the "notice of failure," or within the time limits of section 22-5125(1), Idaho Code, whichever is later; or

(2) If the claim is filed more than two (2) years from the date of transfer.

22-5127. MINIMUM BALANCE FOR CLAIMS -- TERMINATION OF LIABILITY. No claims of producers shall be paid when the balance in the seed indemnity fund is reduced to two hundred fifty thousand dollars ($250,000). If the director cannot fully pay producers' claims without exceeding the minimum balance, he shall pay claims pro rata until the seed indemnity fund contains sufficient funds to pay claims in full. In no case shall the fund be liable for those claims not fully paid within three (3) years of submission of the claim.

22-5128. PAYMENT FROM FUND -- DEBT OF SEED BUYER OR SURETY -- REIMBURSEMENT — ACCRUAL OF CAUSE OF ACTION. Amounts paid from the seed indemnity fund in satisfaction of any approved claims shall constitute a debt and obligation of the seed buyer against whom the claim was made and its surety. The director may bring suit on behalf of the seed indemnity fund and in the name of any claimant paid from the fund in district court of Ada county to recover from the seed buyer and its surety the amount of the payment made from the seed indemnity fund, together with costs and attorney's fees incurred in maintaining the suit. In the event the department initiates an action against a seed buyer or surety, the department's claim is deemed to accrue and relate back to the time that each producer who received a seed indemnity fund payment incurred a loss with the seed buyer. Any recovery for reimbursement of the fund shall bear interest at the statutory rate from the date of failure.

22-5129. RULES. The department may, from time to time, make such rules as it deems necessary for the efficient execution of the provisions of this chapter.

Approved March 25, 2002.

CHAPTER 257
(H.B. No. 564, As Amended)

AN ACT

RELATING TO ANHYDROUS AMMONIA; AMENDING SECTION 18-2407, IDAHO CODE, TO PROVIDE FOR THEFT OF ANHYDROUS AMMONIA; AMENDING SECTION 18-2408, IDAHO CODE, TO PROVIDE FOR PUNISHMENT FOR THEFT OF ANHYDROUS AMMONIA; AND AMENDING CHAPTER 27, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-2734C, IDAHO CODE, TO CLASSIFY CERTAIN ACTIVITIES RELATING TO ANHYDROUS AMMONIA AND ANHYDROUS AMMONIA EQUIPMENT AS FELONIES, TO PROVIDE AN EXCEPTION AND TO PROVIDE FOR DAMAGES.

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

SECTION 1. That Section 18-2407, Idaho Code, be, and the same is hereby amended to read as follows:

18-2407. GRADING OF THEFT. Theft is divided into two (2) degrees, grand theft and petit theft.

(1) Grand theft.

(a) A person is guilty of grand theft when he commits a theft as defined in this chapter and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

1. Cause physical injury to some person in the future; or
2. Cause damage to property; or
3. Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(b) A person is guilty of grand theft when he commits a theft as defined in this chapter and when:

1. The value of the property taken exceeds one thousand dollars ($1,000); or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of a credit card; or
4. The property, regardless of its nature or value, is taken from the person of another; or
5. The property, regardless of its nature and value, is obtained by extortion; or
6. The property consists of one (1) or more firearms, rifles or shotguns; or
7. The property taken or deliberately killed is livestock or any other animal exceeding one hundred fifty dollars ($150) in value.

8. When any series of thefts, comprised of individual thefts having a value of one thousand dollars ($1,000) or less, are part of a common scheme or plan, the thefts may be aggregated in one (1) count and the sum of the value of all of the thefts shall be the value considered in determining whether the value exceeds one thousand dollars ($1,000); or

9. The property has an aggregate value over fifty dollars ($50.00) and is stolen during three (3) or more incidents of theft during a criminal episode. For purposes of this subparagraph a "criminal episode" shall mean a series of unlawful acts committed over a period of up to three (3) days; or

10. The property is anhydrous ammonia.

(2) Petit theft. A person is guilty of petit theft when he commits a theft as defined in this chapter and his actions do not constitute grand theft.

SECTION 2. That Section 18-2408, Idaho Code, be, and the same is hereby amended to read as follows:

18-2408. PUNISHMENT FOR THEFT. (1) Grand theft committed in a manner prescribed in subsection (1)(a) of section 18-2407, Idaho Code, is a felony punishable by fine not exceeding ten thousand dollars ($10,000) or imprisonment in the state prison for not less than one (1) year nor more than twenty (20) years, or by both such fine and imprisonment.

(2) (a) Grand theft committed in a manner prescribed in subsection (1)(b)1., 2., 3., 4., 5., 6., 8., ~~or~~ 9. or 10. of section 18-2407, Idaho Code, is a felony punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment.

(b) Grand theft committed in a manner prescribed in subsection (1)(b)7. of section 18-2407, Idaho Code, is a felony punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), and the minimum fine shall not be suspended or withheld, or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment. In addition, the court shall assess civil damages as provided in section 25-1910, Idaho Code.

(3) Petit theft is a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one (1) year or by both.

SECTION 3. That Chapter 27, Title 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 37-2734C, Idaho Code, and to read as follows:

37-2734C. PROHIBITED ACTS F -- PENALTIES. (1) A person is guilty of the crime of unlawful storage of anhydrous ammonia in a container that:

(a) Is not approved by the United States department of transportation to hold anhydrous ammonia; or

(b) Was not constructed to meet state and federal industrial health and safety standards for holding anhydrous ammonia.

(2) Violation of this section is a felony.

(3) This section does not apply to public employees or private con-

tractors authorized to clean up and dispose of hazardous waste or toxic substances pursuant to the provisions of chapter 22, title 49, Idaho Code.

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia equipment shall be the sole responsibility of the person or persons unlawfully possessing, storing or tampering with the anhydrous ammonia. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor or seller of the anhydrous ammonia or anhydrous ammonia equipment, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor or seller that constitute negligent misconduct to abide by the laws regarding anhydrous ammonia possession and storage.

Approved March 25, 2002.

CHAPTER 258
(H.B. No. 644)

AN ACT

RELATING TO COMMODITY DEALER LAW; AMENDING SECTION 69-502, IDAHO CODE, TO REVISE DEFINITIONS AND TO PROVIDE DEFINITIONS; AMENDING SECTION 69-504, IDAHO CODE, TO STRIKE REFERENCE TO PENALTY FEES, TO PROVIDE FOR REINSTATEMENT FEES, TO STRIKE REFERENCE TO A PENALTY PERIOD, TO PROVIDE FOR A REINSTATEMENT PERIOD, TO PROVIDE FOR REMITTANCE OF THE REINSTATEMENT FEE TO THE DEPARTMENT, TO PROVIDE FOR DENIAL OF COMMODITY DEALER'S LICENSES TO CERTAIN LIMITED LIABILITY COMPANIES OR ASSOCIATIONS, TO STRIKE REFERENCE TO REGULATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 69-506, IDAHO CODE, TO STRIKE REFERENCE TO ANNUITIES IN LIEU OF BOND, TO STRIKE REFERENCE TO BONDS BEING MADE PAYABLE TO THE STATE OF IDAHO, TO PROVIDE THAT BONDS SHALL BE MADE PAYABLE TO THE COMMODITY INDEMNITY FUND, TO REVISE PROVISIONS RELATING TO BONDS OF APPLICANTS FOR LICENSURE, TO STRIKE REFERENCE TO THE REQUIREMENT TO MAKE CERTIFICATES OF DEPOSIT PAYABLE TO THE DIRECTOR AS TRUSTEE, TO PROVIDE THAT CERTIFICATES OF DEPOSIT SHALL BE MADE PAYABLE TO THE COMMODITY INDEMNITY FUND, TO REVISE PROVISIONS RELATING TO CERTIFICATES OF DEPOSIT IN LIEU OF BOND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 69-508, IDAHO CODE, TO REVISE LICENSE FEE PROVISIONS, TO CLARIFY THAT MONEYS ARE TO BE DEPOSITED IN THE COMMODITY INDEMNITY FUND AND USED FOR CERTAIN PURPOSES AS SET FORTH IN A DESIGNATED CODE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 69-510, IDAHO CODE, TO REQUIRE CERTAIN AGREEMENTS BE IN WRITING; AMENDING SECTION 69-511, IDAHO CODE, TO REVISE CRITERIA AND PROCEDURES FOR THE DEPARTMENT'S INSPECTION OF A COMMODITY DEALER'S BOOKS AND RECORDS; AMENDING SECTION 69-515, IDAHO CODE, TO CLARIFY RECORD DISCLOSURE PROVISIONS; AMENDING SECTION 69-516, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS; AMENDING SECTION 69-517, IDAHO CODE, TO STRIKE REFERENCE TO TELEGRAMS, TO PROVIDE FOR CERTAIN NOTICE BY FACSIMILE, TO PROVIDE FOR OTHER ADMINISTRATIVE ACTION, TO PROVIDE FOR CERTAIN RECORDS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-521, IDAHO CODE,

TO PROVIDE THAT LICENSED PUBLIC ACCOUNTANTS MAY PREPARE REQUIRED REVIEWED FINANCIAL STATEMENTS; AMENDING SECTION 69-522, IDAHO CODE, TO PROVIDE FOR ACTION ON A BOND BY CERTAIN PRODUCERS, TO REVISE PROVISIONS RELATED TO ACTIONS ON A BOND IN THE EVENT OF A BREACH OF AN OBLIGATION AND TO PROVIDE FOR THE RECOVERY OF ATTORNEY'S FEES BY THE DIRECTOR; AMENDING SECTION 69-524, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS; AND AMENDING SECTION 69-525, IDAHO CODE, TO CLARIFY PROVISIONS RELATING TO DUTIES OF PROSECUTION.

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

SECTION 1. That Section 69-502, Idaho Code, be, and the same is hereby amended to read as follows:

69-502. DEFINITIONS. As used in this chapter, except as otherwise specified:

(1) "Agricultural commodity" means any grain, ~~dry peas~~ wheat, barley, oats, corn, rye, oilseeds, dry edible beans, peas, lentils and other leguminous ~~or other small~~ seeds and feeds (not including minerals or seed crops) or any other commodity as determined by the director.

(2) "Commodity dealer" or "dealer" means any person who solicits, contracts for, ~~or negotiates the consignment or purchase,~~ or obtains from an Idaho producer or producers, title, possession, or control of any agricultural commodity through his place of business located in the state of Idaho or through his place of business located outside the state of Idaho for the purpose of sale or resale or who buys, during any calendar year, at least ten thousand dollars ($10,000) worth of agricultural commodities from an Idaho producer or producers of the commodities. Commodity dealer or dealer shall not mean any person who purchases agricultural commodities for his own use as seed or feed within his own operation.

(3) "Credit-sale contract" means a contract for the sale of an agricultural commodity pursuant to which the sale price is to be paid at a date subsequent to the delivery of the agricultural commodity to the buyer and includes, but is not limited to, those contracts commonly referred to as deferred payment contracts, deferred pricing contracts and price-later contracts.

(4) "Department" means the department of agriculture of the state of Idaho.

(5) "Director" means the director of the department of agriculture.

(6) "Person" means any individual, firm, association, partnership, ~~or~~ corporation, or limited liability company.

(7) "Producer" means the owner, tenant or operator of land in this state who has an interest in ~~and receives all or part of~~ the proceeds from the sale of agricultural commodities produced on that land. Producer does not include growers who sell their commodity to a facility in which they have a financial or management interest except members of a cooperative marketing association qualified under chapter 26, title 22, Idaho Code.

(8) "Public warehouse" or "warehouse" or "warehouseman" means any elevator, mill, warehouse, subterminal commodity warehouse, public warehouse or other structure or facility in which agricultural commodities are received for storage, shipment, processing, reconditioning or handling.

(9) ~~"Suspension" means the temporary removal of a commodity dealer license by the department pending a hearing for violations of the provisions of this chapter. Correction of the violations prior to a hearing may result in the reinstatement of a license without a hearing.~~

~~(10)~~ "Revocation" means the permanent removal of a commodity dealer license following a hearing on violations of the provisions of this chapter by the hearing officer or director.

(10) "Suspension" means the temporary removal of a commodity dealer license by the department pending a hearing for violations of the provisions of this chapter. Correction of the violations prior to a hearing may result in the reinstatement of a license without a hearing.

(11) "Termination" means the expiration of a commodity dealer license due to failure to meet minimum licensing requirements, failure to renew a commodity dealer license or as requested by the licensee, ~~according to the terms of section 69-504(4), Idaho Code~~ unless a complaint has been filed against the licensee alleging a violation of any provision of this chapter.

SECTION 2. That Section 69-504, Idaho Code, be, and the same is hereby amended to read as follows:

69-504. LICENSE ISSUANCE -- RENEWAL -- EXPIRATION. (1) The department shall issue a license when the applicant has filed the application and complied with the terms and conditions of the provisions of this chapter and the rules ~~and regulations~~ of the department. The license shall expire on December 31 of each year.

(2) A commodity dealer's license may be renewed annually by submitting all necessary licensing materials required by the provisions of this chapter. This material shall be received by the department before December 31 of each year.

(3) A commodity dealer's license which has expired may be reinstated by the department upon receipt of all necessary licensing materials required by the provisions of this chapter and a ~~penalty~~ reinstatement fee in the amount of ~~fifty~~ five hundred dollars ($500~~.00~~); providing, that this material is filed within thirty (30) days from the date of expiration of the commodity dealer's license. At the end of the thirty (30) day ~~penalty~~ reinstatement period, a commodity dealer's license shall terminate. All license applications received after the thirty (30) day ~~penalty~~ reinstatement period shall be considered original applications and, after the five hundred dollar ($500) reinstatement fee has been remitted to the department, license fees shall be assessed according to section 69-508(1), Idaho Code.

(4) A license may terminate upon request of the licensee unless a complaint has been filed against the licensee alleging a violation of any provision of this chapter. A commodity dealer's license is not transferable between legal entities.

(5) If an applicant has had a license revoked under the provisions of chapters 2 or 5, title 69, Idaho Code, or the United States warehouse act within the past three (3) years or been convicted of a violation of the provisions of chapters 2 or 5, title 69, Idaho Code, or the United States warehouse act within the past three (3) years, the department may deny a commodity dealer's license to the applicant.

(6) Any partnership with a partner or any corporation, limited liability company or any association which has an officer, director or

majority stockholder owning at least ten ~~per-cent~~ percent (10%) of issued stock who has had a license revoked under the provisions of chapters 2 or 5, title 69, Idaho Code, or the United States warehouse act within the previous three (3) years or has been convicted of a felony involving violations of the provisions of chapters 2 or 5, title 69, Idaho Code, or the United States warehouse act, may be denied a commodity dealer's license by the department.

SECTION 3. That Section 69-506, Idaho Code, be, and the same is hereby amended to read as follows:

69-506. BONDING REQUIREMENTS -- CANCELLATION -- CERTIFICATE OF DEPOSIT ~~OR ANNUITY~~ IN LIEU OF BOND. Except as provided in chapter 2, title 69, Idaho Code, an applicant for a license to operate as a commodity dealer shall, before a license will be issued, file with the department a bond ~~payable to the state of Idaho~~ in favor of the commodity indemnity fund with a corporate surety approved by the department with the condition that the applicant will pay the purchase price of any agricultural commodity to the seller. The aggregate annual liability of the surety shall in no event exceed the sum of the bond.

The bond for each class 1 license shall be in the sum of twenty-five thousand dollars ($25,000). The bond for each class 2 license shall be in the sum of fifteen thousand dollars ($15,000). A surety shall notify the commodity dealer and the department by certified mail at least ~~sixty~~ ninety (~~60~~90) days prior to the cancellation of a bond issued under the provisions of this chapter. The liability of the surety shall cover purchases made by the commodity dealer during the time the bond is in force. A commodity dealer's bond filed with this department shall be continuous until ~~cancelled~~ canceled by the surety upon ~~sixty~~ ninety (~~60~~90) days' notice. The director reserves the right to waive the ~~sixty~~ ninety (~~60~~90) day cancellation period.

Any person required to submit a bond to the department in accordance with this chapter, may at his option give to the department a certificate of deposit ~~or annuity~~ payable to the ~~director as trustee~~ commodity indemnity fund in lieu of the bond required herein. The principal amount of the certificate ~~or annuity~~ shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit ~~or annuity~~ shall be payable to the purchaser of the certificate. ~~or annuity.~~ The certificate ~~or annuity~~ shall remain on file with the department until it is released, ~~cancelled~~ canceled or discharged by the director. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each certificate of deposit ~~or annuity~~ given in lieu of such bond. ~~Under the provisions of this chapter, an annuity shall not be accepted by~~ The certificate of deposit shall remain on file with the department ~~unless it is issued by an insurance company, bank or other financial institution found acceptable by~~ until it is released, canceled, or discharged by the director, ~~and shall have a cash value equal to the bond requirement less any penalty for early withdrawal~~ or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the certificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the commodity dealer's license.

SECTION 4. That Section 69-508, Idaho Code, be, and the same is hereby amended to read as follows:

69-508. LICENSE FEES. (1) The department shall assess and collect an annual fee for each commodity dealer's license on an original application according to the following schedule:

(a) For a class 1 license the fee shall be ~~two~~ three hundred sixty dollars (~~$20~~360).

(b) For a class 2 license the fee shall be one hundred eighty dollars (~~$10~~80).

(2) The department shall assess and collect an annual fee for the renewal of each commodity dealer's license according to the following schedule:

(a) For a class 1 license the renewal fee shall be ~~forty~~ sixty-five dollars (~~$40~~65.00).

(b) For a class 2 license the renewal fee shall be ~~twenty~~ thirty-five dollars (~~$20~~35.00).

(3) All license fees, assessments and moneys collected by the director under the provisions of this chapter shall be ~~placed in a separate fund in the state treasury to be used by the director for the purpose of inspection, administration and enforcement of the provisions of this chapter~~ deposited into the commodity indemnity fund to be used for the purposes set forth in section 69-256, Idaho Code.

SECTION 5. That Section 69-510, Idaho Code, be, and the same is hereby amended to read as follows:

69-510. PAYMENT OF PURCHASE PRICE. A person required to be licensed as a commodity dealer under the provisions of this chapter shall pay the purchase price to the owner or his agent for agricultural commodities upon delivery or demand by the owner or agent, but not later than thirty (30) days after delivery by the owner or agent, unless otherwise agreed to by the parties in writing. As used in this section, "delivery" means the transfer of title to and possession of agricultural commodities by the owner or agent to the commodity dealer or to another person in accordance with the agreement of the owner or agent and the commodity dealer. As used in this section, "payment" means the actual payment or tender of payment by the commodity dealer to the owner or agent of the agreed purchase price.

SECTION 6. That Section 69-511, Idaho Code, be, and the same is hereby amended to read as follows:

69-511. INSPECTION OF PREMISES, BOOKS AND RECORDS. The department may inspect the premises used by any commodity dealer in the conduct of his business at any reasonable time. The department is authorized through officials, employees, or agents of the department designated by it, to examine all books, accounts, records and papers ~~of every such~~ pertaining to any commodity ~~dealer which pertain to agricultural~~ or seed crop purchased, contracted for, or in the possession of, any commodity ~~purchases shall have bills of lading or other documents covering the agricultural commodities in his possession, and shall present them to any law enforcement officer or to a person designated as a law enforcement officer~~ dealer licensed under the provisions of this chapter. A

commodity dealer licensed in this state who does not have a place of business within the state shall, upon the request of the director, make available and furnish to the department at any reasonable time and place the department may set, all books, accounts, records and papers relating to agricultural commodity transactions within the state of Idaho. Where there is good cause to believe that a person is doing business as a commodity dealer in the state of Idaho without a license, the department may inspect the books, papers and records of the person which pertain to agricultural commodity purchases.

SECTION 7. That Section 69-515, Idaho Code, be, and the same is hereby amended to read as follows:

69-515. RECORDS. All financial statements of commodity dealers required under the provisions of this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code.~~,--except-as-follows:~~ Provided however, that a commodity dealer may provide written permission for disclosure of any of the commodity dealer's financial statements.

~~(a)--Upon-written-permission-by-the-licensee;~~
~~(b)--In-actions-or-administrative-proceedings--commenced--under--the provisions-of-this-chapter-or-chapter-2,-title-69,-Idaho-Code;~~
~~(c)--When-required-by-subpoena-or-court-order;-or~~
~~(d)--Disclosure--to--law-enforcement-agencies-in-connection-with-the investigation-or-prosecution-of-criminal-offenses.~~

SECTION 8. That Section 69-516, Idaho Code, be, and the same is hereby amended to read as follows:

69-516. STANDARDIZATION OF RECORDS AND DOCUMENTS. The department may adopt rules ~~and-regulations~~ specifying the form and content of scale tickets and credit-sale contracts.

SECTION 9. That Section 69-517, Idaho Code, be, and the same is hereby amended to read as follows:

69-517. DIRECTOR'S AUTHORITY. The director may, upon his own motion, whenever he has reason to believe the provisions of this chapter have been violated, or upon verified complaint of any person in writing, investigate the actions of any commodity dealer licensed under the provisions of this chapter, and if he finds probable cause to do so, shall file a complaint against said commodity dealer which shall be set down for hearing before the director upon thirty (30) days' notice served upon such license holder either by personal service, registered mail or ~~telegram~~ facsimile prior to such hearing.

The director shall have the power to administer oaths, certify to all official acts and shall have the power to subpoena any person in this state as a witness, to compel through subpoena the production of books, papers and records, and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so.

All powers of the director herein enumerated in respect to administering oaths, power of subpoena, and other enumerated powers in hearings

on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of a commodity dealer's license.

Nothing in this chapter shall be construed to require the director or his authorized representative to report for prosecution or to institute civil, criminal or administrative action against a commodity dealer for a violation of the provisions of this chapter when he believes that public interest will best be served by a suitable warning or other administrative action. The director shall maintain a record of any administrative action involving a commodity dealer with that commodity dealer's license file.

SECTION 10. That Section 69-521, Idaho Code, be, and the same is hereby amended to read as follows:

69-521. FINANCIAL STATEMENTS. In order to obtain a commodity dealer's license, the applicant shall submit an audited or reviewed financial statement prepared by an independent certified public accountant or licensed public accountant, a statement of current assets and current liabilities and a statement of net worth, all of which shall be prepared in accordance with generally accepted accounting principles. This statement must have been prepared not more than ninety (90) days prior to the date of application and shall conform to the applicable requirements of this chapter as to annual financial statements.

Once licensed, every licensee shall annually prepare a financial statement either at the close of business, December 31, or at the end of their fiscal year and file the statement with the department not later than ninety (90) days thereafter. These statements shall be prepared in conformity with generally accepted accounting principles and shall include, but not be limited to, a reviewed financial statement prepared by an independent certified public accountant or licensed public accountant, a statement of current assets and current liabilities, and a statement of net worth.

SECTION 11. That Section 69-522, Idaho Code, be, and the same is hereby amended to read as follows:

69-522. ACTION ON BOND BY ~~PERSONS~~ PRODUCERS INJURED. Any producer injured by the breach of any obligation for which a bond is written, under the provisions of section 69-506, Idaho Code, ~~shall be entitled to sue--on the bond in his own name in a court of competent jurisdiction to recover the damages he may have sustained by such breach;--or--may~~ must petition the director to ~~fix the amount of his damages~~ make demand upon the commodity dealer, certificate of deposit or bond. The director may thereupon make demand upon the commodity dealer and his surety for payment of such damages and in the event such damages are not promptly paid the director may commence an action on the bond to enforce payment of such damages. The liability of the surety upon the bond required to be given by a commodity dealer as provided by section 69-506, Idaho Code, for any one (1) annual licensing period shall be limited to the amount specified in the bond, and in case of recoveries had by two (2) or more persons for violation of the conditions of such bond in excess of the amount of the bond, such recovery shall be prorated and the total recovery as against the surety for any one (1) annual licensing period shall not exceed the amount of the bond. ~~Any person who~~ In the event the

director sues and obtains a judgment against the commodity dealer or his surety for payment of such damages under this section, he shall be entitled to recover a reasonable attorney's fee.

SECTION 12. That Section 69-524, Idaho Code, be, and the same is hereby amended to read as follows:

69-524. RULES. ~~AND REGULATIONS.~~ The department of agriculture shall make such rules ~~and regulations~~ as it may deem necessary for the efficient execution of the provisions of this chapter.

SECTION 13. That Section 69-525, Idaho Code, be, and the same is hereby amended to read as follows:

69-525. DUTY TO PROSECUTE. It shall be the duty of each prosecuting attorney to whom any violation is reported by the department to cause appropriate proceedings to be instituted and prosecuted without delay in a court of competent jurisdiction.

Approved March 25, 2002.

CHAPTER 259
(H.B. No. 645)

AN ACT

RELATING TO THE BONDED WAREHOUSE LAW; AMENDING SECTION 69-202, IDAHO CODE, TO REVISE DEFINITIONS AND TO PROVIDE DEFINITIONS; AMENDING SECTION 69-204, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-205, IDAHO CODE, TO STRIKE UNNECESSARY LANGUAGE, TO PROVIDE CORRECT TERMINOLOGY, TO AUTHORIZE ANNUAL INSPECTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-206, IDAHO CODE, TO STRIKE UNNECESSARY LANGUAGE, TO STRIKE REFERENCE TO REGULATIONS, TO REVISE CONDITIONS FOR ISSUANCE OR RENEWAL OF WAREHOUSEMAN LICENSES, TO STRIKE REFERENCE TO PENALTY FEES, TO PROVIDE FOR REINSTATEMENT FEES, TO STRIKE REFERENCE TO A PENALTY PERIOD, TO PROVIDE FOR A REINSTATEMENT PERIOD AND TO PROVIDE THAT CERTAIN APPLICATIONS FOR LICENSE MUST PAY A REINSTATEMENT FEE AND BE ASSESSED AN ORIGINAL LICENSE FEE; AMENDING SECTION 69-207, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS AND TO STRIKE UNNECESSARY LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 69-208, IDAHO CODE, TO STRIKE REFERENCE TO ANNUITIES IN LIEU OF BOND, TO REVISE PROVISIONS RELATING TO BONDS OF APPLICANTS FOR LICENSURE, TO PROVIDE CORRECT TERMINOLOGY, TO REQUIRE THE DEPARTMENT TO PROCURE AN ADDITIONAL BOND FROM A WAREHOUSEMAN IN THE EVENT AN APPROVED BOND IS INSUFFICIENT, TO REQUIRE SUSPENSION OR REVOCATION OF THE WAREHOUSEMAN LICENSE IF AN ADDITIONAL BOND IS NOT GIVEN AND TO REVISE PROVISIONS RELATING TO CERTIFICATES OF DEPOSIT AND IRREVOCABLE LETTERS OF CREDIT IN LIEU OF BOND; AMENDING SECTION 69-208A, IDAHO CODE, TO PROVIDE FOR BOND RATES WHERE A VARIETY OF COMMODITIES ARE STORED, TO PROVIDE FOR SEPARATE ADDITIONAL BOND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 69-209, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE PROVISIONS RELATED TO ACTIONS ON

A BOND IN THE EVENT OF A BREACH OF AN OBLIGATION AND TO PROVIDE FOR RECOVERY OF ATTORNEY'S FEES BY THE DIRECTOR; AMENDING SECTION 69-210, IDAHO CODE, TO STRIKE UNNECESSARY LANGUAGE; AMENDING SECTION 69-211, IDAHO CODE, TO REVISE PROVISIONS RELATING TO FEES OF THE DEPARTMENT, TO PROVIDE THAT FEES SHALL BE DEPOSITED TO THE COMMODITY INDEMNITY FUND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 69-212, IDAHO CODE, TO PROVIDE THAT CERTAIN CHARGES AND DISCOUNTS WILL BE POSTED BY WAREHOUSEMEN AND TO STRIKE UNNECESSARY LANGUAGE; AMENDING SECTION 69-213, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 69-214, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO STRIKE UNNECESSARY LANGUAGE AND TO PROVIDE FOR THE EMPLOYMENT OF INVESTIGATORS BY THE DEPARTMENT; AMENDING SECTION 69-219, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE FOR DELIVERY OF COMMODITIES TO A WAREHOUSE FOR STORAGE OR UNDER TERMS OF A CONTRACT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-220, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO STRIKE UNNECESSARY LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-222, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 69-223, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS AND TO STRIKE UNNECESSARY LANGUAGE; AMENDING SECTION 69-224, IDAHO CODE, TO STRIKE UNNECESSARY LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-226, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS AND TO CLARIFY THAT REFERENCED RULES ARE THOSE PROMULGATED PURSUANT TO THE PROVISIONS OF THE CHAPTER; AMENDING SECTION 69-227, IDAHO CODE, TO PROVIDE FOR EXAMINATION OF SEED CROPS AND RECORDS PERTAINING TO SEED CROPS AND TO CLARIFY THAT REFERENCED RULES ARE THOSE PROMULGATED PURSUANT TO THE PROVISIONS OF THE CHAPTER; AMENDING SECTION 69-228, IDAHO CODE, TO STRIKE UNNECESSARY LANGUAGE, TO STRIKE REFERENCE TO REGULATIONS AND TO CLARIFY THAT REFERENCED RULES ARE THOSE PROMULGATED PURSUANT TO THE PROVISIONS OF THE CHAPTER; AMENDING SECTION 69-229, IDAHO CODE, TO STRIKE UNNECESSARY LANGUAGE; AMENDING SECTION 69-230, IDAHO CODE, TO STRIKE UNNECESSARY LANGUAGE; AMENDING SECTION 69-231, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS, TO STRIKE UNNECESSARY LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-233, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 69-236, IDAHO CODE, TO CLARIFY THE BASIS FOR DEPARTMENTAL ACTION IN THE EVENT OF NONCOMPLIANCE OR FAILURE OF A WAREHOUSE, TO REVISE PROCEDURES OF THE DEPARTMENT IN THE EVENT OF NONCOMPLIANCE OR FAILURE OF A WAREHOUSE, TO REVISE PROCEDURES FOLLOWING THE DEPARTMENT TAKING POSSESSION OF A WAREHOUSE, TO STRIKE REFERENCE TO A SEPARATE CIVIL ACTION AND TO PROVIDE FOR RECOVERY OF DESIGNATED FEES AND COSTS IN ANY CIVIL ACTION; AMENDING SECTION 69-238, IDAHO CODE, TO INCREASE THE AMOUNT OF LIQUIDATED DAMAGES; AMENDING SECTION 69-239, IDAHO CODE, TO CLARIFY PROVISIONS RELATING TO CERTAIN RECORDS REQUIRED TO BE MAINTAINED BY A WAREHOUSEMAN; AMENDING SECTION 69-241, IDAHO CODE, TO INCREASE THE PERIOD OF ADVANCE NOTICE INSURANCE COMPANIES ARE REQUIRED TO PROVIDE TO THE DEPARTMENT UPON CANCELLATION OF CERTAIN POLICIES; AMENDING SECTION 69-242, IDAHO CODE, TO STRIKE REFERENCE TO REGULATIONS; AMENDING SECTION 69-243, IDAHO CODE, TO CLARIFY PROVISIONS RELATING TO DUTIES OF PROSECUTION; AMENDING SECTION 69-245, IDAHO CODE, TO STRIKE REFERENCE TO TELEGRAMS, TO PROVIDE FOR CERTAIN NOTICE BY FACSIMILE AND TO PROVIDE REFERENCE TO REINSTATEMENT OF A WAREHOUSE LICENSE; AMENDING SECTION 69-247, IDAHO CODE, TO EXTEND

LICENSE DENIAL PROVISIONS TO CLAIMS AGAINST THE COMMODITY INDEMNITY FUND AND TO PROVIDE REFERENCE TO A LICENSE REINSTATEMENT; AMENDING SECTION 69-248, IDAHO CODE, TO CLARIFY THAT DRAWING CHECKS, DRAFTS OR ORDERS WITH INSUFFICIENT FUNDS FOR PAYMENT IN COMPLIANCE WITH A CONTRACT OR TO THE DEPARTMENT FOR FEES, ASSESSMENTS OR PENALTIES, SHALL CONSTITUTE A VIOLATION; AMENDING SECTION 69-249, IDAHO CODE, TO REVISE CRITERIA RELATED TO CREDIT-SALE CONTRACTS AND TO PROVIDE FOR THE VALUE DETERMINATION OF CERTAIN CONTRACTS FOLLOWING A DECLARED FAILURE; AMENDING SECTION 69-250, IDAHO CODE, TO CLARIFY RECORD DISCLOSURE PROVISIONS; AMENDING SECTION 69-256, IDAHO CODE, TO REVISE PROVISIONS RELATING TO ASSESSMENTS AND TO REVISE PROVISIONS RELATING TO USE OF FUNDS IN THE COMMODITY INDEMNITY FUND AND ACCRUING INTEREST ON THE FUND; AMENDING SECTION 69-257, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO CLARIFY THE RATE OF ASSESSMENT AND TO MAKE A TECHNICAL CORRECTION AND TO DELETE A REFERENCE TO REGULATION; REPEALING SECTION 69-258, IDAHO CODE; AMENDING CHAPTER 2, TITLE 69, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 69-258, IDAHO CODE, TO PROVIDE FOR THE COLLECTION AND REMITTANCE OF ASSESSMENTS, TO PROVIDE THAT WAREHOUSEMEN AND DEALERS HOLD ASSESSMENTS COLLECTED FROM PRODUCERS IN TRUST FOR THE COMMODITY INDEMNITY FUND, TO PROVIDE THAT INTEREST EARNED ON COLLECTED ASSESSMENTS PRIOR TO REMITTANCE BELONG TO THE WAREHOUSEMAN OR DEALER AND TO PROVIDE FOR FAILURES TO COLLECT OR REMIT ASSESSMENTS; AMENDING SECTION 69-259, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE FUNDING AND LIMITS OF THE COMMODITY INDEMNITY FUND; AMENDING SECTION 69-261, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE TERMS OF APPOINTMENT, TO REQUIRE THE ADVISORY COMMITTEE TO MEET AT LEAST TWICE A YEAR, TO REQUIRE THAT THE COMMITTEE REVIEW THE MAXIMUM LIMITS OF THE FUND EVERY TWO YEARS AND ADVISE THE DIRECTOR AND TO CHANGE A CODE REFERENCE TO INCREASE COMPENSATION FOR THE ADVISORY COMMITTEE MEMBERS; AMENDING SECTION 69-262, IDAHO CODE, TO PROVIDE FOR THE PROCESSING OF CLAIMS OF PRODUCERS WHO OWE ASSESSMENTS FOLLOWING A FAILURE, TO CLARIFY THE NATURE OF CLAIMS TO BE PROCESSED BY THE DEPARTMENT, TO STRIKE REFERENCE TO CERTAIN EXCLUDED CLAIMS, TO REQUIRE A CLAIMANT TO SUBROGATE CERTAIN RIGHTS PRIOR TO PAYMENT FROM THE FUND, TO PROVIDE FOR THE DETERMINATION OF THE VALUE OF A PRODUCER'S COMMODITY FOR PURPOSES OF DETERMINING THE AMOUNT OF A PRODUCER'S CLAIM, TO PROVIDE THAT THE FUND SHALL NOT BE LIABLE FOR CERTAIN CLAIMS AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 69-263, IDAHO CODE, TO EXTEND THE TIME IN WHICH A PRODUCER, AFTER NOTIFICATION, MAY FILE A CLAIM AND TO PROVIDE THAT NO PAYMENT FROM THE FUND WILL BE MADE FOR CERTAIN CLAIMS; AMENDING SECTION 69-264, IDAHO CODE, TO CLARIFY THE TYPES OF CLAIMS FOR WHICH THE COMMODITY INDEMNITY FUND WILL BE USED AND TO INCREASE THE MINIMUM BALANCE OF THE FUND; AMENDING SECTION 69-266, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE FOR STATUTORY INTEREST FOR ANY RECOVERY FOR REIMBURSEMENT TO THE FUND AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 69-267, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 69-202, Idaho Code, be, and the same is hereby amended to read as follows:

69-202. DEFINITIONS. As used in this chapter:

(1) "Agricultural commodity" or "commodity" means any grain, ~~dry peas~~ wheat, barley, oats, corn, rye, oilseeds, dry edible beans, peas, lentils and other leguminous ~~or other small~~ seeds and feeds (not including minerals or seed crops) or any other commodity as determined by the director.

(2) "Commodity dealer" or "dealer" means any person who solicits, contracts for, ~~negotiates the consignment or purchase,~~ or obtains from an Idaho producer or producers, title, possession or control of any agricultural commodity through his place of business located in the state of Idaho or through his place of business located outside the state of Idaho for the purposes of sale or resale or who buys, during a calendar year, at least ten thousand dollars ($10,000) worth of agricultural commodities from an Idaho producer or producers of the commodities. Commodity dealer or dealer shall not mean any person who purchases agricultural commodities for his own use as seed or feed within his own operation.

(3) "Contract" means a written agreement between two (2) or more parties for the sale of an agricultural commodity stipulating the terms and conditions of performance of the parties and includes, but is not limited to, those contracts commonly referred to as credit sales, deferred payment, ~~deferred~~ delayed, production, bailment or price later contracts.

(4) "Deliver" or "delivery" means the physical transfer of agricultural commodity from one (1) party to another.

(5) "Department" means the Idaho state department of agriculture.

(~~5~~6) "Depositor" means any person who deposits an agricultural commodity in an Idaho state licensed warehouse for storage, handling, processing, reconditioning or shipment, or who is the owner or legal holder of a negotiable warehouse receipt, outstanding scale weight ticket, nonnegotiable warehouse receipt or other evidence of such deposit, or any person whose agricultural commodity has been sold to or is under control of a warehouseman for selling, processing, reconditioning or handling whether or not such agricultural commodity is within the warehouse.

(~~6~~7) "Director" means the director of the Idaho state department of agriculture.

(~~7~~8) "Failure" means the date that one (1) or more of the following events occurred, as determined by the director:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor or producer;

(d) A failure to redeliver any commodity to a depositor or to pay depositors or producers for commodities purchased by a licensee or to pay a producer for commodity delivered under the provisions of the contract in the ordinary course of business;

(e) A failure to make application for license renewal within sixty (60) days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(~~8~~9) "Historical depositor" means any person who, in the normal course of business operation has consistently made deposits in the same warehouse of commodities produced on the same land. In addition, anyone purchasing or leasing that particular land directly from the original

depositor or receiving that particular land by devise, descent, bequest or gift directly from the historical depositor shall also be considered an historical depositor with regard to the commodities produced on that land.

(9~~1~~0) "Person" means any individual, firm, association, corporation, ~~or~~ partnership or limited liability company.

(10~~1~~) "Producer" means the owner, tenant or operator of land in this state who has an interest in the ~~contract~~ proceeds from the sale of agricultural commodities produced on that land. Producer does not include growers who deposit their commodity in a facility in which they have a financial or management interest, except members of a cooperative marketing association qualified under chapter 26, title 22, Idaho Code.

(11~~2~~) "Public warehouse" or "warehouse" or "warehouseman" means any elevator, mill, warehouse, subterminal commodity warehouse, public warehouse or other structure or facility in which agricultural commodities are received for storage, shipment, processing, reconditioning or handling.

(12~~3~~) "Receipt" means a warehouse receipt.

(13~~4~~) "Revocation" means the permanent removal of a warehouse license following a hearing on violations of this chapter by the hearing officer or director.

(14~~5~~) "Scale weight ticket" means a load slip or other evidence, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of this chapter, upon initial delivery of the commodity to the warehouse.

(16) "Seed crops" means any seed crop regulated by chapter 4, title 22, Idaho Code.

(15~~7~~) "Subterminal warehouse" means any warehouse at which an intermedi~~ate function is p~~erformed in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated prior to shipment.

(16~~8~~) "Suspension" means the temporary removal of a warehouse license by the department pending a hearing for violations of this chapter. Correction of the violations prior to a hearing may result in the reinstatement of a license without a hearing.

(17~~9~~) "Termination" means the expiration of a warehouse license due to failure to meet minimum licensing requirements, failure to renew a warehouse license or as requested by the licensee, unless a complaint has been filed against the licensee alleging a violation of any provision of this chapter.

(20) "Transfer" means, unless otherwise defined by the parties in writing, the event when a producer or his agent delivers a commodity to a warehouseman, who then weighs the commodity, and gives the producer or his agent a scale weight ticket or other written evidence of transfer.

(18~~21~~) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued by a warehouseman, except scale weight tickets.

(22) "Warehouseman" means a person operating or controlling a public warehouse.

SECTION 2. That Section 69-204, Idaho Code, be, and the same is hereby amended to read as follows:

69-204. PENALTY FOR OPERATING WITHOUT A LICENSE -- MISREPRESENTATION. (1) Any person operating a public warehouse without a license or

in any way representing, by actions or words, that the warehouse is so licensed when such warehouse is not so licensed or any person who shall misrepresent, forge, alter, counterfeit or falsely represent a license as required by the provisions of this chapter shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars ($10,000), or by both.

(2) Any person who shall issue, utter, or aid in the issuance or utterance or attempt to issue or utter a false or fraudulent receipt for any commodity shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more ~~more~~ than ten thousand dollars ($10,000), or by both.

SECTION 3. That Section 69-205, Idaho Code, be, and the same is hereby amended to read as follows:

69-205. INSPECTION AND CLASSIFICATION OF WAREHOUSES, STORAGE, WAREHOUSING, WEIGHING AND CERTIFICATION OF COMMODITIES -- DUTIES OF WAREHOUSEMEN. Upon application by any person for license to conduct a warehouse under this chapter, the department ~~of agriculture~~ is authorized to investigate and determine whether the public warehouse for which licenses are applied, or have been previously issued, under this chapter, ~~are~~ is suitable for the proper storage of agricultural commodities and the department ~~of agriculture~~ is authorized with or without application, to wit:

To inspect any warehouse licensed under this chapter; to inspect every licensed warehouse at least once every calendar year; to investigate the storage, warehousing, classifying according to grade, and otherwise weighing and certification of agricultural commodities therein conducted; to classify warehouses, licensed or applying for license, in accordance with their capacity and to prescribe, within the limitations of this chapter, the duties of the warehousemen conducting warehouses licensed under this chapter with respect to their care of and responsibility for agricultural commodities.

SECTION 4. That Section 69-206, Idaho Code, be, and the same is hereby amended to read as follows:

69-206. LICENSES TO WAREHOUSEMEN -- ISSUE — RENEWAL — CONDITIONS PRECEDENT. The department ~~of agriculture~~ is authorized, upon application to it, to issue or renew to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this chapter and such rules ~~and regulations~~ as may be made hereunder, providing the following conditions are met:

(1) Each person, as a condition precedent to operating a warehouse in this state, shall file and maintain satisfactory evidence with the director ~~of the department of agriculture~~ of the existence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that may be stored or accepted for storage on the premises, including commodities owned by the warehouseman, for which such license is sought for the full market value of such agricultural commodities against loss by fire, internal explosion, lightning or tornado;

(2) That each warehouse be found suitable for the proper storage of

the particular agricultural commodity or commodities for which a license is requested;

(3) A license fee is submitted to the department as prescribed by section 69-211, Idaho Code;

(4) A current drawing of the warehouse which shows storage facilities and the capacity calculations of the warehouse ~~is submitted to and~~ which indicates commodity and seed crop storage areas, shall be approved by the department;

(5) A sufficient and valid bond is filed and maintained as required by section 69-208, Idaho Code;

(6) The applicant shall submit to the department an audited or reviewed financial statement prepared by an independent certified public accountant or licensed public accountant showing that the licensee has and does maintain current assets equal to or greater than current liabilities, a statement of current assets and current liabilities, and a statement of net worth, all of which shall be prepared in accordance with generally accepted accounting principles;

(7) For a warehouseman license an applicant shall have and maintain a net worth of at least fifty thousand dollars ($50,000) or maintain a bond in the amount of two thousand dollars ($2,000) for each one thousand dollars ($1,000) or fraction thereof of net worth ~~deficiency~~ financial requirement; however, a person shall not be licensed as a warehouseman if the person has a net worth of less than twenty-five thousand dollars ($25,000). A bond submitted for purposes of this subsection shall be in addition to any bond otherwise required under the provisions of this chapter;

(8) The applicant has complied with and abided by all the terms of this chapter and the rules ~~and regulations~~ prescribed hereunder;

(9) That all materials required for renewal of a license shall be received by the department prior to the expiration date of the warehouse license. A warehouse license which has expired may be reinstated by the department upon receipt of all necessary licensing materials required by the provisions of this chapter and a ~~penalty~~ reinstatement fee in the amount of ~~fifty~~ five hundred dollars ($500~~.00~~), providing that this material is filed within thirty (30) days from the date of expiration of the warehouse license. At the end of the thirty (30) day ~~penalty~~ reinstatement period, a warehouse license shall be terminated by the department. All license applications completed and received after the thirty (30) day ~~penalty~~ reinstatement period shall be considered original applications and after the five hundred dollar ($500) reinstatement fee has been remitted to the department, license fees shall be assessed as original fees according to section 69-211, Idaho Code.

SECTION 5. That Section 69-207, Idaho Code, be, and the same is hereby amended to read as follows:

69-207. TERM OF LICENSE -- RENEWAL. Each license issued under sections 69-206 and ~~section~~ 69-215, Idaho Code, shall be issued for a period to be prescribed by ~~regulation~~ rule by the department. ~~of agriculture.~~

SECTION 6. That Section 69-208, Idaho Code, be, and the same is hereby amended to read as follows:

69-208. BOND OF APPLICANT FOR LICENSE -- ADDITIONAL BOND -- ADDITIONAL OBLIGATIONS -- CERTIFICATE OF DEPOSIT~~,--ANNUITY~~ OR IRREVOCABLE LETTER OF CREDIT IN LIEU OF BOND. Each warehouseman applying for a license to conduct a warehouse in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the department a good and sufficient bond other than personal security. ~~to the state~~ The bond shall be in favor of the commodity indemnity fund to secure the faithful performance of his obligations as a warehouseman under all the laws of the state, including obligations arising by operation of the commodity indemnity ~~account~~ fund program, and the rules prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural commodities in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department shall determine that a bond approved by it is, or for any cause has become, insufficient, it ~~may~~ shall require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman ~~may~~ shall be suspended or revoked.

The bond shall be approved by the department and shall be conditioned upon the faithful performance by the warehouseman of the duty to keep in the warehouse for the depositor the agricultural commodity delivered and to deliver the agricultural commodity to or for such depositors. The bond shall also be conditioned upon the faithful performance by the warehouseman of any additional obligations involving marketing transactions with a depositor.

The warehouseman may give a single bond meeting the requirements as provided in this chapter and all warehouses operated by the warehouseman shall be as one (1) warehouse for the purpose of compliance with the provisions of this section. Any changes in the capacity of a warehouse or installation of any new warehouses involving a change in the bond liability under the provisions of this chapter shall be reported to the department prior to the operation thereof.

At the discretion of the director, any person required to submit a bond to the department in accordance with this chapter, may at his option give to the department a certificate of deposit~~,an annuity~~ or an irrevocable letter of credit payable to the ~~director as trustee~~ commodity indemnity fund in lieu of the bond required herein. The principal amount of the certificate~~,annuity~~ or letter of credit shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit ~~or annuity~~ shall be payable to the purchaser of the certificate. ~~or annuity. The certificate, annuity or letter of credit shall remain on file with the department until it is released, cancelled or discharged by the director~~ The letter of credit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the letter of credit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the bonded warehouse license. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each

certificate of deposit~~;--annuity~~ or letter of credit given in lieu of such bond.

Under provisions of this chapter, an irrevocable letter of credit shall not be acceptable unless it is issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation. ~~Under-the-provisions-of-this-chapter,-an-annuity shall-not-be-accepted-by-the-department-unless-it-is-issued-by-an-insurance-company,-bank-or-other-financial-institution--found--acceptable--by the--director--and-shall-have-a-cash-value-equal-to-the-bond-requirement less-any-penalty-for-early-withdrawal.~~

SECTION 7. That Section 69-208A, Idaho Code, be, and the same is hereby amended to read as follows:

69-208A. AMOUNT OF BOND -- CANCELLATION. The amount of bond to be furnished for each warehouse shall be fixed at a rate of twenty cents (20¢) per bushel of licensed capacity or six percent (6%) of the total value of the agricultural commodities stored, whichever is greater. In the event a variety of commodities are stored, the bond rate may be calculated using either factor or a combination thereof. Any other bond that may be required shall be separate and in addition to the bond listed here. In any case, the amount of the bond shall not be less than twenty-five thousand dollars ($25,000) and shall not be more than five hundred thousand dollars ($500,000). This bond shall run continuously with the warehouse license until suspended, revoked or ~~cancelled~~ canceled by the bonding company. A ninety (90) day written notice shall be given to the department by the bonding company before any bond is suspended, revoked or ~~cancelled~~ canceled. The director reserves the right to waive the ninety (90) day cancellation period.

SECTION 8. That Section 69-209, Idaho Code, be, and the same is hereby amended to read as follows:

69-209. ACTION ON BOND BY ~~PERSONS~~ PRODUCERS INJURED. Any ~~person~~ producer injured by the breach of any obligation for which a bond is written, under the provisions of section 69-208, Idaho Code, ~~shall-be entitled-to-sue-on-the-bond-in-his-own-name--in--a--court--of--competent jurisdiction--to--recover--the--damages--he--may--have-sustained-by-such breach,-or-may~~ must petition the director to ~~fix-the-amount-of-his--damages~~ make demand upon the warehouseman, certificate of deposit, irrevocable letter of credit or bond. The director may thereupon make demand upon the warehouseman and his surety for payment of such damages and in the event such damages are not promptly paid the director may commence an action on the bond to enforce payment of such damages. The liability of the surety upon the bond required to be given by warehousemen as provided in section 69-208, Idaho Code, for any one (1) annual licensing period shall be limited to the amount specified in the bond, and in case of recoveries had by two (2) or more persons for violation of the conditions of such bond in excess of the amount of the bond, such recovery shall be prorated and the total recovery against the surety for any one (1) annual licensing period shall not exceed the amount of the bond. ~~Any person-who~~ In the event the director sues and obtains a judgment against the warehouseman and/or his surety for payment of such damages under

this section, he shall be entitled to recover a reasonable attorney's fee.

SECTION 9. That Section 69-210, Idaho Code, be, and the same is hereby amended to read as follows:

69-210. DESIGNATION OF WAREHOUSE AS BONDED WAREHOUSE. Upon the filing with and approval by the department ~~of agriculture~~ of a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse shall be designated as bonded under this chapter, and no name or description conveying the impression that it is so bonded, shall be used, until a bond, such as provided for in section 69-208, Idaho Code, has been filed with and approved by the department, ~~of agriculture,~~ nor unless the license issued under this chapter for the conduct of such warehouse remains unsuspended and unrevoked.

SECTION 10. That Section 69-211, Idaho Code, be, and the same is hereby amended to read as follows:

69-211. FEES OF DEPARTMENT. (1) The department shall charge, assess, and cause to be collected an annual fee for each warehouse license or renewal thereof, according to the following schedule:

~~(1)~~ For each original application —

Capacity in Hundredweight	Rate
0 to 50,000	$10~~80~~.00
50,001 to 100,000	~~20~~36~~0~~.00
100,001 to 250,000	~~30~~54~~0~~.00
250,001 to 500,000	~~400~~715~~.00~~
500,001 to 750,000	~~50890.00~~
Over 750,000	6~~01~~,0~~7~~0.00

For each renewal application —

Capacity in Hundredweight	Rate
0 to 50,000	$3~~5~~0.00
50,001 to 100,000	6~~1~~0~~0~~.00
100,001 to 250,000	90~~1~~4~~5~~.00
250,001 to 500,000	1~~2~~90.00
500,001 to 750,000	~~15~~24~~0~~.00
Over 750,000	~~18~~29~~0~~.00

(2) The department shall assess and collect a fee of ~~fifty~~ one hundred dollars ($5~~100.00~~) for each inspection of a warehouse or station which is done for the purpose of amending a warehouse license.

(3) The department ~~may~~ shall assess and collect a fee of ~~one~~ two hundred ~~and~~ fifty dollars ($~~1~~250) per day or fraction thereof for maintaining ~~an~~ each employee of the department at a warehouse to oversee ~~the~~ correction of a violation of the provisions of this chapter or the rules promulgated hereunder.

(4) Upon approval by the department, a warehouseman may operate two (2) or more warehouses under a single warehouse license.

(5) All fees shall be deposited into the ~~state treasury and credited to the general account~~ commodity indemnity fund.

SECTION 11. That Section 69-212, Idaho Code, be, and the same is hereby amended to read as follows:

69-212. SCHEDULE OF CHARGES — POSTING. Every licensed warehouseman shall annually, during the first week of July, publish by posting in a conspicuous place in his warehouse, a schedule of storage, ~~and~~ handling, conditioning or any other charges or discounts for the ensuing year, which schedule shall be kept posted in a conspicuous place in said warehouse. Further, the warehouseman shall annually, during the first week in July, mail to the department, ~~of agriculture,~~ a copy of such charges. All charges made by any public warehouseman hereunder for the handling and storage of agricultural commodities shall be just, fair and reasonable; and the director ~~of the department of agriculture of the state of Idaho~~ is hereby vested with the power and authority upon the complaint of any person interested or upon his own motion, after a full hearing, to declare any existing charge for the handling or storage of any agricultural commodity to be unreasonable or unjust and to determine and order what shall be a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust. Failure to file and post scheduled charges for the current year will keep in full force and effect the latest previously posted and filed schedule of rates.

SECTION 12. That Section 69-213, Idaho Code, be, and the same is hereby amended to read as follows:

69-213. PRIVILEGE OF EXAMINING COMMODITIES STORED. Every depositor having an interest in any agricultural commodity stored in any such warehouse, and every state inspector authorized by the director, shall have the right to examine at any reasonable time during ordinary business hours any commodity so stored, and all parts of such warehouses, provided the warehouse or the agricultural commodities stored therein is not endangered by such inspection; and every warehouseman, his agents and ~~servants~~ employees shall furnish safe and reasonable access and facilities for such examination.

SECTION 13. That Section 69-214, Idaho Code, be, and the same is hereby amended to read as follows:

69-214. EMPLOYMENT OF ~~INSPECTORS~~ PERSONNEL. The department ~~of agriculture~~ may employ such inspectors, investigators, samplers and weighers as it may deem necessary.

SECTION 14. That Section 69-219, Idaho Code, be, and the same is hereby amended to read as follows:

69-219. COMMODITIES DEEMED ~~DEPOSITED~~ DELIVERED SUBJECT TO LAW. Any person who ~~deposits~~ delivers agricultural commodities ~~in~~ to a warehouse licensed under this chapter, for storage or under terms of a contract, shall be deemed to have ~~deposited~~ delivered the same subject to the terms of this chapter and the rules prescribed hereunder.

SECTION 15. That Section 69-220, Idaho Code, be, and the same is hereby amended to read as follows:

69-220. INSPECTION AND GRADING OF DISEASED OR INSECT INFESTED COMMODITIES. Any diseased or insect ~~infected~~ infested agricultural commod-

ity complained of by the department or any person having interest in the warehouse or agricultural commodities stored in a warehouse licensed under this chapter shall be inspected and graded by a representative of the department ~~of--agriculture~~ or a person duly licensed to grade the same under this chapter, and if such inspection or grading shows such agricultural commodity to be in a condition that its continued storing or retention would injure or damage the warehouse or other commodities stored therein the owner shall, by order of the director, forthwith remove and dispose of such agricultural commodity as directed. If the owner of such commodity is unknown to the inspector or warehouseman, the warehouseman shall proceed to remove or make disposition of such commodity in a manner that will tend to save and realize the values contained in such commodity by the owner, under such rules and regulations as may be promulgated under this chapter or the uniform commercial code.

SECTION 16. That Section 69-222, Idaho Code, be, and the same is hereby amended to read as follows:

69-222. RECEIPTS -- SCALE WEIGHT TICKETS. For all agricultural commodities ~~deposited in~~ delivered to a warehouse licensed under this chapter original negotiable or nonnegotiable warehouse receipts, or scale weight tickets, shall be issued by the warehouseman conducting the same, but no receipts, or scale weight tickets, shall be issued except for agricultural commodities ~~deposited in~~ delivered to the warehouse at the time of the issuance thereof; provided, however, that no negotiable receipt need be issued except when requested by the depositor.

SECTION 17. That Section 69-223, Idaho Code, be, and the same is hereby amended to read as follows:

69-223. NEGOTIABLE WAREHOUSE RECEIPTS FOR COMMODITIES STORED -- CONTENTS -- CONDITIONS -- PENALTIES. Every negotiable warehouse receipt issued for agricultural commodities stored in a warehouse licensed under the provisions of this chapter shall be issued in accordance with, but not limited to, the following:

(1) Every negotiable warehouse receipt issued for agricultural commodities stored in a warehouse licensed under the provisions of this chapter shall embody within its written or printed terms:

(a) All the requirements of a negotiable warehouse receipt under the Uniform Commercial Code--Documents of Title.

(b) A description of the agricultural commodities received, showing the quantity thereof, or, in case of agricultural commodities customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages.

(c) The grade or other class of the agricultural commodities received and the standard or description in accordance with which such classification has been made: provided, that such grade or other class shall be stated according to the official standards of the state applicable to such agricultural commodities as the same may be fixed and promulgated under authority of law~~:~~; provided further that until such official standards of the state for any agricultural commodity or commodities have been fixed and promulgated, the grade or other class thereof may be stated in accordance with

any recognized standard; provided, that unless otherwise required by law, when requested by the depositor of other than fungible agricultural commodities, a receipt omitting compliance with this subdivision may be issued if it has plainly and conspicuously embodied in its written or printed terms a provision that such negotiable warehouse receipt is not graded.

(d) A statement that the negotiable warehouse receipt is issued subject to the provisions of this chapter and the rules ~~and regulations~~ prescribed hereunder.

(e) Such other terms and conditions within the limitations of this chapter as may be required by the department. ~~of agriculture.~~

(f) All negotiable warehouse receipts issued under the provisions of this chapter, shall be upon forms prepared and supplied by the department ~~of agriculture~~ and issued upon requisition of the warehouseman at a reasonable cost.

(2) Any warehouseman, agent, employee or manager of a public warehouse licensed under the provisions of this chapter who shall remove or allow to be removed any commodities from the facility on which the negotiable warehouse receipt was issued, except to preserve the same from fire or other damage, or except when an emergency storage situation exists as determined by the director, without the return and cancellation of any and all outstanding negotiable warehouse receipts that may have been issued to represent such commodities shall be guilty of a felony and be punished by imprisonment in the state prison not to exceed ten (10) years, or by a fine of not more than ten thousand dollars ($10,000), or by both.

SECTION 18. That Section 69-224, Idaho Code, be, and the same is hereby amended to read as follows:

69-224. STANDARDS FOR AGRICULTURAL COMMODITIES. The department ~~of agriculture~~ is authorized, from time to time, to establish and promulgate standards for agricultural commodities by which their quality or value may be judged or determined.

So far as practicable such standards shall conform to the official standards of the United States or the state of Idaho applicable to such agricultural commodities as the same may from time to time be fixed and promulgated.

No warehouseman in this state shall insert in any receipt issued by him any language in ~~anywise~~ any way limiting or modifying his liabilities, or responsibilities, as imposed by the laws of this state.

SECTION 19. That Section 69-226, Idaho Code, be, and the same is hereby amended to read as follows:

69-226. RECORDS OF WAREHOUSES — CONDUCT OF WAREHOUSES. Every warehouseman conducting a warehouse licensed under the provisions of this chapter shall keep in a place of safety complete and correct records and shall conduct said warehouse in all other respects in compliance with this chapter and the rules ~~and regulations made~~ promulgated hereunder.

SECTION 20. That Section 69-227, Idaho Code, be, and the same is hereby amended to read as follows:

69-227. EXAMINATION OF COMMODITIES OR SEED CROPS -- RECORDS -- PUBLICATION OF FINDINGS. The department is authorized to cause examination to be made of any agricultural commodity or seed crop deposited, or any record pertaining to commodities or seed crops deposited therein, in any warehouse licensed under the provisions of this chapter. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this chapter and the rules ~~made~~ promulgated hereunder, the department may publish its findings in a local daily or weekly newspaper in the area where the warehouse is located.

SECTION 21. That Section 69-228, Idaho Code, be, and the same is hereby amended to read as follows:

69-228. SUSPENSION OR REVOCATION OF LICENSE. The department ~~of agriculture~~ may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to any person under the provisions of this chapter, for any violation of or failure to comply with any provision of this chapter, chapter 7 of the uniform commercial code or the rules ~~and regulations made~~ promulgated hereunder or upon the ground that the licensee has used his license or allowed it to be used for any improper purpose. Pending investigation the department, ~~of--agriculture,~~ whenever it deems necessary, may suspend a license temporarily without hearing.

SECTION 22. That Section 69-229, Idaho Code, be, and the same is hereby amended to read as follows:

69-229. PUBLICATION OF REPORTS. The department ~~of agriculture~~ from time to time may publish the results of any investigations made under the provisions of this chapter; and it may publish the names and addresses of persons licensed under this chapter and a list of all licenses terminated under this chapter and the causes therefore.

SECTION 23. That Section 69-230, Idaho Code, be, and the same is hereby amended to read as follows:

69-230. EXAMINATION OF BOOKS. The department ~~of--agriculture~~ is authorized through officials, employees, or agents of the department designated by it, to examine all books, records, papers, and accounts of warehouses relating thereto.

SECTION 24. That Section 69-231, Idaho Code, be, and the same is hereby amended to read as follows:

69-231. RULES. ~~AND REGULATIONS.~~ The department ~~of agriculture~~ shall from time to time ~~make~~ promulgate such rules ~~and regulations~~ as it may deem necessary for the efficient execution of the provisions of this chapter.

SECTION 25. That Section 69-233, Idaho Code, be, and the same is hereby amended to read as follows:

69-233. VIOLATION OF LAW -- PENALTY. Any person who violates any provision of this chapter or the rules ~~and regulations~~ promulgated hereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the director or his duly authorized representative in the performance of his duty in connection with the provisions of this chapter, except as provided in sections 69-204, 69-212, 69-223 and 69-248, Idaho Code, shall be guilty of a misdemeanor and be punished by imprisonment in a county jail not to exceed six (6) months, or by a fine ~~or~~ of not more than one thousand dollars ($1,000), or by both.

SECTION 26. That Section 69-236, Idaho Code, be, and the same is hereby amended to read as follows:

69-236. NONCOMPLIANCE -- FAILURE -- REMEDIES OF DEPARTMENT. (1) Whenever it appears, after any investigation, that a warehouseman does not have in his possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him, or the ability to pay producers for contract obligations, or when the warehouseman refuses to submit his books, papers, or property to lawful inspection, the department ~~may~~ shall give notice to the warehouseman to comply with all or any of the following requirements:

(a) Cover such shortage;

(b) Give an additional bond as requested by the department; or

(c) Submit to such inspection as the department may deem necessary.

(2) If the warehouseman fails to comply with the terms of such notice within twenty-four (24) hours from the date of issuance of the notice, or within such further time as the department may allow, not to exceed ten (10) working days, the department ~~may~~ shall petition the district court in the county where the licensee's principal place ~~of business~~ is located (as shown by the license application) for an order:

(a) Authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman, and of all books, papers and property of all kinds used in connection with the conduct or the operation of the warehouse business, and any materials which pertain in any way to that business; and

(b) Enjoining the warehouseman from interfering with the department in the discharge of its duties as required by the provisions of this section.

(3) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouseman and ~~may~~ shall notify the holders or producers of record, as shown by the warehouseman's records, of all negotiable or nonnegotiable warehouse receipts, ~~or~~ scale weight tickets, or contracts issued for agricultural commodities, to present their warehouse receipt or other evidence of deposits or obligation for inspection or to account for the same. The department ~~may~~ shall thereupon cause an audit to be made of the affairs of such warehouse including, but not limited to, the agricultural commodities in which there is an apparent shortage, to determine the amount of such shortage and compute the shortage as to each depositor as shown by the warehouseman's records, if possible. The department shall notify the warehouseman and the surety on his bond of the approximate amount of such shortage and notify each depositor thereby affected by sending

notices to the depositor's last known address as shown by the records of the warehouseman.

(4) The department shall retain possession of the agricultural commodities in the warehouse or warehouses, and the books, papers, and property of the warehouseman, until such time as the warehouseman or the surety on the bond shall have satisfied the claims of all holders of warehouse receipts or other evidence of deposits or obligations, in case the ~~shortage~~ obligations exceeds the amount of the bond, the surety on the bond shall have satisfied such claims pro rata, or until such time as the department is ordered by the court to surrender possession.

(5) If during or after the audit provided for in this section, or at any other time the department has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of ~~deposits~~ obligations, the department ~~may~~ shall petition the district court for the appointment of a receiver to operate or liquidate the business of the warehouseman in accordance with the law.

(6) At any time within ten (10) days after the department takes possession of any agricultural commodities, or the books, papers, or property of any warehouse, the warehouseman may serve notice on the department to appear in the district court of the county in which the warehouse is located, at a time to be fixed by the court, and show cause why the agricultural commodities, books, papers and other property should not be restored to his possession.

(7) All court costs, attorney's fees, other professional fees and necessary expenses incurred by the department in carrying out the provisions of this section may be recovered in ~~a separate~~ any civil action brought by the department in district court or recovered at the same time and as part of the receivership or seizure action filed under the provisions of this chapter.

(8) As a part of the expenses so incurred, the department or the receiver is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section.

(9) The provisions and remedies of this section are not limited to a warehouse shortage.

SECTION 27. That Section 69-238, Idaho Code, be, and the same is hereby amended to read as follows:

69-238. WAREHOUSEMAN'S OBLIGATIONS -- DUTY TO DELIVER DEPOSITED COMMODITIES -- DAMAGES. (1) The duty of the warehouseman to deliver agricultural commodities deposited shall be governed by the provisions of this chapter and the requirements of the uniform commercial code. Upon the return of a properly endorsed negotiable warehouse receipt to the warehouseman, and upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity named therein shall be delivered to the holder of the negotiable warehouse receipt, except as provided by the uniform commercial code.

(2) A warehouseman's duty to deliver any agricultural commodity is fulfilled if delivery is made pursuant to the contract with the depositor, or if no contract exists, then to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. When delivery is made within thirty (30) days from date of demand, or as

agreed upon in writing by all parties concerned, such delivery is deemed to comply with the provisions of this section. An extension of the delivery period may be granted by the department upon written request.

(3) A warehouseman shall not fail to deliver an agricultural commodity as provided in this section, and delivery shall be made at the warehouse or station where the agricultural commodity was received, unless otherwise agreed.

(4) In addition to being subject to penalties provided in this chapter for a violation of the provisions of this section, any warehouseman failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damage or liquidated damages of ~~one-half (1/2) of~~ one percent (1%) of the value for each day's delay.

SECTION 28. That Section 69-239, Idaho Code, be, and the same is hereby amended to read as follows:

69-239. DUTIES OF WAREHOUSEMAN -- CONTENTS OF RECORDS. (1) The warehouseman shall maintain current and complete records at all times with respect to all agricultural commodities handled, deposited, shipped or merchandised by him, including agricultural commodities owned by him. Such records shall include, but are not limited to, a daily position record showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining on deposit at the close of each business day, and the warehouseman's total deposit obligation, including agricultural commodities owned by him, for each kind and class of agricultural commodity at the close of each business day.

(2) Every warehouseman purchasing any agricultural commodity from a depositor thereof shall promptly make and keep for five (5) years a correct record showing in detail the following information:

(a) The name and address of the depositor;

(b) The date purchased;

(c) The terms of the sale; and

(d) The quality and quantity purchased by the warehouseman and, where applicable, the dockage, tare, grade, size and net weight.

(3) Records required by this section shall be legible and kept in a place of safety in this state. If a person operates at more than one (1) location, records of each location's transactions must be identifiable.

SECTION 29. That Section 69-241, Idaho Code, be, and the same is hereby amended to read as follows:

69-241. INSURANCE -- CANCELLATION PROCEDURE -- SUSPENSION OF LICENSE. With the existence of an effective policy of insurance as required by section 69-206(1), Idaho Code, the insurance company involved shall be required to give ~~thirty~~ ninety (~~3~~90) days' advance notice to the department by registered or certified mail, return receipt requested, of cancellation of the policy. In the event of any cancellation, the department shall immediately terminate the license of such person without a hearing, and the termination shall be in effect until

satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of this chapter has been submitted to the department.

SECTION 30. That Section 69-242, Idaho Code, be, and the same is hereby amended to read as follows:

69-242. INJUNCTION. Any violation of the provisions of this chapter or the rules ~~and regulations~~ promulgated hereunder may be enjoined upon complaint by the director.

SECTION 31. That Section 69-243, Idaho Code, be, and the same is hereby amended to read as follows:

69-243. DUTY TO PROSECUTE. It shall be the duty of each prosecuting attorney to whom any violation is reported by the department to cause appropriate proceedings to be instituted and prosecuted without delay in a court of competent jurisdiction.

SECTION 32. That Section 69-245, Idaho Code, be, and the same is hereby amended to read as follows:

69-245. DIRECTOR'S AUTHORITY. The director may, upon his own motion, whenever he has reason to believe the provisions of this chapter have been violated, or upon verified complaint of any person in writing, investigate the actions of any warehouseman licensed under the provisions of this chapter, and if he finds probable cause to do so, shall file a complaint against the warehouseman which shall be set down for hearing before the director upon thirty (30) days' notice served upon such license holder by personal service, registered mail or ~~telegram~~ facsimile.

The director shall have the power to administer oaths, certify to all official acts and shall have the power to subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so.

All powers of the director herein enumerated in respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance, reinstatement or renewal of a warehouse license.

SECTION 33. That Section 69-247, Idaho Code, be, and the same is hereby amended to read as follows:

69-247. LICENSE DENIAL. (1) Any person against whose warehouse bond or the commodity indemnity fund a claim has been ordered collected or has actually been collected shall not be licensed by the department for a period of three (3) years from the date of such order or collection. License denial may be waived if the person can show to the satisfaction of the director that full settlement of all claims against the bond and the commodity indemnity fund has been made. A change in a person's busi-

ness name shall not absolve any unsettled claim against that person's prior bond or the commodity indemnity fund.

(2) The director shall, after a public hearing, have the right to deny or refuse to issue a license, reinstatement or renewal thereof to an applicant when it is determined that public interest is best served by that denial or refusal.

(3) Upon refusal or denial pursuant to subsection (2) above, an applicant may reapply for a license, reinstatement or renewal after a period of ninety (90) days, at which time a new hearing will be held to review the application.

(4) The applicant shall have the right of appeal on any decision to refuse or deny a license under subsection (2) above to a court of competent jurisdiction.

SECTION 34. That Section 69-248, Idaho Code, be, and the same is hereby amended to read as follows:

69-248. DRAWING CHECKS INSUFFICIENTLY COVERED A VIOLATION. Any person engaged in business as a warehouseman, as defined in this chapter, who shall make, draw, utter or deliver any check, draft or order for the payment of money upon any bank or other depository, in payment to the seller of the purchase price of any agricultural commodity or any part thereof or in compliance with a contract or to the department in payment of any fee, assessment or penalty, upon obtaining possession or control thereof, when at the time of such making, drawing, uttering or delivery the maker or drawer does not have sufficient funds in or credit with such bank or other depository for the payment of such check, draft or order in full upon its presentation, shall violate the provisions of this chapter. The word "credit" as used herein shall mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

SECTION 35. That Section 69-249, Idaho Code, be, and the same is hereby amended to read as follows:

69-249. CREDIT-SALE CONTRACTS. (1) A warehouseman who purchases agricultural commodities by credit-sale contracts shall maintain books, records and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other information as may be required, a credit-sale contract shall contain or provide, ~~for all of the following~~ but not be limited to:

(a) The seller's name and address;

(b) The conditions of delivery;

(c) The amount, ~~and~~ kind and class of agricultural commodities delivered;

(d) The price per unit or basis of value; ~~and~~

(e) The date payment is to be made; and

(f) Any enhancements to the value of the contract, which may include, but are not limited to, transportation, premiums of any nature, or producer provided services, must be listed separately and apart from the price per unit of the commodity.

(3) Title to all agricultural commodities sold by credit-sale contract is in the purchaser as of the time the contract is executed,

unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One (1) copy shall be retained by the warehouseman and one (1) copy shall be delivered to the seller. Upon revocation or termination of a warehouseman's license, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty (30) days following the effective date of the revocation or termination and the purchase price for all agricultural commodities without a price shall be determined as of the effective date of revocation or termination in accordance with all other provisions of the contract. In the event claims are submitted to the commodity indemnity fund following a declared failure, the value determination of contracts will be controlled by the provisions of section 69-262, Idaho Code, and the rules promulgated pursuant to the provisions of this chapter. However, if the business of the warehouseman is sold to another licensed warehouseman, credit-sale contracts may be assigned to the purchaser of the business.

SECTION 36. That Section 69-250, Idaho Code, be, and the same is hereby amended to read as follows:

69-250. RECORDS. All financial statements of warehousemen required under the provisions of this chapter shall be subject to disclosure ~~according to~~ pursuant to the provisions of chapter 3, title 9, Idaho Code.~~, except as follows:~~ Provided however, that a warehouseman may provide written permission for disclosure of any of the warehouseman's financial statements.

~~(1) Upon written permission by the licensee;~~

~~(2) In actions or administrative proceedings commenced under the provisions of this chapter or chapter 5, title 69, Idaho Code;~~

~~(3) When required by subpoena or court order; or~~

~~(4) Disclosure to law enforcement agencies in connection with the investigation or prosecution of criminal offenses.~~

SECTION 37. That Section 69-256, Idaho Code, be, and the same is hereby amended to read as follows:

69-256. CREATION OF INDEMNITY FUND — USES. (1) There is hereby established within the dedicated fund a fund to be known as the commodity indemnity fund. The commodity indemnity fund shall consist of assessments remitted by producers pursuant to the provisions of this chapter and any interest or earnings on the fund balance.

(2) All assessments shall be paid to the department and shall be deposited in the commodity indemnity fund. Assessments shall be paid solely by producers who deposit or deliver a commodity with a warehouse or sell to a dealer ~~and in no event shall be paid by a person who deposits commodities~~ or ~~other agricultural products with a~~ warehouse. ~~or dealer under a bailment, entrustment, consignment, sale and return, or similar contract~~ A delivery of commodity between producers, none of which are commodity dealers or warehousemen, is exempt from the collection and payment of assessment. The state treasurer shall be the custodian of the commodity indemnity fund. Disbursements shall be on authorization of the director. No appropriation is required for disbursements from this fund.

(3) The commodity indemnity fund and accruing interest shall be

used exclusively for purposes of paying claimants pursuant to this chapter and chapter 5, title 69, Idaho Code, and paying necessary expenses and costs of administering the commodity indemnity fund~~,~~. P~~p~~rovided however, that ~~up to one half (1/2) of~~ each year, accrued interest for that year shall be applied to pay necessary expenses and costs of administering the fund, regardless of the amount, to the extent of available accrued interest. In the event the accrued interest is insufficient to pay the necessary expenses and costs of administering the fund in any particular year, then accrued interest shall first be applied to those costs and expenses. The remaining costs and expenses will be paid with principal from the commodity indemnity fund. In no event, however, shall payments from principal in any given year exceed the sum of two hundred fifty thousand dollars ($250,000). T~~t~~he interest accumulated by the fund may be paid to the department and to the state treasurer to defray costs of administering the warehouse and dealer ~~indemnity~~ program and the commodity indemnity fund. The interest accumulated by the fund and, if necessary, a portion of the fund, may be used to defray the cost of reinsuring the fund at the discretion of the director. The state of Idaho shall not be liable for any claims presented against the fund.

SECTION 38. That Section 69-257, Idaho Code, be, and the same is hereby amended to read as follows:

69-257. ASSESSMENT — RATE -- MINIMUM AND MAXIMUM ASSESSMENT. (1) Every producer shall pay an assessment to the department for deposit in the commodity indemnity ~~account~~ fund according to the provisions of this chapter and rules ~~and--regulations~~ promulgated by the department to implement the provisions of this chapter.

(2) Except as provided in this subsection, the rate of the assessment shall be established by rules promulgated by the department. The producer's annual assessment shall not exceed two-tenths of one ~~per-cent~~ percent (.2%) of the total ~~value~~ gross dollar amount, without deductions, due the producer, as determined at the time of first sale, of the commodities.

SECTION 39. That Section 69-258, Idaho Code, be, and the same is hereby repealed.

SECTION 40. That Chapter 2, Title 69, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 69-258, Idaho Code, and to read as follows:

69-258. COLLECTION AND REMITTANCE OF ASSESSMENTS -- PRINCIPAL AMOUNT HELD IN TRUST -- INTEREST EARNED -- FAILURE TO COLLECT OR REMIT ASSESSMENTS CONSTITUTES A VIOLATION -- INTEREST AND PENALTIES FOR UNPAID ASSESSMENTS. (1) The department shall promulgate rules to provide a procedure for the collection and remittance of the producer's assessments. Any warehouseman or dealer who owes producers for the sale or transfer of a commodity, or have stored for withdrawal a commodity, shall be responsible for the collection of the producer's assessments and the remittance of the assessments collected to the department.

(2) Warehousemen or dealers shall remit to the department assessments collected according to the provisions of this chapter. Payments will be made no later than the twentieth day of the month following the

close of the calendar quarter on a form prescribed by the department. There are four (4) calendar quarters in the year, beginning on the first day of the months of January, April, July and October. Assessment reports shall be submitted even though assessments for the period have not been collected. Failure to do so will result in a penalty of one hundred dollars ($100).

(3) The principal amount of assessments paid by, or deducted from, payments to producers by warehousemen or dealers, are held in trust for the commodity indemnity fund immediately upon collection by any warehouseman or dealer and are not property of the warehouseman or dealer.

(4) Interest earned on assessments prior to remittance to the department belongs to the warehouseman or dealer.

(5) If a warehouseman or dealer fails to collect or remit assessments as required, it shall be considered a violation of this chapter and shall subject the warehouseman or dealer to suspension or revocation of any license issued to the warehouseman or dealer under the provisions of this chapter.

(6) The department shall collect, on assessments unpaid within the time limits specified in this chapter, interest at the rate of ten percent (10%) per annum until the assessments are remitted together with a penalty of five percent (5%) each month on the unpaid assessment due until the maximum penalty of twenty-five percent (25%) is reached.

SECTION 41. That Section 69-259, Idaho Code, be, and the same is hereby amended to read as follows:

69-259. FUNDING AND LIMITS OF FUND. The ~~assessments imposed pursuant to section 69-257, Idaho Code, shall be imposed under rules promulgated by the department, until such time as~~ maximum amount of the commodity indemnity fund ~~reaches~~ shall be maintained between ten million dollars ($10,000,000) and twelve million dollars ($12,000,000). ~~If the commodity indemnity fund balance, less any outstanding claims, exceeds ten million dollars ($10,000,000) on an assessment date, no assessment shall be imposed by the department, except as provided in section 69-258, Idaho Code.~~

SECTION 42. That Section 69-261, Idaho Code, be, and the same is hereby amended to read as follows:

69-261. ADVISORY COMMITTEE -- TERMS -- COMPENSATION. (1) There is hereby created a commodity indemnity ~~account~~ fund advisory committee consisting of nine (9) members to be appointed by the director. Appointments shall be for up to three (3) year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of six (6) producers primarily engaged in the production of commodities, and three (3) licensed bonded warehousemen or licensed commodity dealers.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it, provided, it shall meet not less than ~~once~~ twice per year. Each committee member shall be compensated in accordance with section

59-509(~~g~~i), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the commodity indemnity ~~account~~ fund.

(4) The committee shall have the power and duty to advise the director concer~~ning assessments~~, administration of the commodity indemnity ~~account~~ fund, and payment of claims from the ~~account~~ fund. Every two (2) years the committee will review the maximum limits of the fund and give advice to the director.

SECTION 43. That Section 69-262, Idaho Code, be, and the same is hereby amended to read as follows:

69-262. PROOF OF CLAIMS -- PROCEDURE -- HEARING -- INSPECTION OF WAREHOUSE. In the event a warehouse or dealer fails, as defined in section 69-202(~~7~~8), Idaho Code, the department shall process the claims of producers who have paid or owe assessments as required by this chapter. Claims against a failed warehouse or dealer shall include written evidence disclosing a storage obligation or a sale or delivery of commodities. ~~For the purpose of this statute, a storage obligation or a sale of commodities shall not include any commodities deposited with a warehouse or dealer under a bailment, entrustment, consignment, sale or return, or similar contract.~~

(1) The department shall give notice and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days to producers to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and shall notify each claimant, the warehouseman or dealer, and the advisory committee of the department's determination as to the validity and amount of each claimant's claim. A claimant or warehouseman or dealer may request a hearing on the department's determination within twenty (20) days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 52, title 67, Idaho Code. Upon determining the amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim from the commodity indemnity fund. Prior to any payment from the fund to a claimant, the claimant ~~may~~ shall be required to subrogate and assign his right to recover from any other source. The department may then pay up to ninety percent (90%) of the approved claim to the claimant. The department shall have a priority claim for that amount. The claimant shall be entitled to seek recovery of the remaining ten percent (10%) which was not originally assigned to the department. For the purpose of determining the amount of the producer's claim, the value of a producer's commodity shall be the lesser of: (a) the value of the commodity on the date the director declared the warehouse or dealer to have failed or to have failed to comply with the provisions of this chapter or rules promulgated thereunder; (b) the contract price as listed on a valid contract; or (c) the value of the commodity represented on the contract on the date the contract was signed. The value shall be determined by a survey of the available market price reports or markets of similar facilities within the same geographic location as the failed facility.

(3) The department may inspect and audit a failed warehouseman or dealer. In the event of a shortage, the department shall determine each

producer's pro rata share of available commodities and the deficiency shall be considered as a claim of the producer. Each type of commodity shall be treated separately for the purpose of determining shortages.

(4) The director shall not approve or pay any claim made on the commodity indemnity fund if the claim is based on losses resulting from the deposit, sale or storage of commodities in an unlicensed warehouse or dealer.

(5) The fund shall not be liable for claims filed against a warehouse or dealer in good standing who has voluntarily relinquished their license if such claims are not filed with the department within six (6) months of the closing.

SECTION 44. That Section 69-263, Idaho Code, be, and the same is hereby amended to read as follows:

69-263. FAILURE TO FILE -- LOSS OF CLAIM ON FUND. If a producer, after notification, refuses or neglects to file in the office of the director his verified claim against a warehouseman or dealer as requested by the director within ~~sixty~~ ninety (~~60~~90) days from the date of the notice, the director shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the commodity indemnity fund. No claim shall be paid from the fund if a producer files his claim more than two (2) years from the date of sale of the commodity.

SECTION 45. That Section 69-264, Idaho Code, be, and the same is hereby amended to read as follows:

69-264. MINIMUM BALANCE -- SUBSEQUENT PAYMENTS. The minimum balance in the commodity indemnity fund, which shall be used exclusively for purposes of paying claimants pursuant to this chapter and chapter 5, title 69, Idaho Code, shall be ~~one million~~ two hundred fifty thousand dollars (~~$1,000~~$250,000). At no time shall the balance be allowed to fall below the minimum balance. The director may pay claims, on a pro rata basis if necessary, until the minimum balance is reached. If the director cannot fully pay a claim before the minimum balance is reached, he shall, when the commodity indemnity fund contains sufficient funds, pay off the claim.

SECTION 46. That Section 69-266, Idaho Code, be, and the same is hereby amended to read as follows:

69-266. PAYMENT FROM ~~ACCOUNT~~ FUND -- DEBT OF WAREHOUSEMAN OR DEALER OR SURETY -- REIMBURSEMENT -- ACCRUAL OF CAUSE OF ACTION. Amounts paid from the commodity indemnity ~~account~~ fund in satisfaction of any approved claim shall constitute a debt and obligation of the warehouseman, dealer, or surety against whom the claim was made. The director may bring suit on behalf of the commodity indemnity ~~account~~ fund in the district court of Ada county to recover from the warehouseman, dealer, or surety the amount of the payment made from the commodity indemnity ~~account~~ fund, together with costs and attorney's fees incurred in maintaining the suit. In the event the department initiates an action against a warehouseman, dealer, or surety the department's claim is deemed to accrue and relate back to the time that each producer who

received a commodity indemnity ~~account~~ fund payment incurred a loss in the facility. In no event shall a commodity indemnity ~~account~~ fund payment be deemed to be beyond the reimbursement from the warehouseman, dealer, or surety merely because the payment may have occurred after the facility closed. Any recovery for reimbursement to the fund shall bear interest at the statutory rate from the date of failure.

SECTION 47. That Section 69-267, Idaho Code, be, and the same is hereby amended to read as follows:

69-267. CLAIM AGAINST WAREHOUSEMAN OR DEALER -- DIRECTOR'S REMEDIES. The department may deny, suspend, or revoke the license of any warehouseman or dealer against whom a claim has been made, approved, and paid from the commodity indemnity ~~account~~ fund. Proceedings for the denial, suspension, or revocation shall be subject to the provisions of title 67, chapter 52, Idaho Code.

Approved March 25, 2002.

CHAPTER 260
(H.B. No. 705)

AN ACT

APPROPRIATING MONEYS FOR THE AGRICULTURAL RESEARCH AND COOPERATIVE EXTENSION SERVICE FOR FISCAL YEAR 2003; AND REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED BALANCES.

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

SECTION 1. There is hereby appropriated to the Board of Regents of the University of Idaho for the Agricultural Research and Cooperative Extension Service Program the following amounts from the listed funds for the period July 1, 2002, through June 30, 2003:

FROM:	
General Fund	$23,316,400
Equine Education Fund	135,900
Federal Grant Fund	4,599,500
Miscellaneous Revenue Fund	182,100
TOTAL	$28,233,900

SECTION 2. There is hereby reappropriated to the Board of Regents of the University of Idaho for the Agricultural Research and Cooperative Extension Service, the unexpended and unencumbered balance of any non-General Fund appropriation contained in Section 1, Chapter 236, Laws of 2001, to be used for nonrecurring expenditures for the period July 1, 2002, through June 30, 2003.

Approved March 25, 2002.

CHAPTER 261
(H.B. No. 726)

AN ACT

RELATING TO AGRICULTURE ODOR MANAGEMENT; AMENDING SECTION 25-3801, IDAHO CODE, TO CLARIFY THE LAW PURSUANT TO WHICH CERTAIN OPERATIONS ARE REGULATED; AMENDING SECTION 25-3803, IDAHO CODE, TO REVISE DEFINITIONS AND TO PROVIDE DEFINITIONS; AMENDING SECTION 25-3804, IDAHO CODE, TO REVISE REQUIREMENTS AND PROCEDURES FOR DESIGN AND CONSTRUCTION OF LIQUID WASTE SYSTEMS FOR REGULATED OPERATIONS; AMENDING SECTION 25-3808, IDAHO CODE, TO REVISE CRITERIA RELATED TO SUBSEQUENT VIOLATIONS AND TO REVISE PENALTY PROVISIONS; AMENDING CHAPTER 38, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-3809, IDAHO CODE, TO PROVIDE FOR AN AGRICULTURE ODOR MANAGEMENT FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 25-3801, Idaho Code, be, and the same is hereby amended to read as follows:

25-3801. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. (1) The agriculture industry is a vital component of Idaho's economy and during the normal course of producing the food and fiber required by Idaho and our nation, odors are generated. It is the intent of the legislature to manage these odors when they are generated at a level in excess of those odors normally associated with accepted agricultural practices in Idaho.

(2) Large swine and poultry operations are addressing odor management through chapter 1, title 39, Idaho Code, and the department of environmental quality's rules regulating large swine and poultry operations, and the beef cattle industry will address odor management as needed through implementation of the beef cattle environmental control act as provided for in chapter 49, title 22, Idaho Code, and rules promulgated thereunder.

(3) The Idaho department of agriculture is hereby authorized as the lead agency to administer and implement the provisions of this chapter. In carrying out the provisions of this chapter, the department will make reasonable efforts to ensure that any requirements imposed upon agricultural operations are cost-effective and economically, environmentally and technologically feasible.

SECTION 2. That Section 25-3803, Idaho Code, be, and the same is hereby amended to read as follows:

25-3803. DEFINITIONS. When used in this chapter:

(1) "Accepted agricultural practices" means those management practices normally associated with agriculture in Idaho, and which should include management practices intended to control odor generated by an agricultural operation.

(2) "Agricultural animals" means those animals including, but not limited to, mink, domestic cervidae, horses and ratites raised for agricultural purposes.

(3) "Agricultural operations" means those operations where livestock or other agricultural animals are raised, or crops are grown, for commercial purposes, not to include those operations set forth within section 25-3801(2), Idaho Code.

(4) "Best management practices" means practices, techniques or measures ~~which~~ are determined by the department to be a cost-effective and practicable means of managing odors generated on an agricultural operation to a level associated with accepted agricultural practices.

(~~3~~5) "Department" means the Idaho department of agriculture.

(~~4~~6) "Director" means the director of the Idaho department of agriculture.

(~~5~~7) "Liquid waste system" means those wastewater storage and containment facilities and associated waste collection and conveyance systems where water is used as the primary carrier of manure and manure is added to the wastewater storage and containment facilities on a regular basis including the final distribution system.

(~~6~~8) "Livestock" means cattle, sheep, swine and poultry.

(~~7~~9) "Manure" means ~~livestock~~ animal excrement that may also contain bedding, spilled feed or soil.

(~~8~~10) "Modified" means structural changes and alterations to the livestock operation which would require increased wastewater storage or ~~containment~~ capacity or such changes which would increase the amount of manure entering wastewater storage containment facilities.

(~~9~~11) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard.

(~~10~~12) "Nutrient management standard" means the 1999 publication by the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590, and all subsequent amendments, additions or other revisions thereto, or other equally protective standard approved by the director.

(13) "Odor" means the property or quality of a substance that stimulates or is perceived by the sense of smell, or by other means as the department may determine by rule, the standards for which shall be judged on criteria that shall include intensity, duration, frequency, offensiveness and health risks.

(~~11~~14) "Odor management plan" means a site specific plan approved by the director to manage odor from an agricultural operation to a level associated with accepted agricultural practices by utilizing best management practices.

(~~12~~15) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties.

(~~13~~16) "Wastewater" means water containing manure which is generated on a livestock operation.

(~~14~~17) "Wastewater storage and containment facilities" means wastewater storage ponds, wastewater treatment lagoons and evaporative ponds.

SECTION 3. That Section 25-3804, Idaho Code, be, and the same is hereby amended to read as follows:

25-3804. DESIGN AND CONSTRUCTION. All new or modified liquid waste systems shall be designed by~~, or reviewed and approved by,~~ licensed professional engineers, approved by the director of the department of agri-

culture for compliance with the provisions of this chapter, and constructed in accordance with standards and specifications either approved by the director for management of odors or in accordance with any existing relevant memorandums of understanding with the department of environmental quality. Provided however, that a~~A~~ll persons shall submit plans and specifications for new or modified liquid waste systems to the director for approval~~. No person~~ and shall not begin construction of a liquid waste system prior to approval of plans and specifications by the director. If construction is commenced prior to receiving necessary approval, the director may order construction activities to be ceased. No material deviation shall be made from the approved plans and specifications without the prior written approval of the director. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration or modification performed must be submitted by the operator to the director. If construction does not materially deviate from the plans approved by the director, a statement to that effect shall be filed by the agricultural operation with the director.

SECTION 4. That Section 25-3808, Idaho Code, be, and the same is hereby amended to read as follows:

25-3808. SUBSEQUENT VIOLATIONS -- PENALTIES. (1) An agricultural operation, after having been determined to have committed a first time violation of the provisions of this chapter, shall be deemed to have committed a subsequent violation if the operation:

(a) Is determined by the department to have committed a subsequent violation within a three (3) year period of time; or

(b) Failed to comply with an odor management plan developed pursuant to section 25-3805, Idaho Code.

(2) An agricultural operation, after having been determined to have committed a first time violation of the provisions of this chapter, may be deemed to have committed a subsequent violation if the director determines that the operation has failed to cooperate by failing to submit an acceptable odor management plan.

(3) Those agricultural operations determined to have committed a subsequent violation of this chapter shall be assessed a civil penalty by the department or its duly authorized agent not to exceed ten thousand dollars ($10,000) for each offense and be liable for reasonable attorney's fees and costs.

(~~3~~4) Assessment of a civil penalty as provided herein may be made in conjunction with any other department administrative action and shall be based on the severity of the offense and the degree of cooperation with the department.

(~~4~~5) No civil penalty may be imposed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(~~5~~6) If the department is unable to collect the civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court.

(~~6~~7) Any person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final

action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. ~~Moneys collected for violations shall be deposited in the state treasury and credited to the general fund.~~

(8) Moneys collected for violations shall be deposited in the state treasury and credited to the general fund.

(~~7~~9) The imposition or computation of monetary penalties shall take into account the seriousness of the violation, ~~good faith efforts to comply with the law, the economic impact of the penalty on the violator,~~ and such other matters as justice requires. The director shall prepare a written report setting forth the basis upon which any monetary penalty is imposed and/or computed and shall retain the report on file with the department.

SECTION 5. That Chapter 38, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-3809, Idaho Code, and to read as follows:

25-3809. AGRICULTURE ODOR MANAGEMENT FUND. There is hereby created in the state treasury a fund to be known as the agriculture odor management fund, which shall consist of all moneys which may be appropriated to it by the legislature or made available to it from federal, private or other sources. The department may expend such amounts as are appropriated by the legislature from the fund for research, grants, projects, programs or other expenditures.

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 25, 2002.

CHAPTER 262
(H.B. No. 737)

AN ACT

PROVIDING LEGISLATIVE INTENT REGARDING ONE-TIME TECHNOLOGY EXPENDITURES CONTAINED IN SECTION 6, HOUSE BILL NO. 683, AS ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-SIXTH IDAHO LEGISLATURE.

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

SECTION 1. Of the moneys allocated for one-time technology expenditures by Section 6, House Bill No. 683, as enacted by the Second Regular Session of the Fifty-sixth Idaho Legislature, up to $150,000 may be used by the Idaho Council for Technology in Learning to match technology grants from private sources.

Approved March 26, 2002.

CHAPTER 263
(S.B. No. 1332)

AN ACT

RELATING TO CERTAIN TRESPASS CRIMES; AMENDING CHAPTER 70, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-7040, IDAHO CODE, TO PROVIDE THE CRIME OF INTERFERENCE WITH AGRICULTURAL RESEARCH, TO PROVIDE PENALTIES, TO DEFINE TERMS AND TO PROVIDE FOR RESTITUTION.

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

SECTION 1. That Chapter 70, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-7040, Idaho Code, and to read as follows:

18-7040. INTERFERENCE WITH AGRICULTURAL RESEARCH. (1) A person commits the crime of interference with agricultural research if the person knowingly:

(a) Damages any property at an agricultural research facility with the intent to damage or hinder agricultural research or experimentation;

(b) Obtains any property of an agricultural research facility with the intent to damage or hinder agricultural research or experimentation;

(c) Obtains access to an agricultural research facility by misrepresentation with the intent to perform acts that would damage or hinder agricultural research or experimentation;

(d) Enter an agricultural research facility with the intent to damage, alter, duplicate or obtain unauthorized possession of records, data, materials, equipment or specimens related to agricultural research or experimentation;

(e) Without the authorization of the agricultural research facility, obtains or exercises control over records, data, materials, equipment or specimens of the agricultural research facility with the intent to destroy or conceal the records, data, materials, equipment or specimens; or

(f) Releases or steals an animal from, or causes the death, injury or loss of an animal at an agricultural research facility.

(2) A person found guilty of committing the crime of interference with agricultural research shall be guilty of a felony and shall be punished by a term of imprisonment of not more than twenty (20) years or by a fine not in excess of ten thousand dollars ($10,000), or by both such fine and imprisonment.

(3) For purposes of this section:

(a) "Agricultural research facility" means any structure or land, whether privately or publicly owned, leased or operated, that is being used for agricultural research or experimentation.

(b) "Agricultural research or experimentation" means the lawful study, analysis or testing of plants or animals, or the use of plants or animals to conduct studies, analyses, testing or teaching, for the purpose of improving farming, forestry or animal husbandry.

(4) In addition to any other penalty imposed for a violation of this section, the court shall require any person convicted, found guilty

or who pleads guilty to a violation of this section to make restitution to the victim of the offense in accordance with the terms of section 19-5304, Idaho Code; provided, that such award shall be in an amount equal to twice the value of the crop, crop product, timber, timber product, livestock or equipment damaged or destroyed. In ordering restitution under this section, the court shall, in the determination of value, consider:

(a) The market value of the crop, crop product, timber, timber product, livestock, or equipment that has been damaged or destroyed;

(b) Production, research, testing, replacement and development costs directly related to the crop, crop product, timber, timber product, livestock or equipment that has been damaged or destroyed;

(c) the costs of repeating an experiment, including the replacement of the records, data, equipment, specimens, labor and materials, if acts constituting the violation cause the failure of an experiment in progress or irreparably damage completed research or experimentation.

Approved March 25, 2002.

CHAPTER 264
(S.B. No. 1408)

AN ACT

RELATING TO INSURANCE CONTRACTS; AMENDING CHAPTER 18, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1843, IDAHO CODE, TO PROVIDE THAT NO INSURER REGULATED PURSUANT TO TITLE 41, IDAHO CODE, SHALL CHARGE A HIGHER PREMIUM THAN WOULD OTHERWISE BE CHARGED, OR CANCEL, NONRENEW OR DECLINE TO ISSUE A PROPERTY OR CASUALTY POLICY OR COVERAGE BASED PRIMARILY UPON AN INDIVIDUAL'S CREDIT RATING OR CREDIT HISTORY, TO DEFINE "BASED PRIMARILY" AND TO LIMIT APPLICATION TO ONLY PROPERTY OR CASUALTY INSURANCE TO BE USED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 18, 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 41-1843, Idaho Code, and to read as follows:

41-1843. INSURANCE RATES AND CREDIT RATING. (1) No insurer regulated pursuant to this title shall charge a higher premium than would otherwise be charged, or cancel, nonrenew or decline to issue a property or casualty policy or coverage based primarily upon an individual's credit rating or credit history.

(2) As used in this section, "based primarily" means that the weight given by the insurer to an individual's credit rating or credit history exceeds the weight given by the insurer to all other criteria considered in making the decision to charge a higher premium or to cancel, nonrenew or decline to issue an insurance policy.

(3) This section shall apply only to property or casualty insurance, as defined in chapter 5, title 41, Idaho Code, to be used primarily for personal, family or household purposes.

SECTION 2. This act shall be in full force and effect on and after January 1, 2003.

Approved March 25, 2002.

CHAPTER 265
(S.B. No. 1411)

AN ACT
RELATING TO TEACHERS; AMENDING CHAPTER 12, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1280, IDAHO CODE, TO PROVIDE FOR THE AUTHORIZATION OF AMERICAN INDIAN LANGUAGES TEACHERS AND TO SET FORTH PROCEDURES FOR DESIGNATION BY INDIAN TRIBES AND AUTHORIZATION BY THE STATE BOARD OF EDUCATION.

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

SECTION 1. That Chapter 12, 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 33-1280, Idaho Code, and to read as follows:

33-1280. AMERICAN INDIAN LANGUAGES TEACHING AUTHORIZATION. (1) As used in this section, "Indian tribe" is as defined in section 67-4001, Idaho Code.

(2) It is the policy of the state of Idaho to preserve, protect and promote the rights of Indian tribes to use, practice and develop their native languages and to encourage American Indians in the state to use, study and teach their native languages in order to encourage and promote:

(a) The survival of the native language;

(b) Increased student scholarship;

(c) Increased student awareness of the student's culture and history; and

(d) Increased student success.

(3) The state board of education shall promulgate rules authorizing American Indian languages teachers to teach in the public schools of this state.

(4) Each Indian tribe may establish its own system of designation for individuals qualified to teach that tribe's native language. In establishing such a system, the tribe shall determine:

(a) The development of an oral and written qualification test;

(b) Which dialects shall be used in the test;

(c) Whether the tribe will standardize the tribe's writing system;

(d) How the teaching methods will be evaluated in the classroom; and

(e) The period of time for which a tribal designation shall be valid.

(5) (a) Each Indian tribe shall provide to the state board of education the names of those highly and uniquely qualified individuals who have been designated to teach the tribe's native language.

(b) Upon receiving the names of American Indian languages teachers designated by an Indian tribe, the state board of education shall authorize those individuals as American Indian languages teachers in accordance with rules of the board.

(6) Notwithstanding any other provision of law, the state board of education shall not require an American Indian languages teacher who has obtained tribal designation to teach a native language to hold a specific academic degree or to complete a teacher education program.

(7) (a) An American Indian languages teaching authorization shall qualify the authorized individual to accept a teaching position or assignment in any school district of the state that offers or permits courses in an American Indian language.

(b) A holder of an American Indian languages teaching authorization who does not also have a teaching certificate as provided in section 33-1201, Idaho Code, may not teach in a school district of this state any subject other than the American Indian language for which he or she is authorized to teach.

Approved March 25, 2002.

CHAPTER 266
(H.B. No. 420, As Amended, As Amended in the Senate)

AN ACT

RELATING TO GEOLOGISTS; AMENDING SECTION 54-2802, IDAHO CODE, TO REDEFINE "GEOLOGY" AND "GEOLOGIST" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2803, IDAHO CODE, TO REVISE THE COMPOSITION AND APPOINTMENT OF MEMBERS TO THE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS, TO DELETE OBSOLETE LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2804, IDAHO CODE, TO REVISE QUALIFICATIONS FOR BOARD MEMBERSHIP AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2805, IDAHO CODE, TO INCREASE COMPENSATION FOR BOARD MEMBERS; AMENDING SECTION 54-2807, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2808, IDAHO CODE, TO PROVIDE THAT THE BOARD MAY ADOPT BY RULE A CODE OF ETHICS AND STANDARDS OF CONDUCT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2809, IDAHO CODE, TO DELETE BONDING REQUIREMENTS FOR THE SECRETARY OF THE BOARD AND TO PROVIDE PROPER TERMINOLOGY; AMENDING SECTION 54-2810, IDAHO CODE, TO DELETE THE REQUIREMENT FOR SUBMISSION OF AN ANNUAL REPORT AND STATEMENT OF RECEIPTS AND EXPENDITURES TO THE GOVERNOR AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 54-2811, IDAHO CODE; AMENDING SECTION 54-2812, IDAHO CODE, TO MODIFY QUALIFICATIONS FOR REGISTRATION, TO PROVIDE PROPER TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2813, IDAHO CODE, TO PROVIDE FOR A NONREFUNDABLE APPLICATION FEE; AMENDING SECTION 54-2814, IDAHO CODE, TO REVISE THE TIME FRAME FOR REEXAMINATION AND TO AUTHORIZE THE BOARD TO SET THE FEES FOR EXAMINATION AND FOR REEXAMINATION; AMENDING SECTION 54-2815, IDAHO CODE, TO AUTHORIZE THE BOARD TO SET A CERTIFICATE FEE

AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2819, IDAHO CODE, TO ESTABLISH THE BOARD'S AUTHORITY WITH RESPECT TO DISCIPLINARY PROCEEDINGS; AND REPEALING SECTION 54-2820, IDAHO CODE.

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

SECTION 1. That Section 54-2802, Idaho Code, be, and the same is hereby amended to read as follows:

54-2802. DEFINITIONS. (~~a~~1) Within the intent of this ~~act~~ chapter, it is recognized that "geology" is a fundamental science dealing with the physical earth, the organisms, materials and structures composing the earth, ~~and~~ the physical forces affecting the earth, and the utilization of the knowledge of the earth and its constituent rocks, minerals, liquids, gases and other materials insofar as these factors may influence the safety and public welfare.

The terms, "geology and professional geology," within the intent of this ~~act~~ chapter, shall include any professional service such as consultation, investigation, evaluation, planning, and mapping, or responsible supervision of such activities in connection with any public or private project, as governed by the principles of geology, wherein the public welfare or the safeguarding of life, health, or property is concerned or involved, when such service is rendered in a professional capacity and requires the application of geologic principles and data.

A person shall be construed to practice or offer to practice geology, within the meaning and intent of this ~~act~~ chapter, who practices any branch of the profession of geology; or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a geologist, or through the use of some other title implies that he is a geologist or that he is registered under this ~~act~~ chapter; or who holds himself out as able to perform, or who does perform any geological services or work recognized as geology.

Further, within the intent of this ~~act~~ chapter, it is recognized that the information derived from geological studies may be utilized in various associated fields or sciences concerned with the safety and public welfare.

Registration under this ~~act~~ chapter, however, does not qualify the registrant to practice professionally in any field or science other than geology.

(~~b~~2) The term "geologist," within the intent of this ~~act~~ chapter, shall mean a person who is qualified by reason of his knowledge of principles of geology, the physical sciences, and mathematics acquired by education and practical experience, to engage in the practice of professional geology. ~~and--the--allied---geosciences---of---geophysics---and geochemistry.~~

(~~c~~3) The term "professional geologist," as used in this ~~act~~ chapter, shall mean a person who has been duly registered by the state board of registration for professional geologists.

(~~d~~4) The term "board" as used in this ~~act~~ chapter shall mean the state board of registration for professional geologists, hereinafter provided by this ~~act~~ chapter.

SECTION 2. That Section 54-2803, Idaho Code, be, and the same is hereby amended to read as follows:

54-2803. STATE BOARD OF REGISTRATION FOR PROFESSIONAL GEOLOGISTS -- CREATION -- TERMS OF MEMBERS -- OATH. A state board of registration for professional geologists is hereby created in the department of self-governing agencies whose duty it shall be to administer the provisions of this ~~act~~ chapter. The board shall consist of five (5) ~~professional geologists~~ members, who shall be appointed by the governor ~~from among nominees recommended by the Idaho Association of Professional Geologists,~~ and shall have the qualifications required by section 54-2804, Idaho Code.

The board shall be comprised of members representing at least three (3) of the following ~~professional~~ categories: ~~one (1)~~ academic geologists, ~~one (1)~~ government geologists, ~~two (2)~~ salaried company geologists and ~~one (1)~~ independent or consultant geologists.

~~The members of the first board shall be appointed within ninety (90) days after the approval of this act to serve for the following terms: one (1) member for one (1) year, one (1) member for two (2) years, one (1) member for three (3) years, one (1) member for four (4) years, and one (1) member for five (5) years, from the date of their appointment.~~

Each member of the board shall take, subscribe and file the oath required by chapter 4, title 59, Idaho Code, before entering upon the duties of his office. On the expiration of the term of any member his successor shall be appointed in like manner by the governor for a term of five (5) years.

Members of the board shall hold office until the expiration of the term for which they were appointed and until their successors have been appointed and qualified.

SECTION 3. That Section 54-2804, Idaho Code, be, and the same is hereby amended to read as follows:

54-2804. QUALIFICATIONS FOR BOARD MEMBERSHIP. Members of the ~~initial~~ board shall be citizens of the United States and residents of this state, and they shall have been engaged in the practice of geology for at least twelve (12) years~~, shall have been in responsible charge of important geologic work for at least five (5) years, and shall be geologists as qualified under the provisions of this act as herein provided. Responsible charge of geologic teaching may be construed as responsible charge of important geologic work. Each appointee to subsequent boards~~ and shall ~~be a geologist registered~~ never have been the subject of a disciplinary action under the provisions of this ~~act~~ chapter.

SECTION 4. That Section 54-2805, Idaho Code, be, and the same is hereby amended to read as follows:

54-2805. COMPENSATION FOR BOARD MEMBERS. Each member of the board shall be compensated as provided by section 59-509(~~f~~n), Idaho Code.

SECTION 5. That Section 54-2807, Idaho Code, be, and the same is hereby amended to read as follows:

54-2807. BOARD MEETINGS. The board shall hold ~~a meeting within thirty (30) days after its members are first appointed and thereafter shall hold~~ at least one (1) regular meeting each year. The ~~by-laws~~ board may provide for such additional regular meetings as necessary and for

special meetings. Notice of all meetings shall be given as may be provided in the ~~by-laws~~ open meeting law. The board shall annually elect a chairman, a vice chairman and a secretary, who shall be members of the board, and they may provide for an assistant ~~secretary~~ who need not be a member of the board. Three (3) members shall constitute a quorum.

SECTION 6. That Section 54-2808, Idaho Code, be, and the same is hereby amended to read as follows:

54-2808. POWERS AND DUTIES OF BOARD -- SUBPOENAS. The board shall have the power to adopt and amend rules ~~and regulations~~ including, but not limited to, a code of ethics and standards of conduct which may be reasonably necessary for the proper performance of its duties and the administration of this ~~act~~ chapter and the regulation of proceedings before the board. It shall adopt and have an official seal. It shall have power to provide an office, office equipment and facilities and such books and records as may be reasonably necessary for the proper performance of its duties. The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest.

In carrying into effect the provisions of this ~~act~~ chapter, the board, under the hand of its chairman and the seal of the board, may request the attendance of witnesses and the production of such books, records and papers as may be required at any hearing before it, and for that purpose the board may request a district court to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. Subpoenas shall be directed to the sheriff of any county in the state of Idaho where such witness resides or may be found. Subpoenas shall be served and returned in the same manner as subpoenas in a criminal case. The fees and mileage of the sheriff and witnesses shall be the same as that allowed in district court criminal cases, which fees and mileage shall be paid from any funds in the state treasury available therefor in the same manner as other expenses of the board are paid. Disobedience of any subpoena issued by the district court or the refusal by any witness in failing to testify concerning any matter regarding which he may lawfully be interrogated, or the failure to produce any books, records or papers, shall constitute a contempt of the district court of any county where such disobedience or refusal occurs, and said court, or any judge thereof, by proceedings for contempt in said court, may, if such contempt be found, punish said witness as in any other case of disobedience of a subpoena issued from such court or refusal to testify therein.

SECTION 7. That Section 54-2809, Idaho Code, be, and the same is hereby amended to read as follows:

54-2809. PROFESSIONAL GEOLOGISTS' FUND -- FINANCES. The duly elected secretary of the board shall receive and account for all moneys derived under the provisions of this ~~act~~ chapter, and shall pay the same monthly to the state treasurer, who shall keep such moneys in a separate fund to be known as the "professional geologists' fund." Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only on approval of the board. ~~The secretary of the board shall give a surety bond to the state in such sum as the board may~~

~~determine. The premium on said bond shall be regarded as a proper and necessary expense of the board, and shall be paid out of the "professional geologists' funds."~~ The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 54-2805, Idaho Code. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this ~~act~~ chapter. Under no circumstances shall the total amount of expenditures approved by the board in payment of the expenses and compensation provided for in this ~~act~~ chapter exceed the amount of the examination and registration fees collected as herein provided. All warrants on the "professional geologists' funds" shall be drawn by the state controller on vouchers by the board and approved by the state board of examiners.

SECTION 8. That Section 54-2810, Idaho Code, be, and the same is hereby amended to read as follows:

54-2810. RECORDS -- REGISTER. ~~ANNUAL REPORT.~~ The board shall keep a record of its proceedings and register of all applications for registration, which register shall show: (~~a~~1) the name, the age and residency of each applicant; (~~b~~2) the date of application; (~~c~~3) the place of business of such applicant; (~~d~~4) his educational and other qualifications; (~~e~~5) whether or not an examination was required; (~~f~~6) whether the applicant was rejected; (~~g~~7) whether a certificate of registration was granted; (~~h~~8) the dates of the action by the board; and (~~i~~9) such other information as may be deemed necessary by the board.

The records of the board shall be prima facie evidence of the proceedings of the board set forth therein; and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

~~Annually the board shall submit to the governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the board, attested by affidavits of its chairman and its secretary.~~

SECTION 9. That Section 54-2811, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 54-2812, Idaho Code, be, and the same is hereby amended to read as follows:

54-2812. QUALIFICATIONS FOR REGISTRATION. (~~a~~1) ~~Except as herein otherwise expressly provided, n~~No applicant may be registered until he has successfully passed an examination given by or under the supervision of the board, nor shall an applicant be registered having habits of character that would justify revocation or suspension of registration, as provided in section 54-2819, Idaho Code. The following shall be considered as minimum evidence that the applicant is qualified to take an examination for registration as a professional geologist:

(~~b~~2) Completion of thirty (30) semester units in courses in geological science leading to a degree in the geological sciences of which at

least twenty-four (24) units are in third or fourth year, and/or graduate courses; and have at least seven (7) years of professional geological work which shall include either a minimum of three (3) years of professional geological work under the supervision of a registered geologist; or, wherein the applicant has been under the direct supervision of an individual acceptable to the board, or, wherein the applicant has demonstrated five (5) years of progressive experience in responsible charge of geological work that is acceptable to the board.

Each year of undergraduate study in the geological sciences shall count as one-half (1/2) year of training up to a maximum of two (2) years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total annual teaching experience includes six (6) semester units of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of four (4) years towards meeting the requirement for at least seven (7) years of professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by his having performed the work in a responsible position, as the term "responsible position" is defined in ~~regulations~~ rules adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in ~~regulations~~ rules adopted by it.

Three (3) references from geologists in responsible positions must be filed with the application for registration.

~~(c)--Wherein-an-applicant,-with-a-specific-record-of--at--least--ten (10)--years--of-lawful-practice-in-geologic-work,-of-which-at-least-five (5)-years-have-been-in-responsible-charge-of-important-geologic-work--of a-grade-and-character-which-indicates-that-the-applicant-is-competent-to practice--geology--and--being-otherwise-qualified,-or-through-compliance with-subsection-(b)-of-this-section,-the-board,-at-its-discretion,-shall waive-subsection-(a)-of-this-section,-until-one-(1)-year--following--the effective--date--of--this-act-and-issue-a-license-to-practice-geology-in the-state-of-Idaho.~~

(~~d~~3) A person holding a certificate of registration to engage in the practice of geology, ~~on-the-basis-of-comparable-licensing-requirements,~~ issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of any foreign country, who, in the opinion of the board, meets the requirements of this ~~act~~ chapter, based on verified evidence may, upon application, be registered without further examination.

~~Any--person--having-the-necessary-qualifications~~ An applicant otherwise qualified as prescribed in this ~~act-to-entitle-him-to--registration shall-be~~ chapter need not be actively engaged in the practice of geology to be eligible for ~~such~~ registration. ~~although-he-may-not-be-practicing his-profession-at-the-time-of-making-his-application.~~

SECTION 11. That Section 54-2813, Idaho Code, be, and the same is hereby amended to read as follows:

54-2813. APPLICATION FORMS -- ~~REGISTRATION FEE~~-- APPLICATION FEE. Applications for registration shall be on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's education and a detailed summary of his geologic work.

(1) The ~~registration~~ application fee for professional geologists shall be set by the board at not more than one hundred dollars ($100). ~~The board shall designate the portion of the fee to accompany the application for examination; the remaining portion shall be paid prior to the issuance of the certificate.~~

(2) Should the board deny the issuance of a certificate of registration to any applicant, the ~~initial~~ application fee deposited shall be retained ~~as an application fee~~ by the board.

SECTION 12. That Section 54-2814, Idaho Code, be, and the same is hereby amended to read as follows:

54-2814. EXAMINATION AND FEE -- TIME AND PLACE — SCOPE — REEXAMINATION -- REEXAMINATION FEE. Written and/or oral examinations shall be held at such time and place as the board shall determine. If examinations are required on fundamental geologic subjects (such as are ordinarily given in college curricula), the applicant may be permitted to take this part of the professional examination prior to his completion of the requisite years of experience in geologic work, and satisfactory passage of this portion of the professional examination by the applicant shall constitute a credit toward the applicant's complete professional examination for a period not to exceed ten (10) years. The examination fee shall be set by the board.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to supervise geologic projects so as to insure the safety of life, health and property. A candidate failing his first examination may apply for reexamination ~~at the expiration of six (6) months~~ within one (1) year of the failed exam without filing a new application and shall be entitled to such reexamination on payment of an additional fee to be set by the board. ~~at not more than one hundred dollars ($100).~~ A candidate who fails on reexamination, must file a new application before he can again be admitted to examination, and such new application shall not be filed prior to one (1) year following the date of the last examination taken by the applicant; provided, however, that it shall be unlawful for a candidate failing any examination to practice professional geology under subsections (b) and (c) of section 54-2822, Idaho Code.

SECTION 13. That Section 54-2815, Idaho Code, be, and the same is hereby amended to read as follows:

54-2815. CERTIFICATE OF REGISTRATION — CERTIFICATE FEE -- SIGNING OF WORK -- SEAL — INVALID AFFIXATIONS UNLAWFUL. The board shall issue a certificate of registration upon payment of ~~registration~~ a certificate fee as ~~provided for in this act~~ set by the board, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this ~~act~~ chapter. Certificates of registration shall show the full name of the registrant, shall give a serial number, and shall be signed by the chairman and the secretary of the board under seal of the board.

The issuance of a certificate of registration by the board shall be

prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional geologist, while the said certificate remains unrevoked or unexpired.

All drawings, specifications, reports, or other geologic papers or documents involving geologic work as defined in section 54-2802, Idaho Code, which shall have been prepared or approved by a registered geologist or a subordinate employee under his direction for the use of or for delivery to any person or for public record within this state shall be signed by him or be impressed with said seal or the seal of a ~~non-resident~~ nonresident practicing under the provisions of section 54-2822, Idaho Code, either of which shall indicate his responsibility for them.

Each registrant hereunder may, upon registration, obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional geologist."

It shall be unlawful for any person to affix his signature, stamp or seal to any document, after the certificate of the registrant named thereon has expired or been suspended or revoked, unless said certificate shall have been renewed, reinstated, or reissued.

SECTION 14. That Section 54-2819, Idaho Code, be, and the same is hereby amended to read as follows:

54-2819. ~~CODE OF ETHICS---DISCIPLINARY ACTIONS AND--REVOCATION--OF CERTIFICATE~~ DISCIPLINE. (1) ~~The board shall cause to have prepared and shall adopt a code of ethics which shall be made--known--in--writing--to every--registrant--and--applicant--for--registration under this act, and which shall be published in the roster provided for in section--54-2811, Idaho--Code.--Such publication shall constitute due notice to all registrants. The board may revise and amend this code of ethics from time--to time and shall forthwith notify each registrant in writing of such revisions or amendments.~~

Grounds for discipline. The board shall have the power to ~~suspend, refuse to renew, or revoke the~~ deny any application for or renewal of a certificate of registration ~~of any registrant who is found guilty of~~ or to revoke, suspend or amend any such certificate issued pursuant to this chapter and to limit or restrict the practice of any registrant upon a determination by the board that the person:

(a) ~~The--practice--of--any--fraud--or--deceit in obtaining~~ Made, or caused to be made, a false, fraudulent or forged statement, document, credentials or representation in procuring or attempting to procure a certificate of registration to practice geology; or

(b) ~~Any gross negligence, incompetence, or misconduct in the--practice of geology as a professional geologist.~~ Practiced geology under a false or assumed name; or

(c) ~~Any~~ Was convicted of, found guilty, received a withheld judgment or suspended sentence in this or any other state of action constituting a felony or ~~any~~ of a crime involving moral turpitude; or

(d) Violated the provisions of this chapter or rules, standards of conduct and practice, or any ethical codes as may be adopted by the board; or

(e) Is or has been grossly negligent, incompetent, or reckless in the practice of geology; or

(f) Has had a license, certificate, or registration to practice as a professional geologist suspended or revoked in any jurisdiction. A

certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(2) ~~Any--person--may--prefer-charges-of-fraud,-deceit,-gross-negligence,-incompetence,-or-misconduct-against-any-registrant.-Such--charges shall-be-in-writing-and-shall-be-sworn-to-by-the-person,-or-persons-making-them-and-shall-be-filed-with-the-secretary-of-the-board~~ Proceedings. Every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice.

(a) All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence.

(3) ~~All--charges,--unless--dismissed--by--the-board-as-unfounded-or trivial,-shall-be-heard-by-the-board-within-three-(3)-months--after--the date-on-which-they-shall-have-been-preferred~~ Probation. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor or supervise the practice of geology by the registrant subject to such order for the prescribed probationary period.

(4) ~~The-time-and-place-for-said--hearing--shall--be--fixed--by--the board,-and-a-copy-of-the-charges,-together-with-a-notice-of-the-time-and place--of--hearing,--shall-be-personally-served-on-or-mailed-to-the-last known-address-of-such-registrant,-at-least-thirty-(30)-days--before--the date--fixed--for--the--hearing.-The-proceedings-shall-be-governed-by-the provisions-of-chapter-52,-title-67,-Idaho-Code.~~

~~If,-after-such-a-hearing,-a-majority-of-the-board-vote-in--favor--of sustaining--the--charges,--the--board-shall-suspend,-refuse-to-renew,-or revoke-the-certificate-of-registration-of-such-registered-geologist.-The board,-for-reasons-it-may-deem-sufficient,-may-reissue-a-certificate--of registration-to-any-person-whose-certificate-has-been-revoked~~ Subsequent review. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice professional geology and that he is not likely to violate the provisions of this section or rules adopted hereunder in the future.

(5) Costs and fees. The board may, pursuant to an order of discipline or as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs and fees incurred by the board in proceedings upon which the order was entered.

SECTION 15. That Section 54-2820, Idaho Code, be, and the same is hereby repealed.

Approved March 26, 2002.

CHAPTER 267
(H.B. No. 467, As Amended)

AN ACT
RELATING TO EMERGENCY RESPONSES; AMENDING TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 24, TITLE 6, IDAHO CODE, TO PROVIDE FOR LIABILITY FOR CERTAIN EMERGENCY RESPONSES.

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

SECTION 1. That Title 6, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 24, Title 6, Idaho Code, and to read as follows:

CHAPTER 24
LIABILITY FOR EMERGENCY RESPONSES

6-2401. LIABILITY FOR EMERGENCY RESPONSES. (1) Any person who knowingly enters into any area that has been closed to the public by competent authority for any reason, where such closure is posted by sign, barricade or other device, is liable for the expenses of an emergency response required to search for or rescue such person or, if the person was operating a vehicle, any of his or her passengers, plus expenses for the removal of any inoperable vehicle.

(2) Unless otherwise provided by law, subsection (1) of this section shall apply only to persons eighteen (18) years of age or older and shall apply to all such persons irrespective of whether the person is on foot, on skis or snowshoes, or is operating a motor vehicle, bicycle, vessel, watercraft, raft, snowmobile, all-terrain vehicle, or any other boat or vehicle of any description.

(3) Unless otherwise provided by law, subsection (1) of this section shall only apply to the person who knowingly enters the closed area, and not to his or her family, heirs or assigns.

(4) Expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection (1) of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities and not-for-profit entities that incurred the expenses. The person's liability for expenses of an emergency response shall not exceed four thousand dollars ($4,000) for a single incident. The liability imposed under this section is in addition to and not in limitation of any other liability that is imposed.

(5) An insurance policy may exclude coverage for a person's liability for expenses of an emergency response under this section.

(6) Any public agency or private entity that receives full reimbursement from the state search and rescue fund shall not attempt to collect any money from the person. In such cases, the debt described in subsection (4) of this section is collectable by the state of Idaho for reimbursement to the state search and rescue fund.

(7) For purposes of this section:

(a) "Expenses of an emergency response" means those reasonable and necessary costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emer-

gency response to an incident, and shall include the cost of providing police, firefighting, search and rescue, and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.

(b) "Public agency" means this state and any city, county, municipal corporation or other public authority that is located in whole or in part in this state and that provides police, firefighting, medical or other emergency services.

Approved March 26, 2002.

CHAPTER 268
(H.B. No. 594)

AN ACT

RELATING TO HAZING; AMENDING SECTION 18-917, IDAHO CODE, TO PROHIBIT STUDENTS ON OR NEAR SCHOOLS FROM HAZING ANY MEMBER, POTENTIAL MEMBER OR PERSON PLEDGED TO BE A MEMBER OF A GROUP OR ORGANIZATION AS A CONDITION OR PRECONDITION OF GAINING MEMBERSHIP IN THE GROUP OR ORGANIZATION, TO STRIKE AN EXCEPTION, TO PROVIDE EXCEPTIONS AND TO PROVIDE THAT A STUDENT WHO VIOLATES THE PROVISIONS OF THE SECTION SHALL BE GUILTY OF A MISDEMEANOR.

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

SECTION 1. That Section 18-917, Idaho Code, be, and the same is hereby amended to read as follows:

18-917. HAZING. (1) No student or member of a fraternity, sorority or other living or social student group or organization organized or operating on or near a school or college or university campus, ~~for--purposes--of--participating-in-student-activities-of-the-college-or-university,~~ shall intentionally haze or conspire to haze any member, potential member or person pledged to be a member of the group or organization, as a condition or precondition of attaining membership in the group or organization or of attaining any office or status therein.

(2) As used in this section, "haze" means to subject a person to bodily danger or physical harm or a likelihood of bodily danger or physical harm, or to require, encourage, authorize or permit that the person be subjected to any of the following:

(a) Total or substantial nudity on the part of the person;

(b) Compelled ingestion of any substance by the person;

(c) Wearing or carrying of any obscene or physically burdensome article by the person;

(d) Physical assaults upon or offensive physical contact with the person;

(e) Participation by the person in boxing matches, excessive number of calisthenics, or other physical contests;

(f) Transportation and abandonment of the person;

(g) Confinement of the person to unreasonably small, unventilated, unsanitary or unlighted areas;

(h) Sleep deprivation; or

(i) Assignment of pranks to be performed by the person.

(3) ~~Subsection--(1)--of--this--section-does-not-apply-to-curricular activities-or-to-athletic-teams-of-or-within-the-college--or--university~~ The term "hazing," as defined in this section, does not include customary athletic events or similar contests or competitions, and is limited to those actions taken and situations created in connection with initiation into or affiliation with any group or organization. The term "hazing" does not include corporal punishment administered by officials or employees of public schools when in accordance with policies adopted by local boards of education.

(4) A student or member of a fraternity, sorority or other student organization, who personally violates any provision of this section shall be guilty of a misdemeanor.

Approved March 26, 2002.

CHAPTER 269
(H.B. No. 663)

AN ACT

RELATING TO INCOME TAX CREDITS FOR CHARITABLE CONTRIBUTIONS; AMENDING SECTION 63-3029C, IDAHO CODE, TO PROVIDE AN INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS MADE TO KINDERHAVEN OR ITS FOUNDATION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3029C, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029C. INCOME TAX CREDIT FOR CERTAIN CHARITABLE CONTRIBUTIONS -- LIMITATION. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to the anchor house or its foundation, to the children's home society of Idaho, inc., to the Idaho youth ranch or its foundation, to kinderhaven or its foundation, to gem youth services or its foundation, to the hope house, inc. or its foundation, to the north Idaho children's home or its foundation, to a center for independent living located within the state of Idaho, to a nonprofit substance abuse center licensed by the department of health and welfare, or to a nonprofit rehabilitation facility located within the state of Idaho or its foundation.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars ($100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability

imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars ($500), whichever is less.

(3) For the purposes of this section, "center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

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

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

(c) Is cross-disability.

(4) For the purposes of this section, "nonprofit rehabilitation facility" means only a facility that is accredited by the commission on accreditation of rehabilitation facilities or another accreditation organization recognized by the state of Idaho.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2002.

Approved March 26, 2002.

CHAPTER 270
(H.B. No. 691)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Agriculture the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General Fund	$ 402,700	$ 344,500		$ 7,800	$ 755,000
Administration and Accounting Services Fund	596,100	101,700			697,800
Facilities Maintenance Fund	91,500	64,400			155,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Agriculture in the Classroom Fund		20,900			20,900
TOTAL	$ 1,090,300	$ 531,500		$ 7,800	$ 1,629,600
II. ANIMAL INDUSTRIES:					
FROM:					
General Fund	$ 1,138,900	$ 218,500		$ 373,500	$ 1,730,900
Agricultural Fees - Livestock Disease Control Fund	483,500	259,800	$ 54,200		797,500
Agricultural Fees - Dairy Inspection Fund	732,800	252,700			985,500
Agricultural Fees - Egg Inspection Fund	81,000	25,000			106,000
Agricultural Fees - Commercial Fisheries Fund	6,000	4,200			10,200
Seminars and Publications Fund		96,500			96,500
Federal Grant Fund	167,900	520,000		$ 875,000	1,562,900
TOTAL	$ 2,610,100	$1,376,700	$ 54,200	$1,248,500	$ 5,289,500
III. AGRICULTURAL RESOURCES:					
FROM:					
General Fund	$ 474,100	$ 440,300			$ 914,400
Agricultural Fees - Pesticides Fund	1,144,200	496,100	$137,800		1,778,100
Federal Grant Fund	405,800	166,200			572,000
TOTAL	$ 2,024,100	$1,102,600	$137,800		$ 3,264,500
IV. PLANT INDUSTRIES:					
FROM:					
General Fund	$ 583,800	$ 93,200		$ 95,300	$ 772,300
Agricultural Inspection Fund	1,085,800	252,900	21,600	60,000	1,420,300
Agricultural Fees - Commercial Feed and Fertilizer Fund	556,300	168,700	35,000		760,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Agricultural Fees - Honey Advertising Fund	400	6,000			6,400
Agricultural Fees - Organic Food Products Fund	83,000	30,600			113,600
Federal Grant Fund	37,500	5,300			42,800
TOTAL	$ 2,346,800	$ 556,700	$ 56,600	$ 155,300	$ 3,115,400
V. AGRICULTURAL INSPECTIONS:					
FROM:					
General Fund	$ 793,200	$ 197,500			$ 990,700
Agricultural Inspection Fund	121,600	48,800		$ 3,700	174,100
Agricultural Fees - Fresh Fruit and Vegetable Inspection Fund	7,789,000	732,100	$102,000	413,200	9,036,300
TOTAL	$ 8,703,800	$ 978,400	$102,000	$ 416,900	$10,201,100
VI. MARKETING AND DEVELOPMENT:					
FROM:					
General Fund	$ 303,400	$ 204,100			$ 507,500
Agricultural Inspection Fund	35,000	100			35,100
Seminars and Publications Fund		234,600			234,600
USDA Publications Fund		63,700			63,700
Agricultural Loans Fund	12,700	15,000		$ 5,200	32,900
Federal Grant Fund	510,000	359,000		921,700	1,790,700
TOTAL	$ 861,100	$ 876,500		$ 926,900	$ 2,664,500
VII. ANIMAL DAMAGE CONTROL:					
FROM:					
General Fund				$ 148,100	$ 148,100
Animal Damage Control Fund				100,000	100,000
Agricultural Fees - Sheep Industry Regulation Fund		$ 200		144,100	144,300
TOTAL		$ 200		$ 392,200	$ 392,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VIII. SHEEP COMMISSION:					
FROM:					
General Fund	$ 49,700	$ 2,200			$ 51,900
Agricultural Fees - Sheep Industry Regulation Fund	68,300	29,300			97,600
Sheep and Goat Disease Indemnity Fund		20,300			20,300
TOTAL	$ 118,000	$ 51,800			$ 169,800
GRAND TOTAL	$17,754,200	$5,474,400	$350,600	$3,147,600	$26,726,800

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Agriculture is authorized no more than one hundred eighty-four and fifty-six hundredths (184.56) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 25, 2002.

CHAPTER 271
(H.B. No. 706)

AN ACT

APPROPRIATING MONEYS FOR THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; AND EXPRESSING LEGISLATIVE INTENT REGARDING ANY NON-GENERAL FUND MONEYS THAT MAY BECOME AVAILABLE FOR ASSESSMENT AND/OR ACCOUNTABILITY ACTIVITIES.

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 Office of the State Board of Education the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
OFFICE OF THE STATE BOARD OF EDUCATION:				
FROM:				
General Fund	$1,246,700	$4,091,300	$100,000	$5,438,000
Federal Grant Fund	101,700	218,600		320,300
Miscellaneous Revenue Fund	56,900	362,800		419,700
TOTAL	$1,405,300	$4,672,700	$100,000	$6,178,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the agency is authorized no more than twenty-one (21) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 Office of the State Board of Education the unexpended and unencumbered balance of any non-General Fund appropriation contained in Section 1, Chapter 310, Laws of 2001, to be used for nonrecurring expenditures for the period July 1, 2002, through June 30, 2003.

SECTION 4. Any non-General Fund moneys that become available with an allowable use consistent with assessment and/or accountability activities shall replace the General Fund money contained in Section 1 of this appropriation to the maximum extent possible and be used to fund the Assessment and Accountability efforts of the State Board of Education. All General Fund money so replaced shall be returned to the General Fund.

Approved March 26, 2002.

CHAPTER 272
(H.B. No. 719)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Human Rights Commission the following amounts, to be

expended according to the designated expense classes from the listed funds, for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$488,400	$103,200	$591,600
Federal Grant Fund	105,700	59,200	164,900
Miscellaneous Revenue Fund		6,700	6,700
TOTAL	$594,100	$169,100	$763,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Human Rights Commission is authorized no more than eleven (11) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 26, 2002.

CHAPTER 273
(H.B. No. 722)

AN ACT

APPROPRIATING MONEYS FOR COMMUNITY COLLEGE SUPPORT FOR FISCAL YEAR 2003.

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

SECTION 1. There is hereby appropriated to the State Board of Education for Community College Support the following amount, to be expended according to the designated expense class from the listed fund for the period July 1, 2002, through June 30, 2003:

FOR:	
Trustee and Benefit Payments	$18,821,600
FROM:	
General Fund	$18,821,600

Approved March 26, 2002.

CHAPTER 274
(H.B. No. 723)

AN ACT

APPROPRIATING MONEYS FOR SPECIAL PROGRAMS FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING ANY UNEXPENDED AND UNENCUMBERED GENERAL FUND BALANCES FOR THE DESIGNATED PROGRAMS; AND PROVIDING LEGISLATIVE INTENT REGARDING MONEYS APPROPRIATED FOR CATEGORY B OF THE IDAHO PROMISE SCHOLARSHIP PROGRAM.

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 for Special Programs the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. FOREST UTILIZATION RESEARCH:				
FROM:				
General Fund	$ 472,900	$ 94,400		$ 567,300
II. IDAHO GEOLOGICAL SURVEY:				
FROM:				
General Fund	$ 743,000	$ 26,000		$ 769,000
III. SCHOLARSHIPS AND GRANTS:				
FROM:				
General Fund			$7,369,500	$7,369,500
Federal Grant Fund			236,000	236,000
TOTAL			$7,605,500	$7,605,500
IV. IDAHO MUSEUM OF NATURAL HISTORY:				
FROM:				
General Fund	$ 471,500	$ 13,600		$ 485,100
V. IDAHO SMALL BUSINESS DEVELOPMENT CENTERS:				
FROM:				
General Fund			$ 280,000	$ 280,000
VI. IDAHO COUNCIL ON ECONOMIC EDUCATION:				
FROM:				
General Fund			$ 51,800	$ 51,800
VII. TECHNICAL HELP:				
FROM:				
General Fund			$ 160,600	$ 160,600
GRAND TOTAL	$1,687,400	$134,000	$8,097,900	$9,919,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, there is hereby authorized no more than twenty-four and ninety-nine hundredths (24.99) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the Forest Utilization Research Program, Idaho Geological Survey Program and the Idaho Museum of Natural History as 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 Scholarships and Grants Program, and the unexpended and unencumbered balance of any non-General Fund appropriation made to the Scholarships and Grants Program under Section 1, Chapter 311, Laws of 2001, to be used for nonrecurring expenditures for the period July 1, 2002, through June 30, 2003.

SECTION 4. It is the intent of the Legislature that the moneys appropriated for Category B of the Idaho Promise Scholarship Program may only be used for qualifying Category B students entering a postsecondary institution for the first time for the 2001-2002 academic year or subsequent academic years after completion of high school or its equivalent, pursuant to Sections 33-4303 through 33-4313, Idaho Code.

Approved March 26, 2002.

CHAPTER 275
(S.B. No. 1326, As Amended in the House)

AN ACT

RELATING TO HOMEOWNER'S ASSOCIATIONS; AMENDING CHAPTER 8, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-810, IDAHO CODE, TO PROVIDE FOR LIENS BY HOMEOWNER'S ASSOCIATIONS, TO PROVIDE FOR ACTIONS TO RECOVER UNPAID SUMS, TO DEFINE "HOMEOWNER'S ASSOCIATION" AND TO PROVIDE THAT HOMEOWNER'S ASSOCIATIONS THAT ARE UNINCORPORATED ASSOCIATIONS MUST BE GOVERNED BY CERTAIN BYLAWS IN ORDER TO FILE LIENS.

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

SECTION 1. That Chapter 8, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-810, Idaho Code, and to read as follows:

45-810. HOMEOWNER'S ASSOCIATION LIENS. (1) Whenever a homeowner's association levies an assessment against a lot for the reasonable costs incurred in the maintenance of common areas consisting of real property owned and maintained by the association, the association, upon complying with subsection (2) of this section, shall have a lien upon the individual lot for such unpaid assessments accrued in the previous twelve (12) months.

(2) (a) An association claiming a lien under subsection (1) of this section shall file in the county in which the lot or some part thereof is located a claim containing:

(i) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;

(ii) The name of the owner, or reputed owner, if known;

(iii) The name of the association; and

(iv) A description, sufficient for identification, of the property to be charged with the lien.

(b) When a claim has been filed and recorded pursuant to this section and the owner of the lot subject to the claim thereafter fails to pay any assessment chargeable to such lot, then so long as the original or any subsequent unpaid assessment remains unpaid, such claim shall automatically accumulate the subsequent unpaid assessments without the necessity of further filings under this section.

(c) The claim shall be verified by the oath of an individual having knowledge of the facts and shall be recorded by the county recorder. The record shall be indexed as other liens are required by law to be indexed.

(d) Within twenty-four (24) hours after recording a lien on the property, the association shall serve, by personal delivery to the owner or reputed owner or by certified mail to the last known address of the owner or reputed owner, a true and correct copy of the recorded lien.

(3) The lien may be continued in force for a period of time not to exceed one (1) year from the date the claim is filed and recorded under subsection (2) of this section; provided however, that such period may be extended by the homeowner's association for not to exceed one (1) additional year by recording a written extension thereof. For the purpose of determining the date the claim is filed in those cases when subsequent unpaid assessments have accumulated under the claim as provided in subsection (2) of this section, the claim regarding each unpaid assessment shall be deemed to have been filed at the time such unpaid assessment became due. The lien may be enforced by the board of directors acting on behalf of the association.

(4) This section does not prohibit a homeowner's association from pursuing an action to recover sums for which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of the lien.

(5) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made.

(6) As used in this section, "homeowner's association" means any incorporated or unincorporated association:

(a) In which membership is based upon owning or possessing an interest in real property; and

(b) That has the authority, pursuant to recorded covenants, bylaws or other governing instruments, to assess and record liens against the real property of its members.

(7) In order to file a lien as provided in this section, a homeowner's association that is an unincorporated association must be governed by bylaws which provide for at least the following:

(a) A requirement that the homeowner's association hold at least one (1) meeting each calendar year;

(b) A requirement that notice of any meeting of the homeowner's association be published and distributed to all members of the homeowner's association;

(c) A requirement that the minutes of all homeowner's association meetings be recorded;

(d) A method of adopting and amending fees; and

(e) A provision providing that no fees or assessments of the homeowner's association may be increased unless a majority of all members of the homeowner's association vote in favor of such increase.

Approved March 26, 2002.

CHAPTER 276
(S.B. No. 1327)

AN ACT

RELATING TO THE POW/MIA SCHOLARSHIP ACT OF 1972; AMENDING SECTION 33-4302, IDAHO CODE, TO INCREASE THE BENEFIT AMOUNT FOR SCHOLARSHIP ASSISTANCE TO ELIGIBLE STUDENTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-4302, Idaho Code, be, and the same is hereby amended to read as follows:

33-4302. SCHOLARSHIPS -- STATE AID. ~~Children~~ Any child of any Idaho citizen who is a resident of the state of Idaho on or after the effective date of this act and who has been determined by the federal government to be a prisoner of war or missing in action or died of injuries or wounds sustained in action in southeast Asia, including Korea, or who shall become so hereafter, in any area of armed conflict in which the United States is a party, shall be admitted to attend any public institution of higher education or public professional-technical school within the state of Idaho without the necessity of paying tuition and fees therefor; that such student shall be provided with books, equipment and supplies necessary for pursuit of such program of enrollment not to exceed ~~two~~ five hundred dollars ($2500) per quarter, semester, intensified semester, or like educational period; that such student shall be furnished on-campus housing and subsistence ~~not to exceed two hundred dollars ($200)~~ for each month he is enrolled under this program and actually resides in such on-campus facility; provided, however, that such educational benefits shall not exceed a total of thirty-six (36) months or four (4) nine (9) month periods; provided further, that such child shall meet such other educational qualifications as such institution of higher education or professional-technical school has established for other prospective students of this state.

Affected institutions shall in their preparation of future budgets include therein costs resultant from such tuition, fee, book, equipment, supply, housing and subsistence loss for reimbursement thereof from appropriations of state funds.

Applicants for the scholarship program herein prescribed shall provide institutional administrative personnel with documentation of their rights under this act.

Approved March 26, 2002.

CHAPTER 277
(S.B. No. 1329)

AN ACT

RELATING TO VITAL STATISTICS; AMENDING SECTION 39-241, IDAHO CODE, TO REVISE THE DEFINITION OF STILLBIRTH AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 39-260, IDAHO CODE, TO PROVIDE THAT

STILLBIRTHS SHALL BE DEFINED AS A SPONTANEOUS FETAL DEATH OF TWENTY COMPLETED WEEKS GESTATION OR MORE BASED ON A CLINICAL ESTIMATE OF GESTATION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 39-241, Idaho Code, be, and the same is hereby amended to read as follows:

39-241. DEFINITIONS. For the purposes of this chapter and this chapter only, the following terms shall be construed to have the meanings hereinafter set forth:

(a) "Vital statistics" includes the registration, preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, legitimations, deaths, stillbirths, induced terminations of pregnancy, marital status and data incidental thereto.

(b) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, ~~breaths~~ breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(c) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(1) "Induced termination of pregnancy (induced abortion)" means the purposeful interruption of pregnancy with an intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

(2) "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

(d) "Stillbirth" means a spontaneous fetal death of twenty (20) completed weeks gestation or more, ~~calculated from the date the last normal menstrual period began to the date of delivery~~ based on a clinical estimate of gestation, or a weight of three hundred ~~and~~ fifty (350) grams (twelve and thirty-five hundredths (12.35) ounces) or more.

(e) "Dead body" means lifeless human body or such parts of the human body or the bones thereof from the state of which it reasonably may be concluded that death recently occurred.

(f) "Person in charge of interment" means any person who places or causes to be placed a stillborn fetus or dead body or the ashes of the same, after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes thereof.

(g) "Physician" means a person legally authorized to practice medicine and surgery in this state.

(h) "Board" means the Idaho state board of health and welfare.

(i) "Record" means the original certificate of an event and any replacement thereof filed for record by virtue of authority contained in this chapter, as well as instruments of any nature provided by this

chapter as a means of effecting replacement of certificates.

(j) "Director" means the director of the department of health and welfare.

(k) "Certified copy" means the reproduction of an original vital record by typewritten, photographic, or electronic means. Such reproductions, when certified by the state registrar, shall be used as the original.

(l) "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption.

(m) "Consent" means a verified written statement which has been notarized.

(n) "Identifying information" includes the following information:

(1) The name of the qualified adoptee before placement in adoption;

(2) The name and address of each qualified birthparent as it appears in birth records;

(3) The current name, address, and telephone number of the qualified adult adoptee; and

(4) The current name, address, and telephone number of each qualified birthparent.

(o) "Qualified adult adoptee" means an adopted person eighteen (18) years of age or older who was born in Idaho.

(p) "Qualified birthparent" means a genetic, biological, or natural parent whose rights were voluntarily or involuntarily terminated by a court or otherwise. "Birthparent" includes a man who is the parent of a child prior to the termination of parental rights.

(q) "Qualified adult birth sibling" means a genetic, biological, or natural brother or sister or half-brother or sister, eighteen (18) years of age or older.

(r) "Registrar" means the state registrar of vital statistics or a designated representative.

(s) "Relative" includes only an individual's spouse, birthparent, adoptive parent, sibling, or child who is eighteen (18) years of age or older.

(t) "Voluntary adoption registry" or "registry" means a place where eligible persons, as described in section 39-259A, Idaho Code, may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in section 39-259A, Idaho Code.

SECTION 2. That Section 39-260, Idaho Code, be, and the same is hereby amended to read as follows:

39-260. REGISTRATION OF DEATHS AND STILLBIRTHS. (a) A certificate of each death which occurs in this state shall be filed with the local registrar of the district in which the death occurs, or as otherwise directed by the state registrar, within five (5) days after the occurrence. However, the board shall, by rule and upon such conditions as it may prescribe to assure compliance with the purposes of the vital statistics act, provide for the filing of death certificates without medical certifications of cause of death in cases in which compliance with the applicable prescribed period would result in undue hardship; but provided, however, that medical certifications of cause of death shall be provided by the certifying physician or coroner to the vital statistics unit within fifteen (15) days from the filing of the death certificate. No certificate shall be deemed complete until every item of infor-

mation required shall have been provided or its omission satisfactorily accounted for. When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined. If the place of death is unknown but the dead body is found in this state, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation.

The person in charge of interment or of removal of the body from the district shall be responsible for obtaining and filing the certificate. Said person shall obtain the required information from the following persons, over their respective signatures:

(1) Personal data shall be supplied by the person best qualified to supply them; and

(2) Except as otherwise provided, medical data shall be supplied by the physician who attended the deceased during the last illness, who shall certify to the cause of death according to his best knowledge, information and belief within seventy-two (72) hours from time of death. In the absence of the attending physician or with said physician's approval the certificate may be completed and signed by said physician's associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided such individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.

(b) The person in charge of interment or of removal of the body from the district shall refer the following cases to the coroner who shall make an immediate investigation, supply the necessary medical data, and certify to the cause of death:

(1) When no physician was in attendance during the last illness of the deceased; or

(2) When the circumstances suggest that the death occurred as a result of other than natural causes.

(c) When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of an order of a court of record of this state, which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "presumptive" and shall show on its face the date of registration and shall identify the court and the date of decree.

(d) Each stillbirth, defined as a spontaneous fetal death of twenty (20) completed weeks gestation or more, ~~calculated from the date the last normal menstrual period began to the date of delivery~~ based on a clinical estimate of gestation, or a weight of three hundred fifty (350) grams (twelve and thirty-five hundredths (12.35) ounces) or more, which occurs in this state shall be registered on a certificate of stillbirth within five (5) days after delivery with the local registrar of the district in which the stillbirth occurred. All induced terminations of

pregnancy shall be reported in the manner prescribed in section 39-261, Idaho Code, and shall not be reported as stillbirths. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for.

(1) When a stillbirth occurs in an institution, the person in charge of the institution or a designated representative shall prepare the certificate, obtain the signature of the physician in attendance (except as otherwise provided in section 39-260(e), Idaho Code), who shall provide the medical data, and forward the certificate to the mortician or person acting as such. In the absence of the attending physician or with said physician's approval the certificate may be completed and signed by said physician's associate physician, the chief medical officer of the institution in which the stillbirth occurred, or the physician who performed an autopsy on the stillborn fetus, provided such individual has access to the medical history of the case and views the fetus at or after stillbirth. The mortician or person acting as such shall provide the disposition information and file the certificate with the local registrar.

(2) When a stillbirth occurs outside an institution, the mortician or person acting as such shall complete the certificate, obtain the medical data from and signature of the attendant at the stillbirth (except as otherwise provided in section 39-260(e), Idaho Code), and file the certificate. If the attendant at or immediately after the stillbirth is not a physician, the coroner shall investigate and sign the certificate of stillbirth.

(3) When a stillbirth occurs in a moving conveyance in the United States and the stillborn fetus is first removed from the conveyance in this state, the stillbirth shall be registered in this state and the place where the stillborn fetus is first removed shall be considered the place of stillbirth. When a stillbirth occurs in a moving conveyance while in international air space or in a foreign country or its air space and the stillborn fetus is first removed from the conveyance in this state, the stillbirth shall be registered in this state but the certificate shall show the actual place of stillbirth insofar as can be determined.

(4) When a stillborn fetus is found in this state and the place of stillbirth is unknown, it shall be reported in this state. The place where the stillborn fetus was found shall be considered the place of stillbirth.

(5) The name of the father shall be entered on the certificate of stillbirth as provided by section 39-255, Idaho Code.

(e) When the circumstances suggest that the stillbirth occurred as a result of other than natural causes (excepting legally induced abortions, as defined by section 39-241, Idaho Code), the local registrar shall refer the case to the coroner in the county where the stillbirth occurred. Said coroner shall make an immediate investigation, supply the necessary medical data, and certify to the cause of stillbirth.

Approved March 26, 2002.

CHAPTER 278
(S.B. No. 1333)

AN ACT

RELATING TO COMPENSATION FOR DAMAGE TO LIVESTOCK BY BLACK BEARS AND MOUNTAIN LIONS; AMENDING SECTION 36-1109, IDAHO CODE, TO REVISE THE DEFINITION OF LIVESTOCK TO INCLUDE GOATS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 36-1109, Idaho Code, be, and the same is hereby amended to read as follows:

36-1109. CONTROL OF DAMAGE BY BLACK BEARS OR MOUNTAIN LIONS -- COMPENSATION FOR DAMAGE. (a) Prevention of depredation shall be a priority management objective of the department, and it is the obligation of landowners to take all reasonable steps to prevent property loss from black bears or mountain lions or to mitigate damage by such. The director, or his representative, will consult with appropriate land management agencies and landusers before transplanting or relocating any black bear or mountain lion.

(b) When any black bear or mountain lion has done damage to or is destroying livestock on public, state, or private land, whether owned or leased, or when any black bear has done damage to or is destroying berries or honey on private land, the owner or his representative of such livestock shall, for the purposes of filing a claim, report such loss to a representative of the U.S. department of agriculture animal plant and health inspection services/animal damage control (APHIS/ADC) who shall, within seventy-two (72) hours, investigate the conditions complained of. For purposes of this section, livestock shall be defined as domestic cattle, ~~and~~ sheep, and goats. If it appears that the complaint is well founded and livestock, berries or honey of the complainant has been damaged or destroyed by such black bear or mountain lion, APHIS/ADC shall so inform the director or the department's regional office of the extent of physical damage or destruction in question. The physical damages, without establishing a monetary value thereon, as determined by the APHIS/ADC representative shall be final, and shall be binding upon the owner or his representative and on the department.

(c) Any claim for damages must be in written form, shall be in the form of a claim for damages substantially the same as required in section 6-907, Idaho Code, shall be attested to by the claimant under oath, and the claim shall be for an amount of at least one thousand dollars ($1,000) in damages per occurrence. The department shall prepare and make available suitable forms for claims for damages. Claims may be submitted only for the fiscal year (July 1 through June 30) in which they occurred. Any person submitting a fraudulent claim shall be prosecuted for a felony as provided in section 18-2706, Idaho Code.

1. Upon receipt by the department, the department shall review the claim, and if approved, pay it as provided in section 36-115, Idaho Code. Failure on the part of the owner or representative to allow on-site access shall negate the claim for damages.

2. If the department accepts the claim for damages as submitted by

the owner or his representative, the department may approve the claim for payment, or may make a counter offer. If the owner or his representative rejects the department's counter offer, this rejection or refusal must be in writing and submitted within five (5) working days. The value of the damage or destruction will then be determined by arbitration as set forth in section 36-1108, Idaho Code. Any claim received by the department under the provisions of this section must be finally decided within sixty (60) calendar days of receipt by the department. If the claim is approved for payment, the claim must be immediately forwarded to the department of administration for payment.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001.

Approved March 26, 2002.

CHAPTER 279
(S.B. No. 1336, As Amended)

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 56-214, IDAHO CODE, TO FURTHER DESCRIBE CONDITIONS GOVERNING THE TRANSFER OF ASSETS TO QUALIFY FOR MEDICAL ASSISTANCE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 56-214, Idaho Code, be, and the same is hereby amended to read as follows:

56-214. AWARD OF PUBLIC ASSISTANCE -- INELIGIBILITY UPON TRANSFER OF PROPERTY. Upon the completion of the investigation, the state department shall determine whether the applicant is eligible for public assistance under the provisions of this act, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin. Public assistance shall be paid in the manner prescribed by the state department.

(1) Assistance to families with children shall not be granted under this act to any person who within six (6) months prior to applying for or at any time during which such assistance is received, has either made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act, or who has divested himself of any interest in property without adequate consideration which interest or proceeds therefrom could reasonably be expected to contribute to the support and maintenance of such person and his family, except that any person who is ineligible for public assistance due solely to such assignment or transfer shall become eligible provided:

(a) ~~t~~There is a showing that such person has caused such property to be assigned or transferred back to him; or

(b) ~~t~~There is a showing that the person to whom such property is assigned or transferred has, subsequent to such assignment or trans-

fer, met subsistence and medical care costs exclusive of any obligation for support, of such person or family, according to the department's assistance standard, equal to, or in excess of, the market value of the property so assigned or transferred; or

(c) tThere is a showing that the subsistence and medical care costs of such person, according to the department's assistance standard, subsequent to such assignment or transfer, equal or exceed the market value of the property so assigned or transferred.

(2) Eligibility for old age assistance under section 56-207, Idaho Code, or aid to the blind under section 56-208, Idaho Code, or aid to the disabled under section 56-209a, Idaho Code, shall be determined by continuing to consider as available any resource that was transferred prior to July 1, 1988, until such resource is fully accounted for under the provisions of section 1613(c) of the social security act as such section read on June 30, 1988.

(3) Eligibility for medical assistance under section 56-209b, Idaho Code, shall continue to apply the rules of the director of the department of health and welfare concerning transfer of property as such rules read on October 29, 1988, to transfers that occur prior to July 1, 1989, to persons other than to the spouse of the person receiving or applying for medical assistance, and to interspousal transfers that occur prior to October 1, 1989.

(4) The provisions of section 1917(c) of the social security act as amended by public law 100-360 and further amended by public law 100-485 and as hereafter amended shall apply as of July 1, 1989, to transfers of assets other than to the spouse, and as of October 1, 1989, to transfers between spouses, except that such provisions shall not apply either to transfers that occurred before July 1, 1988, or to transfers that have been fully accounted for under subsection (3) of this section. Notwithstanding the foregoing, any transfer of assets not otherwise specifically permitted by federal law, whether or not for fair market value including, but not limited to, a transfer in the form of an annuity, between spouses or to another for the benefit of a spouse, is presumed to be for the purpose of sheltering assets to qualify for medical assistance. Such assets transferred shall be counted as available in determining eligibility, and will subject the applicant to penalties prescribed by the director, unless the applicant for assistance can demonstrate by clear and convincing evidence that the transfer was intended for another purpose.

(5) Any funds, securities, accounts, contracts and all other property held in or transferred to a special needs trust as provided in chapter 14, title 68, Idaho Code, section 15-5-409, Idaho Code, and section 15-5-409a, Idaho Code, shall not be considered by the state department in determining whether the applicant is eligible for public assistance under the provisions of this act, so long as the action is permitted under the provisions of section 1917(c) and (d) of the social security act, as amended.

(6) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

Approved March 26, 2002.

CHAPTER 280
(S.B. No. 1340)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO CODE, TO DEFINE "CORE COURSE" AND TO PROVIDE CORRECT REFERENCES; AMENDING SECTION 54-2023, IDAHO CODE, TO REVISE CONTINUING EDUCATION REQUIREMENTS FOR LICENSEES SEEKING RENEWAL OF LICENSES AND CHANGES OF LICENSES FROM INACTIVE TO ACTIVE STATUS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 54-2036, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE THAT EACH CONTINUING EDUCATION COURSE MUST CONTAIN AT LEAST TWO CLASSROOM HOURS, TO PROVIDE FOR A CONTINUING EDUCATION COURSE EXAM, TO REMOVE A CODE REFERENCE AND TO PROVIDE THAT THE COMMISSION SHALL ESTABLISH TOPICS FOR COURSE CONTENT FOR PRELICENSE COURSES AND CONTINUING EDUCATION COURSES.

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

SECTION 1. That Section 54-2004, Idaho Code, be, and the same is hereby amended to read as follows:

54-2004. DEFINITIONS. As used in this chapter:

(1) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (2~~5~~6) of this section.

(2) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(3) "Brokerage agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(4) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(5) "Business name" means the name that appears on the real estate broker's license issued by the commission.

(6) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

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

(8) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

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

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

(11) "Council" means the Idaho real estate education council.

(~~11~~12) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(~~12~~13) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(~~13~~14) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by distance or time.

(~~14~~15) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

(~~15~~16) "Executive director" means the executive director of the Idaho real estate commission.

(~~16~~17) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(~~17~~18) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of conducting business.

(~~18~~19) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(~~19~~20) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(~~20~~21) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility.

(~~21~~22) "Main office" means the principal location where the real estate broker is licensed to transact business.

(2~~2~~3) "Person" means and includes an individual, or any legal business entity.

(2~~3~~4) "Primary Idaho license" means an Idaho real estate license that is not contingent upon continuance of a license in another state or jurisdiction.

(2~~4~~5) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(2~~5~~6) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;

(e) A dealer in options as defined in this section.

(2~~6~~7) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (2~~5~~6) of this section.

(2~~7~~8) "Reciprocal license" means an Idaho real estate license that is issued pursuant to the terms of a specific, written reciprocal agreement between Idaho and another state or jurisdiction, and that is contingent upon the licensee's maintaining a license in the other state or jurisdiction.

(2~~8~~9) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(~~29~~30) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(3~~0~~1) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(3~~1~~2) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

(3~~2~~3) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

(~~3~~4) "Wall license" means the certificate of license issued by the commission.

SECTION 2. That Section 54-2023, Idaho Code, be, and the same is hereby amended to read as follows:

54-2023. CONTINUING EDUCATION REQUIREMENTS. Each licensee seeking renewal of an Idaho real estate license on active status, and each Idaho licensee seeking to change from inactive to active license status, shall submit satisfactory proof to the commission of having successfully completed ~~at--least--twelve-(12)~~ the required number of classroom hours of commission-approved ~~and~~ or certified continuing education ~~course--work~~ coursework as provided in this section, plus one (1) commission-approved core course. Failure to provide proof of meeting the continuing education requirements as set forth in this ~~chapter~~ section constitutes an incomplete application for a renewal of an active license or for a change in license status from inactive to active, and, as such, constitutes grounds for denial of ~~those~~ the applications.

(1) Required number of classroom hours. The required number of classroom hours are as follows:

(a) Renewing active license. A ~~l~~Licensees renewing on active status effective prior to July 1, 2003, must successfully complete ~~the~~ at least eight (8) classroom hours of continuing education ~~requirement~~ on or before the license expiration date.~~,-in-the-manner--stated--in section--54-2018,--Idaho--Code~~ A licensee renewing on active status effective on or after July 1, 2003, must successfully complete at least sixteen (16) classroom hours of continuing education on or before the license expiration date.

(~~2~~b) Change from inactive to active. A ~~l~~Licensees changing from inactive to active status effective prior to July 1, 2003, must successfully complete ~~one--(1)~~ at least eight (8) classroom hours of continuing education ~~requirement-offered~~ during their current inactive license period. A licensee changing from inactive to active status effective on or after July 1, 2003, must successfully complete at least sixteen (16) classroom hours of continuing education during the current inactive license period.

(~~3~~2) No duplicate credit. Credit for completion of any approved continuing education course curriculum will not be granted twice within the same license period.

(~~4~~3) Excess credits. The ~~twelve-(12)-hours-of-course-work~~ classroom hours shall apply to the license period in which such course ~~work~~ is completed; hours completed in excess of those required for the license period shall not accumulate or be credited for the purposes of subsequent license renewal periods.

(~~5~~4) ~~Challenge--exams.--The-commission-may-substitute-all-or-a-portion-of-the-continuing-education-course-work-required--when--a--licensee shows--evidence--of--passing-an-approved-challenge-exam-or-of-completing equivalent-education-determined-by-the-commission-to-be-in-full--compliance-with-such-continuing-education-requirements~~ Commission-ordered education. No licensee shall obtain continuing education credit for education ordered by the commission as part of a disciplinary action.

(~~6~~5) ~~No-exam-for-live-courses.-A-licensee--may--receive--continuing education--course--credit--without-having-to-take-or-pass-an-exam-if-the licensee-personally-attends-the-entire-live-presentation-of-an--approved~~

~~course~~ Obtaining continuing education classroom hours. In order to obtain continuing education classroom hours, a licensee may:

(a) Successfully complete a commission-approved continuing education course;

(b) Successfully complete a commission-approved continuing education challenge exam;

(c) Attend an entire regularly-scheduled meeting of the commission. The licensee shall provide at least seven (7) days' advance notice to the education section of the commission of his intent to attend the meeting. Failure to provide advance notice shall result in no continuing education hours being credited. A maximum of three (3) hours for this activity shall be credited for any one (1) meeting in any one (1) license period;

(d) Successfully complete a commission-approved broker prelicense course, or a commission-approved continuing education challenge exam, in advanced real estate study. Continuing education credit may be obtained for retaking the same broker prelicense course or challenge exam only if completed after five (5) years of completing the previous course or challenge exam; or

(e) Provide to the commission a transcript or course completion certificate of successful completion of any of the following courses, in accordance with all of the continuing education requirements of this section, without commission preapproval of the curriculum, instructors or providers:

(i) Courses developed by national professional organizations that are required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice; and

(ii) Courses approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements, if within the approved topic areas established by the commission.

(~~7~~6) Provisional license -- Extension of time. A three-month extension of time for completing the education requirements may be obtained by submitting with the renewal application, or application to activate, satisfactory evidence showing that the applicant was unable to comply with such education requirements. Such evidence may be:

(a) Bona fide hardship preventing completion of the reinstatement requirements of an inactive license;

(b) Health reasons preventing attendance or completion;

(c) Active duty in the military service with assignment to a permanent duty station outside of the state during the last twelve (12) months of a license period; or

(d) Other compelling cause beyond the control of the applicant while engaged in the real estate business.

If such an extension is granted, the licensee shall receive a provisional license for a period of time not to exceed three (3) months. No further extension of time may be granted. A license issued or renewed after an extension of time has been granted shall ~~be dated effective as of~~ retain the original license expiration date. ~~and not the extended date.~~ Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

SECTION 3. That Section 54-2036, Idaho Code, be, and the same is hereby amended to read as follows:

54-2036. CERTIFICATION OF COURSES AND COURSE CONTENT. Every real estate course offered for prelicense or continuing education credit for an Idaho real estate license shall first be certified and accredited by the Idaho real estate commission.

(1) An application for course certification must be submitted in the form and manner required by the commission, with proper fees, at least two (2) months prior to contemplated date of the first course offering.

(2) Minimum requirements for course certification:

(a) Each course must be certified individually, offered only through a provider certified or approved in Idaho, and taught by an instructor certified or approved in Idaho in accordance with this chapter.

(b) Each prelicense course must contain at least twenty (20) ~~hours of~~ classroom ~~instruction~~ hours, and each continuing education course must contain at least two (2) classroom hours.

(c) Exam time shall not be included as approved classroom hours of instruction.

(d) A ~~course~~ classroom hour is defined as a period of at least fifty (50) minutes of actual instruction.

(e) Distance learning and alternative course delivery. The length of a certified distance learning or other alternative course shall be based upon the same number of hours which would be awarded in an equivalent classroom course, and must include a commission-approved, proctored final exam. The commission may, by motion, adopt national standards and require national certification for the design and delivery of noncommission-produced distance learning courses.

(f) Each prelicense course must include a proctored, commission-approved final exam requiring a minimum passing score of seventy percent (70%).

(g) Continuing education course exam.

(i) A licensee may receive continuing education course credit without having to take or pass an exam if the licensee personally attends the entire live presentation of an approved course.

(ii) The commission may substitute all or a portion of the continuing education coursework required when a licensee shows evidence of passing a commission-approved challenge exam.

(~~f~~h) Exam retake policy. Each certified course provider may, at its option, allow students who fail the initial course exam one (1) opportunity to retake the approved course exam within the following time periods:

~~1.~~(i) Prelicense course exam retakes must occur within one (1) month of the original course exam;

~~2.~~(ii) Continuing education course challenge exam retakes must occur within that course's certification period;

(iii) If a student fails the retake exam for any prelicense or continuing education course, the student must repeat the entire course and pass the final exam to receive credit.

(~~g~~i) Challenge exams. A student shall not earn credit for any prelicense course by challenging and passing the course exam without otherwise completing all course requirements. ~~Credit for continuing education courses may be earned by challenge exam only as allowed in section 54-2023(5), Idaho Code.~~

(3) Approved topics. The commission shall establish specific, approved topics for course content for prelicense courses and continuing education courses as it deems appropriate to current real estate practices and laws.

Approved March 26, 2002.

CHAPTER 281
(S.B. No. 1341)

AN ACT

RELATING TO INSURANCE PRODUCER LICENSING; AMENDING SECTIONS 41-1002, 41-1006 AND 41-1108, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AND AMENDING SECTION 41-1036, IDAHO CODE, TO REMOVE REFERENCES TO CONSULTANTS AND CONSULTING SERVICES.

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

SECTION 1. That Section 41-1002, Idaho Code, be, and the same is hereby amended to read as follows:

41-1002. TERMS CONSTRUED. Wherever the terms "agent" or "broker" appear in title 41, Idaho Code, or in the rules of the department, they shall be understood and construed to mean "producer" as defined in section 41-1003(~~9~~8), Idaho Code, except as used in section 41-1018, Idaho Code, and any other sections where it is apparent from the language that the terms should not be so construed.

SECTION 2. That Section 41-1006, Idaho Code, be, and the same is hereby amended to read as follows:

41-1006. APPLICATION FOR EXAMINATION. (1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 41-1008(4)~~,~~ or 41-1012, ~~41-1027(3) or 41-1028(2)(c),~~ Idaho Code. The examination shall test the knowledge of the individual concerning the lines of auth~~ority~~ for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under rules prescribed by the director of the department of insurance.

(2) Each individual applying for an examination shall remit a nonrefundable fee as promulgated by the director pursuant to section 41-401, Idaho Code.

(3) An individual who fails to appear for the examination as scheduled or who fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(4) Applications for licensure not received by the department within one hundred eighty (180) days of the successful completion of the examination shall be denied.

SECTION 3. That Section 41-1108, Idaho Code, be, and the same is hereby amended to read as follows:

41-1108. OTHER PROVISIONS APPLICABLE. The following sections of chapter 10, title 41, Idaho Code, shall, to the extent so applicable, also apply as to adjuster licenses:

(1) 41-1007(1) (application for producer license).

(2) 41-1008 (producer license).

(3) 41-1011 (issuance, refusal of license).

(4) 41-1013 (continuation, expiration of license, continuing education statement).

(5) 41-1016 (administrative penalty -- suspension, revocation, refusal of license).

(6) 41-10~~33~~26 (procedure following suspension, revocation -- reinstatement).

(7) 41-10~~34~~27 (return of license).

SECTION 4. That Section 41-1036, Idaho Code, be, and the same is hereby amended to read as follows:

41-1036. RECORDS. (1) ~~Every--person~~ A producer holding a license under this chapter shall make available through his principal place of business~~:~~

~~(a)---If-a-producer,~~ complete records of transactions placed through or countersigned by the producer~~;-and~~

~~(b)--If--a--consultant,-complete-records-of-subjects-of-insurance-on which-the-consultant-has-acted.~~

(2) Records as provided in subsection (1) of this section shall include, but not be limited to:

(a) The names and addresses of insurer and insured;

(b) The number and expiration date of the policy or contract;

(c) The premium payable as to the policy or contract; ~~and-fee-payable-as-to-consulting-services;~~

(d) The date, time, insurer, insured and coverage of every binder made by the producer;

(e) All disclosures made by a producer to an insured or to a prospective insured; ~~or-by-a-consultant-to-any-person;~~ and

(f) Such other information as the director may reasonably require.

(3) The records shall be kept available for inspection by the director for at least five (5) years after the creation or the completion, whichever is later, of the respective transactions. ~~or--consulting services.~~

(4) This section shall not apply to life and disability insurance.

Approved March 26, 2002.

CHAPTER 282
(S.B. No. 1342)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-1004, IDAHO CODE, TO PROVIDE THAT ONLY SPECIFIED PERSONS MAY ENGAGE FOR A FEE IN THE BUSINESS OF OFFERING ADVICE, COUNSEL, OPINION OR SERVICE REGARDING THE BENEFITS, ADVANTAGES OR DISADVANTAGES OF INSURANCE POLICIES.

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

SECTION 1. That Section 41-1004, Idaho Code, be, and the same is hereby amended to read as follows:

41-1004. LICENSE REQUIRED. (1) A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed as a producer for that line of authority in accordance with this chapter.

(2) A person shall not, for a fee, engage in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any policy of insurance that could be issued in Idaho unless that person is:

(a) A licensed insurance producer offering advice concerning a class of insurance as to which the producer is licensed to transact business in this state;

(b) An attorney rendering services in the performance of the duties of an attorney;

(c) A certified public accountant rendering services in the performance of the duties of a certified public accountant, as authorized by law;

(d) An actuary rendering actuarial services if such actuary is a member of an organization determined by the director as establishing standards for the actuarial profession;

(e) A person providing services to producers or authorized insurers only;

(f) A person rendering services as an expert pursuant to the Idaho rules of evidence; or

(g) An investment adviser, investment adviser representative or federally-covered investment adviser as defined in section 30-1402, Idaho Code.

Approved March 26, 2002.

CHAPTER 283
(S.B. No. 1356, As Amended, As Amended)

AN ACT

RELATING TO DEPENDENT SCHOLARSHIPS; AMENDING SECTION 33-4302A, IDAHO CODE, TO PROVIDE FOR SCHOLARSHIPS FOR DEPENDENTS OF FULL-TIME OR PART-TIME PUBLIC SAFETY OFFICERS EMPLOYED OR VOLUNTEERING FOR THE STATE OF IDAHO OR A POLITICAL SUBDIVISION OF THE STATE, TO PROVIDE

THAT DEPENDENTS SHALL BE ELIGIBLE FOR SUCH SCHOLARSHIPS FOR A CERTAIN PERIOD OF TIME, TO PROVIDE THAT THE SCHOLARSHIPS ARE AVAILABLE TO DEPENDENTS OF PUBLIC SAFETY OFFICERS WHO WERE KILLED OR DISABLED IN 1975 OR THEREAFTER, TO DEFINE "TERMS" AND TO PROVIDE LIMITATIONS.

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

SECTION 1. That Section 33-4302A, Idaho Code, be, and the same is hereby amended to read as follows:

33-4302A. ~~PEACE OFFICER/FIREFIGHTER~~ PUBLIC SAFETY OFFICER DEPENDENT SCHOLARSHIPS -- STATE AID. (1) Any dependent of a full-time or part-time ~~peace~~ public safety officer, ~~or firefighter~~ as defined in subsection 5 of this section, employed ~~in~~ by or volunteering for the state of Idaho or for a political subdivision of the state of Idaho, which public safety officer ~~or firefighter~~ is or was a resident of the state of Idaho ~~and--which~~ at the time such officer ~~or firefighter is~~ was killed or disabled in the line of duty shall be admitted to attend any public institution of higher education or public professional-technical college within the state of Idaho without the necessity of paying tuition and fees therefor. Said dependents shall be provided by the institution or college with books, equipment and supplies necessary for pursuit of the dependent's chosen program of enrollment not to exceed the actual cost therefor, or five hundred dollars ($500), whichever is less, per quarter, semester, intensified semester, or like education period. Said dependent shall be provided with the institution or college's published normal on-campus residential facility housing and meals program for each month the dependent is enrolled full time under this statute and continues to actually reside in such on-campus residential facility. Provided however, that the educational benefits provided for in this section shall not exceed a total of thirty-six (36) months or four (4) nine-month periods; provided further, that such educational benefits shall not extend beyond ten (10) years following the date the dependent receives a high school diploma, a high school equivalency diploma, a special diploma or a certificate of high school completion, or beyond the date such dependent turns thirty (30) years old, whichever comes first.

(2) The dependent shall be required to meet the educational qualifications as such institution of higher education or professional-technical college as established for other prospective students of this state. Application for eligibility under this section shall be made to the state board of education and board of regents of the University of Idaho. The board shall verify the eligibility of the dependent and communicate such eligibility to the dependent and the affected institution or college.

(3) Affected institutions and colleges shall, in their preparation of future budgets, include therein costs resulting from such tuition, fees, housing, meals, books, equipment and supplies for reimbursement thereof from appropriation of state funds.

For the purposes of this section, a ~~peace~~ public safety officer ~~or firefighter,~~ employed ~~in~~ by or volunteering for the state of Idaho or for a political subdivision of the state of Idaho~~,~~ is considered disabled if he or she is unable to perform with reasonable continuity the material duties of any gainful occupation for which he or she is reason-

ably fitted by education, training and experience.

(4) The scholarships provided in this section shall be available for dependents of public safety officers who were killed or disabled in 1975 or thereafter.

(5) For purposes of this section:

(a) "Public safety officer" means a peace officer or firefighter, or a paramedic, emergency medical technician or first responder as those terms are defined in section 56-1012, Idaho Code.

(b) "Volunteering" means contributing services as a bona fide member of a legally organized law enforcement agency, fire department or licensed emergency medical service provider organization.

(6) The scholarship provided in this section shall not be available unless it is determined that:

(a) The death or disablement of the public safety officer occurred in the performance of the officer's duties;

(b) The death or disablement was not caused by the intentional misconduct of the public safety officer or by such officer's intentional infliction of injury; and

(c) The public safety officer was not voluntarily intoxicated at the time of death.

Approved March 26, 2002.

CHAPTER 284
(S.B. No. 1358)

AN ACT

RELATING TO THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT ACT; PROVIDING A STATEMENT OF LEGISLATIVE INTENT; AMENDING CHAPTER 78, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-7804, IDAHO CODE, TO IMPOSE THE DUTY ON CIGARETTE DISTRIBUTORS AND STAMPING AGENTS TO DISTRIBUTE AND STAMP ONLY CIGARETTES OF TOBACCO PRODUCT MANUFACTURERS THAT ARE IN COMPLIANCE WITH THIS CHAPTER AND TO PROVIDE PENALTIES; AND AMENDING CHAPTER 78, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-7805, IDAHO CODE, TO PROVIDE AUTHORITY FOR THE ATTORNEY GENERAL TO ENFORCE THIS CHAPTER, TO PROVIDE FOR SERVICE OF PROCESS AND TO PROVIDE FOR EXCHANGE OF INFORMATION.

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

SECTION 1. LEGISLATIVE INTENT. The Legislature finds that a number of nonparticipating tobacco product manufacturers are not complying with the provisions of Idaho's Master Settlement Agreement Act. Compliance with that act is in the interests of the state. Permitting cigarette distributors and stamping agents to stamp and distribute only cigarettes made or sold by participating tobacco product manufacturers, or by nonparticipating tobacco product manufacturers that are making all escrow payments required by Idaho's Master Settlement Agreement Act, will significantly improve compliance under the act.

SECTION 2. That Chapter 78, 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 39-7804, Idaho Code, and to read as follows:

39-7804. CIGARETTE DISTRIBUTOR AND STAMPING AGENT DUTIES. (a) A cigarette distributor or any other stamping agent may not affix, or cause to be affixed, stamps to individual packages of cigarettes unless the tobacco product manufacturer has:

(1) Become a participating manufacturer as defined in section 39-7803(a), Idaho Code; or

(2) Created a qualified escrow fund pursuant to, and timely made all escrow payments required by sections 39-7803(b) and 39-7805(b), Idaho Code.

(b) The attorney general shall maintain a list, available for public inspection, of tobacco product manufacturers that have become participating manufacturers as defined in section 39-7803(a), Idaho Code, or have created qualified escrow funds pursuant to, and timely made all escrow payments required by, sections 39-7803(b) and 39-7805(b), Idaho Code. A cigarette distributor or stamping agent may rely upon the attorney general's list in affixing or causing to be affixed stamps to individual packages of cigarettes of such tobacco product manufacturers. A cigarette distributor or stamping agent who affixes, or causes to be affixed, stamps only to cigarettes of those tobacco product manufacturers included on the attorney general's list, as of the date the stamps were affixed, shall not be found liable under this section even if it is later established that a tobacco product manufacturer included on the list failed either to become a participating manufacturer as defined in section 39-7803(a), Idaho Code, or to create a qualified escrow fund pursuant to, or timely make all escrow payments required by sections 39-7803(b) and 39-7805(b), Idaho Code.

(c) The attorney general may bring a civil action on behalf of the state against any cigarette distributor or stamping agent who violates this section. Any cigarette distributor or stamping agent who violates this section shall be subject to the same liability provisions that a tobacco product manufacturer faces for violating section 39-7803(b), Idaho Code, pursuant to section 39-7803(b)(3), Idaho Code. In addition, in any action brought under this section, the court shall award the attorney general, if he is the prevailing party, reasonable costs, expenses and attorney's fees in bringing his action.

(d) Any nonparticipating manufacturer that falsely represents to any cigarette distributor or stamping agent that it is a participating manufacturer as defined in section 39-7803(a), Idaho Code, or has created a qualified escrow fund pursuant to, or has timely made all escrow payments required by, sections 39-7803(b) and 39-7805(b), Idaho Code, or falsely certifies to the attorney general its compliance with this chapter, pursuant to section 39-7803(b)(3), Idaho Code, shall be subject to a civil penalty, to be imposed by the district court, in an amount up to five thousand dollars ($5,000) per violation.

(e) For purposes of this section, "cigarette distributor" means every person who is a wholesaler, as that term is defined in section 63-2502, Idaho Code. "Stamping agent" means every person who affixes or causes to be affixed stamps to individual packages of cigarettes.

SECTION 3. That Chapter 78, 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 39-7805, Idaho Code, and to read as follows:

39-7805. ADDITIONAL ATTORNEY GENERAL AUTHORITY AND SERVICE OF PROCESS. (a) The attorney general may require nonparticipating tobacco product manufacturers to submit such information as the attorney general may determine is necessary to enable the attorney general to determine whether a nonparticipating manufacturer has made the escrow payments required by section 39-7803(b), Idaho Code.

(b) To promote compliance with section 39-7803(b), Idaho Code, the attorney general may require nonparticipating manufacturers to make the escrow payments required by such subsection in quarterly installments during the year in which the sales covered by such payments are made.

(c) The state tax commission and the attorney general may enter into a written agreement authorizing the exchange of information reasonably necessary to the enforcement and administration of this chapter.

(d) Service of any complaint and summons under this chapter shall be made personally within this state, pursuant to the Idaho rules of civil procedure but if such cannot be obtained, substituted service therefor may be made in the following manner:

(1) Personal service thereof without this state; or

(2) The mailing thereof by registered or certified mail to the last known place of business, residence, or abode of the nonparticipating manufacturer, cigarette distributor or stamping agent within or without this state.

Approved March 26, 2002.

CHAPTER 285
(S.B. No. 1361)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING SECTION 49-402C, IDAHO CODE, TO PROVIDE FOR THE DISCONTINUANCE OF SPECIFIED SPECIAL LICENSE PLATE PROGRAMS IN ACCORDANCE WITH SPECIFIED CONDITIONS; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-420C, IDAHO CODE, TO ESTABLISH A PEACE OFFICER MEMORIAL LICENSE PLATE PROGRAM; AND PROVIDING EFFECTIVE DATES.

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

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

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

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

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceed-

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

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

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

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

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

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

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

(7) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars ($25.00) and an annual program fee of fifteen dollars ($15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416 and 49-418, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars ($25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-418B, 49-418C, 49-419, 49-419A, 49-420, 49-420A, ~~and~~ 49-420B and

49-420C, Idaho Code, there shall be an initial program fee of thirty-five dollars ($35.00) and an annual program fee of twenty-five dollars ($25.00). The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law.

SECTION 2. That Section 49-402C, Idaho Code, be, and the same is hereby amended to read as follows:

49-402C. SPECIAL LICENSE PLATE PROGRAMS -- STANDARDIZED PLATE COLOR AND DESIGN. (1) It is the intent of the legislature that special license plates issued by the department be readily recognizable as plates from the state of Idaho without losing the uniqueness for which the special plate was designed and purchased. In addition, the legislature finds that the department can operate in a more efficient, cost-effective manner by conforming special plates to a basic color and design.

(2) No special license plates and no special license plate programs in existence on or before June 30, 1998, shall be affected by the provisions of this section. On and after July 1, 1998, any new special license plate program authorized or any redesign of an existing special license plate, shall use the same red, white and blue background as the standard issue of license plates described in section 49-443, Idaho Code, except that:

(a) The identification of county shall be omitted;

(b) The word "Idaho" shall appear on every plate;

(c) The inscription "Scenic Idaho" may be omitted without legislative consideration and approval; and

(d) No slogan shall be used that infringes upon, dilutes or compromises, or could be perceived to infringe upon, dilute or compromise, the trademarks of the state of Idaho, including, but not limited to, "Idaho Potatoes®," "Grown in Idaho®," "Famous Idaho Potatoes™" or "Famous Potatoes™."

The provisions of this section shall not apply to the second plate design issued pursuant to the provisions of section 49-417, Idaho Code.

(3) Any redesign required for a special plate to conform with legislative intent and the provisions of this section may be done in a manner similar to that used to produce the original design.

(4) The special plates shall conform in all other respects with the provisions of section 49-443, Idaho Code, relating to visibility requirements, display of registration number, time period for validity of plates, and reservation of plate numbers.

(5) No special license plates shall be issued to motor vehicles with a registered maximum gross weight in excess of twenty-six thousand (26,000) pounds, or any motor vehicle registered under section 49-434(5), Idaho Code, or section 49-435, Idaho Code.

(6) Following an introductory period of ~~two~~ three (~~2~~3) years during which the provisions of this subsection shall not apply, if, ~~for~~ during both years of any following two (2) consecutive years, fewer than one thousand (1,000) plates are issued ~~per~~ in each of those two (2) consecutive years, ~~for a special license plate program,~~ the department shall ~~so advise the legislature and assist the legislature in adopting appropriate action to~~ discontinue that special license plate program and no new

plates shall be issued nor shall any existing plate be renewed upon its expiration. The provisions of this subsection shall apply ~~only~~ to sections 49-416, 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-418B, 49-418C, 49-419, 49-419A, 49-420, 49-420B and any other special license plate programs created on and after July 1, ~~1998~~ 2002.

SECTION 3. 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 49-420C, Idaho Code, and to read as follows:

49-420C. PEACE OFFICER MEMORIAL PLATES. (1) On and after January 1, 2003, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and, upon department approval, receive special peace officer memorial license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. Availability of peace officer memorial license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the Idaho peace officers memorial fund in the Idaho community foundation, and shall be used exclusively for the Idaho law enforcement memorial and families of peace officers killed in the line of duty.

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

(4) The peace officer memorial license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The distinguishing feature of the license plate shall be a representation of the Idaho peace officer memorial logo. The design and any slogan on the plate shall be acceptable to the Idaho peace officer memorial board, and shall be approved by the department utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho police chiefs association.

(5) Sample peace officer memorial license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Idaho peace officers memorial fund in the Idaho community foundation. No additional fee shall be charged for personalizing sample plates.

SECTION 4. Section 2 of this act shall be in full force and effect on and after July 1, 2002; and Sections 1 and 3 of this act shall be in full force and effect on and after January 1, 2003.

Approved March 26, 2002.

CHAPTER 286
(S.B. No. 1362)

AN ACT

RELATING TO THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; REPEALING SECTION 67-1505, IDAHO CODE, RELATING TO THE PRINTING OF SUPPLIES AND LAWS.

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

SECTION 1. That Section 67-1505, Idaho Code, be, and the same is hereby repealed.

Approved March 26, 2002.

CHAPTER 287
(S.B. No. 1363)

AN ACT

RELATING TO PUBLIC SCHOOL PUPILS ATTENDING SCHOOL IN ANOTHER STATE; AMENDING SECTION 33-1002E, IDAHO CODE, TO DELETE LANGUAGE WHICH IS IN CONFLICT WITH THE BORDER DISTRICT ALLOWANCE AS CALCULATED PURSUANT TO THE PROVISIONS OF THE EDUCATIONAL SUPPORT PROGRAM.

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

SECTION 1. That Section 33-1002E, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002E. PUPILS ATTENDING SCHOOL IN ANOTHER STATE. In any school district which abuts upon the border of another state, ~~and~~ the resident pupils of said district may attend schools in the other state as provided in section 33-1403, Idaho Code~~;-the-total-number-of-such-pupils shall-be-considered-as-being-in-attendance-in-a-separate-school-of-their home-district;-kindergarten;-elementary-or-secondary-as-the-case-may-be.~~

Approved March 26, 2002.

CHAPTER 288
(S.B. No. 1364)

AN ACT

RELATING TO DISHONORED CHECKS; AMENDING SECTION 1-2301A, IDAHO CODE, TO PROVIDE FOR WRITTEN DEMAND BY REGULAR MAIL SUPPORTED BY AFFIDAVIT; AMENDING SECTION 28-22-105, IDAHO CODE, TO CLARIFY MAILING REQUIRE-

MENTS FOR NOTICES OF DISHONOR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-22-106, IDAHO CODE, TO REVISE PROVISIONS FOR NOTICE OF DISHONOR; AND AMENDING SECTION 28-22-107, IDAHO CODE, TO CLARIFY MAILING REQUIREMENTS FOR NOTICES OF DISHONOR AND TO MAKE TECHNICAL CORRECTIONS.

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

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

1-2301A. DRAWING CHECK WITHOUT FUNDS OR INSUFFICIENT FUNDS -- CIVIL LIABILITY. In any action filed in the small claims department against a person who makes any check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the same, or because the maker has no account with the drawee, the plaintiff, or a collection agency with a permit issued to it pursuant to section 26-2229, Idaho Code, which is attempting to collect the dishonored check under a written agreement with the payee or holder of the check, may recover from the defendant the amount of the check, draft or order and, in addition thereto, the greater of the amount of one hundred dollars ($100) or three (3) times the amount for which the check, draft or order is drawn. Except as provided in section 1-2304, Idaho Code, the plaintiff or collection agency may recover no other costs, fees, charges or damages. However, damages recovered under the provisions of this section shall not exceed by more than five hundred dollars ($500) the value of the check, draft or order and may be awarded only if the plaintiff made written demand of the defendant for payment of the amount of the check, draft or order not less than ten (10) days before commencing the action, and if the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded. The written demand required by this section shall be sent to the maker by certified mail at his last known address, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check as provided in section 28-22-106, Idaho Code, in which case the demand shall be deemed conclusive three (3) days following the date the affidavit is executed. The written demand ~~and~~ shall fully advise the maker of the check, draft, or order of the consequences of failure to make prompt payment under this section. The plaintiff or collection agency must show proof of service by producing a copy of a signed return receipt or affidavit of personal service.

SECTION 2. That Section 28-22-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-22-105. CHECKS DISHONORED BY NONACCEPTANCE OR NONPAYMENT -- LIABILITY FOR INTEREST -- COLLECTION COSTS AND ATTORNEY'S[1] FEES. Whenever a check, as defined in section 28-3-104, Idaho Code, has been dishonored by nonacceptance or nonpayment and has not been paid within fifteen (15) days and after the holder of such check sends such notice of dishonor as provided in section 28-22-106, Idaho Code, to the drawer, ~~at his last known address,~~ then if the check does not provide for the payment of interest, or collection costs and attorney's[1] fees, the drawer of such check shall also be liable for payment of interest at the rate of twelve

percent (12%) per annum from the date of dishonor and cost of collection not to exceed twenty dollars ($20.00) or the face amount of the check, whichever is the lesser; provided however, that if the holder of the dishonored check has the right to collect a set fee under a written agreement or has notified the drawer by a posted notice at the point of sale that the drawer will be required to pay a set collection fee if the check is dishonored, the holder is not required to give the notice of dishonor as provided in section 28-22-106, Idaho Code, and may assess a collection cost of the notice amount regardless of the size of the check, but the set fee may not exceed twenty dollars ($20.00). In addition, in the event of court action on the check, the court, after such notice and the expiration of said fifteen (15) days, shall award reasonable attorney's fees as part of the damages payable to the holder of the check. No attorney's fees may be awarded to a collection agency in a proceeding pursuant to section 1-2301A, Idaho Code. The provisions of this section shall not apply to any check which has been dishonored by reason of any justifiable stop payment order.

SECTION 3. That Section 28-22-106, Idaho Code, be, and the same is hereby amended to read as follows:

28-22-106. STATUTORY FORM FOR NOTICE OF DISHONOR. The notice of dishonor shall be sent either:

(1) B~~by~~ certified mail to the drawer at his last known address, ~~and said~~ or

(2) By regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check.

(a) The affidavit of service by mailing shall be retained by the payee or holder of the check.

(b) Notice shall be deemed conclusive three (3) days following the date the affidavit is executed.

(c) The affidavit of service shall be substantially in the following form:

STATE OF)
) AFFIDAVIT OF SERVICE BY MAIL
COUNTY OF)

....., being first duly sworn on oath, deposes and states that he/she is of legal age and that on (date)....., ..., he/she served the attached Notice of Dishonor, by placing a true and correct copy thereof securely enclosed in an envelope addressed as follows:

.....
.....
.....
.....

and deposited the same, with postage prepaid, in the United States mail at ....., ...

.....
(Signature)

Subscribed and sworn to before me this .... day of ....., ...

.....
Notary Public

.....County,.....

(SEAL)

(3) The notice of dishonor shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to ..... in the amount of ..... has not been accepted for payment by ....., which is the drawee bank designated on your check. This check is dated ....., and it is numbered, No. .....

You are CAUTIONED that unless you pay the amount of this check within fifteen (15) days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

(1) Costs of collecting the amount of the check, including an attorney fee which will be set by the court; and

(2) Interest on the amount of the check which shall accrue at the rate of twelve percent (12%) per annum from the date of dishonor.

You are advised to make your payment to ..... at the following address: .....

(4) The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section provided the drawer has had actual notice for fifteen (15) days that the check has been dishonored.

(5) The check is prima facie evidence of the identity of the drawer if the name, home or work address, and home or work telephone number of the drawer are either recorded by the person receiving the check or printed on the face of the check.

SECTION 4. That Section 28-22-107, Idaho Code, be, and the same is hereby amended to read as follows:

28-22-107. CONSEQUENCES FOR FAILING TO COMPLY WITH REQUIREMENTS. No interest, collection costs and attorney's[1] fees shall be recovered on any dishonored check under the provisions of section 28-22-105, Idaho Code, where the holder of such check or any agent, employee or assignee of the holder has demanded:

(1) Interest or collection costs in excess of that provided in section 28-22-105, Idaho Code; or

(2) Interest or collection costs prior to the expiration of fifteen

(15) days after the ~~certified~~ mailing of notice of dishonor, as provided in sections 28-22-105 and 28-22-106, Idaho Code; or

(3) Attorney's fees, either without having such fees set by the court, or prior to the expiration of fifteen (15) days after the ~~certified~~ mailing of notice of dishonor, as provided in sections 28-22-105 and 28-22-106, Idaho Code.

The provisions of this section shall not prohibit the collection of a set collection fee which does not exceed twenty dollars ($20.00), if the holder has the right to collect a set fee under a written agreement or has notified the drawer at the point of sale that the drawer will be required to pay the set collection fee in the event a check is dishonored.

Approved March 26, 2002.

CHAPTER 289
(S.B. No. 1365)

AN ACT

RELATING TO THEFT; AMENDING SECTION 18-2408, IDAHO CODE, TO EXTEND A DESIGNATED PUNISHMENT TO THE PROHIBITED USE OF SCANNING DEVICES AND REENCODERS; AND AMENDING CHAPTER 24, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-2415, IDAHO CODE, TO DEFINE TERMS, TO PROHIBIT CERTAIN POSSESSION AND USE OF SCANNING DEVICES AND REENCODERS AND TO PROVIDE FOR PUNISHMENT.

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

SECTION 1. That Section 18-2408, Idaho Code, be, and the same is hereby amended to read as follows:

18-2408. PUNISHMENT FOR THEFT. (1) Grand theft committed in a manner prescribed in subsection (1)(a) of section 18-2407, Idaho Code, is a felony punishable by fine not exceeding ten thousand dollars ($10,000) or imprisonment in the state prison for not less than one (1) year nor more than twenty (20) years, or by both such fine and imprisonment.

(2) (a) Grand theft committed in a manner prescribed in subsection (1)(b)1., 2., 3., 4., 5., 6., 8. or 9. of section 18-2407, Idaho Code, or a felony committed in a manner prescribed in section 18-2415, Idaho Code, is a felony punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment.

(b) Grand theft committed in a manner prescribed in subsection (1)(b)7. of section 18-2407, Idaho Code, is a felony punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), and the minimum fine shall not be suspended or withheld, or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment. In addition, the court shall assess civil damages as provided in section 25-1910, Idaho Code.

(3) Petit theft is a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one (1) year or by both.

SECTION 2. That Chapter 24, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-2415, Idaho Code, and to read as follows:

18-2415. SCANNING — REENCODING. (1) As used in this section, the term:

(a) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

(b) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

(c) "Financial transaction card" or "FTC" means any instrument or device known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or any instrument or device used in providing the card holder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or traveler's checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.

(d) "Merchant" is defined as an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. A "merchant" means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing or receiving goods, services, money or anything else of value from the person.

(2) It is a felony for a person to use or possess with intent to use:

(a) A scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(b) A reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a

different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(3) Any person who commits a violation pursuant to this section shall be punished pursuant to the provisions of section 18-2408(2)(a), Idaho Code.

Approved March 26, 2002.

CHAPTER 290
(S.B. No. 1369)

AN ACT

RELATING TO OPEN PUBLIC MEETINGS; AMENDING SECTION 67-2342, IDAHO CODE, TO PROVIDE FOR THE USE BY GOVERNING BODIES OF TELECOMMUNICATIONS DEVICES AND TO ENSURE PUBLIC ACCESS TO PUBLIC MEETINGS CONDUCTED USING SUCH DEVICES.

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

SECTION 1. That Section 67-2342, Idaho Code, be, and the same is hereby amended to read as follows:

67-2342. GOVERNING BODIES -- REQUIREMENT FOR OPEN PUBLIC MEETINGS. (1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty association established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body

through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body shall be physically present at the location designated in the meeting notice, as required under section 67-2343, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

Approved March 26, 2002.

CHAPTER 291
(S.B. No. 1380)

AN ACT

RELATING TO INSPECTION AND SUPPRESSION OF DISEASES AMONG LIVESTOCK; AMENDING CHAPTER 2, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-212A, IDAHO CODE, TO PROVIDE FOR DEFICIENCY WARRANTS FOR DISEASE CONTROL.

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

SECTION 1. That Chapter 2, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-212A, Idaho Code, and to read as follows:

25-212A. DEFICIENCY WARRANTS FOR DISEASE CONTROL. Whenever the director declares an emergency, as provided in section 25-212, Idaho Code, the director shall cause the disease to be controlled and eradicated, using such funds as have been appropriated or may hereafter be made available for such purposes; provided, that whenever the cost of disease control and eradication exceeds the funds appropriated or otherwise available for that purpose, the state board of examiners may authorize the issuance of deficiency warrants against the general fund for up to five million dollars ($5,000,000) in any one (1) year for such disease control and eradication. The director, in executing the provisions of this chapter insofar as it relates to disease control and eradication, shall have the authority to cooperate with federal, state, county and municipal agencies and private citizens in disease control and eradication efforts; provided, that the state funds shall only be used to pay the state's share of the cost of the disease control and eradication efforts. Disease control and eradication costs may include costs for inspection, diagnosis of disease, indemnity paid to owners for infected, exposed or disease susceptible animals purchased and destroyed by order of the director, costs associated with burial or disposal of animal carcasses, and costs for cleaning and disinfecting of infected premises. Such moneys as the state shall thus become liable for shall be paid as a part of the expenses of the department of agriculture out of appropriations which shall be made by the legislature for that purpose. In all appropriations hereafter made for expenses of the department of agriculture, account shall be taken of and provision made for this item of expense.

Approved March 26, 2002.

CHAPTER 292
(S.B. No. 1382, As Amended)

AN ACT

RELATING TO THE CHILDREN'S TRUST FUND; AMENDING THE CHAPTER HEADING OF CHAPTER 60, TITLE 39, IDAHO CODE; AMENDING SECTION 39-6001, IDAHO CODE, TO CHANGE THE TERM ACCOUNT TO FUND; AMENDING SECTION 39-6002, IDAHO CODE, TO CHANGE THE TERM ACCOUNT TO FUND AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-6003, IDAHO CODE, TO DELETE LANGUAGE REGARDING CONTRACTING FOR CERTAIN PROGRAMS, TO CHANGE THE TERM ACCOUNT TO FUND, TO PROVIDE FOR A REPORT ON THE EFFECTIVENESS OF ACTIVITIES OF THE CHILDREN'S TRUST FUND BOARD IN FOSTERING THE PREVENTION OF CHILD ABUSE AND NEGLECT, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-6005, IDAHO CODE, TO CHANGE THE TERM ACCOUNT TO FUND; REPEALING SECTION 39-6006, IDAHO CODE; AMENDING SECTION 39-6007, IDAHO CODE, TO CHANGE THE TERM ACCOUNT TO FUND AND TO DELETE LANGUAGE THAT THE ACCOUNT SHALL BE ABOLISHED; AMENDING SECTION 39-6008, IDAHO CODE, TO CHANGE THE TERM ACCOUNT TO FUND; AMENDING SECTION 63-3067A, IDAHO CODE, TO CHANGE THE TERM ACCOUNT TO FUND; AND AMENDING SECTION 63-3067B, IDAHO CODE, TO CHANGE THE TERM ACCOUNT TO FUND.

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

SECTION 1. That the Heading for Chapter 60, Title 39, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 60
CHILDREN'S TRUST ~~ACCOUNT~~ FUND

SECTION 2. That Section 39-6001, Idaho Code, be, and the same is hereby amended to read as follows:

39-6001. CHILDREN'S TRUST ~~ACCOUNT~~ FUND BOARD -- CREATION. (1) There is hereby created within the department of health and welfare a children's trust ~~account~~ fund and a children's trust ~~account~~ fund board to administer the children's trust ~~account~~ fund.

(2) The children's trust ~~account~~ fund board shall consist of a chairperson and nine (9) other members as follows:

(a) The chairperson and six (6) other members of the board shall be appointed by the governor and shall be selected for their interest and expertise in the prevention of child abuse. There shall be one (1) board member appointed from each of the seven (7) judicial districts of the state as enumerated in chapter 8, title 1, Idaho Code. Members shall be appointed to serve for three (3) year terms except that the chairperson and three (3) other members shall initially serve for four (4) years. Vacancies shall be filled for any unexpired term by appointment in the same manner as the original appointments were made.

(b) The superintendent of public instruction, the attorney general, and the director of the department of health and welfare or their designees shall be members and shall serve as voting members of the children's trust ~~account~~ fund board.

(3) A quorum of the children's trust ~~account~~ fund board shall consist of a majority of its members which quorum must be present in order to conduct any business.

(4) The chairperson of the children's trust ~~account~~ fund board shall have no vote except in the event of a tie vote of a quorum of the members of the board.

(5) Board members shall be compensated as provided in section 59-509(b), Idaho Code.

(6) Members of the children's trust ~~account~~ fund board may be removed by the governor for misconduct or failure to carry out the duties provided in this chapter.

SECTION 3. That Section 39-6002, Idaho Code, be, and the same is hereby amended to read as follows:

39-6002. CHILDREN'S TRUST ~~ACCOUNT~~ FUND BOARD -- POWERS AND DUTIES. ~~(1)~~ To carry out the purposes of this chapter, the children's trust ~~account~~ fund board may:

(~~a~~1) Contract with public or private nonprofit organizations, agencies, schools or with qualified individuals for the establishment of community-based educational and service programs designed to reduce the occurrence of child abuse and neglect. Each contract entered into by the board shall contain a provision for the evaluation of services provided under the contract. Contracts for services to prevent child abuse and child neglect may be awarded to existing programs and to demonstration projects. Continuation of contracts shall be based upon goal attainment.

(~~b~~2) Facilitate the exchange of information between groups concerned with families and children.

(~~c~~3) Consult with state departments, agencies, commissions and boards to help determine the probable effectiveness, fiscal soundness, and need for proposed educational and service programs for the prevention of child abuse and neglect.

(~~d~~4) The children's trust ~~account~~ fund board may adopt rules ~~and regulations~~ pursuant to chapter 52, title 67, Idaho Code, to carry out the provisions of this chapter.

(~~e~~5) Employ and shall fix the compensation of a part-time administrator who shall be designated as the executive director of the board and who shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

SECTION 4. That Section 39-6003, Idaho Code, be, and the same is hereby amended to read as follows:

39-6003. CRITERIA FOR PROGRAMS. (1) Programs contracted for with moneys received pursuant to section 63-3067A, Idaho Code, are intended to provide prevention services. "Prevention services" means any community-based educational or service program designed to prevent or alleviate child abuse or neglect. "Prevention services" shall not include direct treatment programs.

(2) ~~Programs--contracted-for-with-moneys-appropriated-by-the-legislature-may-provide-training-for-community-based,-multidisciplinary-child abuse-investigation-teams,-and-community-based-programs-to--provide--for the-development-of-local-interview-centers-for-reported-victims-of-child abuse,--including--the-purchase-of-necessary-interview-equipment.~~ Moneys

appropriated by the legislature also may be used for a part-time administrator pursuant to subsection (e5) of section 39-6002, Idaho Code.

(3) The children's trust ~~account~~ fund board shall develop policies to determine whether programs will receive renewed funding. Nothing in this chapter shall be construed to require continued funding by the state of Idaho or the children's trust ~~account~~ fund board.

(4) The children's trust ~~account~~ fund board shall prepare a report on its activities and the effectiveness of those activities in fostering the prevention of child abuse and neglect annually, and deliver that report to the governor and legislature each January 15th.

SECTION 5. That Section 39-6005, Idaho Code, be, and the same is hereby amended to read as follows:

39-6005. MATCHING FUNDS. The children's trust ~~account~~ fund board, in its discretion, may require a certain percentage of the funding for programs approved by the board be provided by the entity sponsoring or proposing the program. Contributions such as materials, personnel, supplies, physical facilities or services may be considered as all or part of the funding provided by the petitioning entity.

SECTION 6. That Section 39-6006, Idaho Code, be, and the same is hereby repealed.

SECTION 7. That Section 39-6007, Idaho Code, be, and the same is hereby amended to read as follows:

39-6007. CHILDREN'S TRUST ~~ACCOUNT~~ FUND -- CREATION. (1) There is hereby created ~~an account in the agency asset fund~~ in the state treasury ~~to be designated~~ the children's trust ~~account~~ fund.

(2) The ~~account~~ fund shall consist of:

(a) Moneys appropriated to the ~~account~~ fund;

(b) Moneys as provided in section 63-3067A, 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~~ fund may be expended for purposes provided in this chapter, provided that the children's trust ~~account~~ fund advisory board is authorized to expend up to fifty percent (50%) of the moneys generated annually pursuant to section 63-3067A, Idaho Code. Interest earned on the investment of idle money in the children's trust ~~account~~ fund shall be returned to the children's trust ~~account~~ fund.

(4) Disbursements of moneys from the ~~account~~ fund shall be on the authorization of the children's trust ~~account~~ fund board or a duly authorized representative of the board.

(5) After a total of two million five hundred thousand dollars ($2,500,000) has been distributed to the children's trust ~~account~~ fund, ~~the account shall be abolished, and~~ no further collections shall be received by the tax commission, and all references to the ~~account~~ fund shall be deleted from income tax forms.

SECTION 8. That Section 39-6008, Idaho Code, be, and the same is hereby amended to read as follows:

39-6008. DUTIES OF DEPARTMENT OF HEALTH AND WELFARE. The department of health and welfare under the direction of the children's trust ~~account~~ fund board shall be responsible for the management and accounting of moneys expended from the children's trust ~~account~~ fund.

SECTION 9. That Section 63-3067A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067A. DESIGNATION BY INDIVIDUALS -- TRUST ACCOUNTS. (a) Every individual who:

(i) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (c) below; or

(ii) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (c) of this section.

(b) A designation under subsection (a) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(c) The trust accounts authorized to receive moneys designated under subsection (a) of this section are:

(i) The fish and game set-aside account created by section 36-111, Idaho Code;

(ii) The Idaho ag in the classroom account created by section 57-815, Idaho Code;

(iii) The drug enforcement donation account created by section 57-816, Idaho Code;

(iv) The children's trust ~~account~~ fund created by section 39-6007, Idaho Code; and

(v) The United States olympic account created by section 57-817, Idaho Code, but no donation shall exceed five dollars ($5.00).

(d) Prior to the distribution of funds into any of the trust accounts specified in subsection (c) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars ($3,000) from each account for start-up costs during the first year of collections, and three thousand dollars ($3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

SECTION 10. That Section 63-3067B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067B. DESIGNATION BY INDIVIDUALS — TRUST ACCOUNTS. (a) Every resident individual who:

(i) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (c) below; or

(ii) Has an income tax liability may, in addition to his tax obli-

gation, include a donation to be deposited in a trust account specified in subsection (c) of this section.

(b) A designation under subsection (a) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(c) The trust accounts authorized to receive moneys designated under subsection (a) of this section are:

(i) The fish and game set-aside account created by section 36-111, Idaho Code;

(ii) The Idaho ag in the classroom account created by section 57-815, Idaho Code;

(iii) The drug enforcement donation account created by section 57-816, Idaho Code;

(iv) The children's trust ~~account~~ fund created by section 39-6007, Idaho Code;

(v) The United States olympic account created by section 57-817, Idaho Code, but no donation shall exceed five dollars ($5.00);

(vi) The Alzheimer's disease services account created in section 57-819, Idaho Code; and

(vii) The community forestry trust account created in section 38-136, Idaho Code.

(d) Prior to the distribution of funds into any of the trust accounts specified in subsection (c) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars ($3,000) from each account for start-up costs during the first year of collections, and three thousand dollars ($3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

Approved March 26, 2002.

CHAPTER 293
(S.B. No. 1383)

AN ACT

RELATING TO CHARTER SCHOOLS; AMENDING SECTION 33-5204, IDAHO CODE, TO CLARIFY APPLICATION OF LAW TO CHARTER SCHOOLS AND THE BOARD OF DIRECTORS OF A CHARTER SCHOOL.

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

SECTION 1. That Section 33-5204, Idaho Code, be, and the same is hereby amended to read as follows:

33-5204. NONPROFIT CORPORATION -- LIABILITY -- INSURANCE. (1) A charter school shall be organized and managed under the Idaho nonprofit corporation act. The board of directors of a charter school shall be

deemed public agents authorized by a public school district or the state board of education to control the charter school, but shall function independently of any school board of trustees, except as provided in the charter. A charter school shall be considered a public school for all purposes and shall comply with the audit reporting requirements of section 33-701 6., Idaho Code, and shall annually file financial and statistical reports as required in section 33-701 7., Idaho Code. For the purposes of section 59-1302(15), Idaho Code, a charter school created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by a public charter school are exempt from payment of the sales and use tax. A charter school and the board of directors of a charter school are subject to the provisions of chapter 23, title 67, and chapter 3, title 9, Idaho Code, in the same manner that a public school and the board of school trustees are subject to those provisions.

(2) A charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of public school districts and other public schools. The approving authority of a charter school shall have no liability for the acts, omissions, debts or other obligations of a charter school, except as may be provided in an agreement or contract with such charter school.

(3) Nothing in this chapter shall prevent the board of directors of a charter school, operating as a nonprofit corporation, from borrowing money to finance the purchase of school building facilities. Subject to the terms of a contractual agreement between the board and a lender, nothing herein shall prevent the board from using the facility as collateral for the loan.

(4) Charter schools shall secure insurance for liability and property loss.

Approved March 26, 2002.

CHAPTER 294
(S.B. No. 1384)

AN ACT

RELATING TO COMMUNITY COLLEGE TUITION; AMENDING SECTION 33-2110, IDAHO CODE, TO PROVIDE THAT TUITION AT COMMUNITY COLLEGES MAY BE INCREASED BY INCREMENTS OF NOT MORE THAN TEN PERCENT PER ANNUM TO A MAXIMUM TUITION OF ONE THOUSAND TWO HUNDRED FIFTY DOLLARS PER ANNUM AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-2110, Idaho Code, be, and the same is hereby amended to read as follows:

33-2110. TUITION. (1) All students of a community college shall pay tuition that shall be fixed annually by the board of trustees not later

than the 1st day of August of each year. The tuition for full-time students taking normal academic courses provided by the college, who are residents of the district, shall be fixed at not less than three hundred fifty dollars ($350) per annum, and may be increased by increments of not more than ~~fifty dollars ($50.00)~~ ten percent (10%) per annum to a maximum tuition of ~~nine hundred~~ one thousand two hundred fifty dollars ($91,250) per annum. For all other students taking such courses the tuition shall be, as nearly as is practicable, the annual costs of all elements of providing the courses of instruction, including interest on general obligation bonds, teaching, administration, maintenance, operation and depreciation of equipment and buildings, supplies and fuel, and other ordinary and necessary expenses of operation incurred in providing courses by the community college, provided that the tuition of students residing outside the district but within the county or counties wherein the district is located shall be fixed after taking into account moneys received by the community college district from any funds allocated to the community college from the educational funds of the state of Idaho, other than allocations for professional-technical education; and provided that the tuition of students residing outside the district and the county but within the state of Idaho shall be fixed after taking into account moneys received from educational funds other than professional-technical moneys, as referred to in this chapter, from the state of Idaho. Receipt of moneys, as hereinbefore provided in this section, shall be based upon the receipts from the sources referred to during the fiscal year preceding the fixing of the tuition. A student in a community college shall not be deemed a resident of the district or of the county or of the state of Idaho, unless that student is deemed a resident as defined by section 33-2110B, Idaho Code, for the district, county or state prior to the date of his first enrollment in the community college, and no student who was not a resident of the district, county or state shall gain residence while attending and enrolled in the community college. The residence of a minor shall be deemed to be the residence of his parents or parent or guardian. Tuition shall be payable in advance, but the board may, in its discretion, permit tuition to be paid in ~~instalments~~ installments.

(2) The board of trustees shall also fix fees for laboratory and other special services provided by the community college and for special courses, including, but not limited to, night school, off-campus courses, summer school, professional-technical courses, as otherwise provided in this chapter, and other special instruction provided by the community college and nothing in this chapter shall be deemed to control the amount of tuition for special courses or fees for special services, as herein provided, but the same shall be, as nearly as reasonable, sufficient to cover the cost of all elements of providing courses as above defined.

(3) In this chapter, unless the context requires otherwise, the following definitions shall be uniformly applied. The application of these definitions shall be retroactive and prospective.

(a) "Fees" shall include all charges imposed by the governing body, to students, as a whole or individually, in excess of tuition. Student fees may be imposed for special courses, instruction, and service:

(i) "Special course or instruction fee" means those fees charged for any class or educational endeavor which shall have

unique costs beyond a traditional college lecture class; for example, foreign language audio or visual instruction, specialized musical instruction, computer class, art class involving supplies or audiovisual equipment, professional-technical instruction, laboratory class, remedial instruction, team teaching, satellite transmissions, outside instructor, professionally assisted instruction, etc.

(ii) "Special service fee" means those fees charged for activity, benefit, or assistance offered to students which is beyond traditional classroom instruction; for example, student government support, providing of student health staff or facilities, student union support, intramural and intercollegiate athletics, recreational opportunities, financial aid services, graduation expense, automobile parking, student yearbook/publication, insurance, registration, noncapital library user fee, etc.

Fees shall not be imposed for any capital improvements except as specifically authorized in chapter 21, title 33, Idaho Code.

(b) "Tuition" shall mean a sum charged students for cost of college instruction and shall include costs associated with maintenance and operation of physical plant, student services and institutional support.

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 26, 2002.

CHAPTER 295
(S.B. No. 1385)

AN ACT

RELATING TO TENANCY AT WILL; AMENDING SECTION 55-208, IDAHO CODE, TO PROVIDE FOR A TENANT'S TERMINATION OF A TENANCY AT WILL AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 55-208, Idaho Code, be, and the same is hereby amended to read as follows:

55-208. TERMINATION OF TENANCY AT WILL. A tenancy or other estate at will, however created, may be terminated:

(1) B~~b~~y the landlord's giving notice in writing to the tenant, in the manner prescribed by the C~~c~~ode of C~~c~~ivil P~~p~~rocedure, to remove from the premises within a period of not less than one (1) month, to be specified in the notice; or

(2) By the tenant giving notice in writing to the landlord that the tenant will be vacating the premises, on a date as specified in the notice, but not less than one (1) month from the date of notice.

Approved March 26, 2002.

CHAPTER 296
(S.B. No. 1386)

AN ACT

RELATING TO LEGAL ACTIONS BY PRISONERS; AMENDING SECTION 31-3220A, IDAHO CODE, TO DELETE REFERENCE TO THE DEFINITION OF "INDIGENT PRISONER," TO PROVIDE WHEN A PRISONER WHO SEEKS TO FILE AN ACTION WITH PARTIAL PAYMENT OF COURT FEES, THE PRISONER SHALL FILE AN AFFIDAVIT OF INABILITY TO PAY ALL COURT FEES AT THE TIME OF THE FILING OF THE ACTION, TO PROVIDE INFORMATION CONTAINED IN THE AFFIDAVIT, TO PROVIDE PROCEDURES, TO PROVIDE FOR PAYMENT OF FEES, TO PROVIDE THAT IN NO EVENT SHALL A PRISONER BE PROHIBITED FROM BRINGING AN ACTION FOR THE REASON THAT THE PRISONER HAS NO ASSETS AND NO MEANS BY WHICH TO PAY THE INITIAL PARTIAL FILING FEE, TO PROVIDE THAT THIS ACT SHALL NOT BE INTERPRETED TO CREATE A LIBERTY INTEREST FOR PRISONERS ENTITLING THEM TO DUE PROCESS PROTECTION UNDER THE IDAHO CONSTITUTION OR THE UNITED STATES CONSTITUTION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 31-3220A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3220A. PRISONER ~~INABILITY TO~~ PAYMENT OF FEES AT TIME OF FILING OF ACTION -- PARTIAL PAYMENT OF FEES -- DISMISSAL OF ACTION. (1) For the purposes of this section, the following definitions shall apply:

(a) "Action" means a civil suit, action, proceeding, or appeal of any such action, including habeas corpus, but excluding proceedings brought pursuant to chapter 49, title 19, Idaho Code.

(b) ~~"Indigent--prisoner"--means--a-prisoner-who-has-had-no-funds-in his-inmate-account-for-the-twelve-(12)-months--preceding--filing--of the-action,-or-the-period-of-his-incarceration,-whichever-is-less.~~

~~(c)~~ "Inmate account" means an account managed by officials of state, local or private correctional facilities, as defined in section 18-101A, Idaho Code, to which the prisoner has access to purchase personal property from the correctional facility's commissary in addition to property and supplies provided by the county, state or private correctional facility to meet the prisoner's basic needs.

(~~d~~c) "Prisoner" shall have the meaning provided in section 18-101A, Idaho Code.

(2) A prisoner who seeks to file an action ~~without-payment-of-court fees-or~~ with partial payment of court fees required in sections 31-3201 and 31-3201A, Idaho Code, shall file the following at the time of filing of an action:

(a) A motion to proceed ~~without-payment-of-court-fees-or-for~~ on partial payment of court fees under this section;

(b) An affidavit of inability to pay all court fees ~~as-set-forth-in section-31-3220(3),-Idaho-Code~~ at the time of filing the action, containing complete information as to:

(i) The prisoner's identity;

(ii) The nature and amount of the prisoner's income;

(iii) The prisoner's spouse's income;

(iv) The real and personal property owned;

(v) His cash or checking accounts;
(vi) His dependents;
(vii) His debts;
(viii) His monthly expenses;
(ix) The nature of the action;
(x) The affiant's belief that he is entitled to redress;

The affidavit shall also contain the following statements: "I am unable to pay all court costs at the time of filing the action. I verify that the statements made in this affidavit are true and correct." The affidavit shall be sworn as required by law; and

(c) A certified copy of his inmate account that reflects the activity of his account over his period of incarceration or for twelve (12) months, whichever is less. The copy of the prisoner's inmate account shall be certified by a custodian of inmate accounts of the office of the county sheriff, the department of correction, or the private correctional facility.

Upon filing of the action and motion to proceed under this section, the prisoner shall also serve a copy of each document filed in compliance with this subsection upon counsel for the county sheriff, the department of correction, or the private correctional facility.

(3) ~~If the court finds that the prisoner is an indigent prisoner, the court may order the action to proceed without payment of any court fees.~~

~~(4) If the court finds that the prisoner is not an indigent prisoner~~ Upon review of the information provided and considering the prisoner's ability to pay all court fees at the time of filing the action, the court shall order the prisoner to pay all or part of the court fees as set forth in sections 31-3201 and 31-3201A, Idaho Code.

(4) If the court permits the prisoner's action to proceed on partial payment of court fees, the court shall assess and, when funds exist, collect a partial payment of any court fees as set forth in sections 31-3201 and 31-3201A, Idaho Code, an initial partial filing fee of twenty percent (20%) of the greater of:

(a) The average monthly deposits to the prisoner's inmate account; or

(b) The average monthly balance for the six (6) month period immediately preceding the filing of the action.

(5) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of twenty percent (20%) of the preceding month's income credited to the prisoner's inmate account until the full amount of all applicable court fees set forth in sections 31-3201 and 31-3201A, Idaho Code, are paid. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars ($10.00) until the full amount of all applicable court fees set forth in sections 31-3201 and 31-3201A, Idaho Code, are paid.

(6) In no event shall the court fees collected exceed the amount of fees permitted by statute for the commencement of an action.

(7) In no event shall a prisoner be prohibited from bringing an action for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(~~5~~8) The court may dismiss an action filed under this section, in whole or in part, on its own motion or by motion of a party, upon a finding that:

(a) The ~~nonindigent~~ prisoner has failed to pay the court fees under subsection (~~4~~3) of this section within thirty (30) days of the entry of the order for court fees, or any time thereafter; or

(b) Any allegation in the prisoner's affidavit filed under this section is false.

(~~6~~9) If the action or any part of it is dismissed without prejudice under subsection (~~5~~8) of this section, and the prisoner refiles the action, the following shall apply:

(a) The requirements under this section must be met again in their entirety; and

(b) No amount paid for court fees in any previously filed action, or any part thereof, shall be credited to the court fees required under sections 31-3201 and 31-3201A, Idaho Code.

(~~7~~10) The court may refuse further filings under this section until the order for court fees has been satisfied in any previous action filed under this section.

(~~8~~11) The office of the attorney general, the county prosecutor, or other counsel for the defendant or respondent, is authorized to receive information from the county sheriff, department of correction, or private correctional facility in order to verify the financial information submitted by a prisoner pursuant to this section.

(~~9~~12) The court may request an official or officials of the county jail, department of correction, or private correctional facility to file an affidavit concerning the allegations in the prisoner's affidavit or concerning the merits of the action prior to determination whether to proceed under this section.

(~~10~~3) The court may require the prisoner to file an affidavit that the claim has not been previously brought against the same parties or from the same operative facts in any state or federal court.

(~~11~~4) The court may dismiss an action or a portion of the action under this section, before or after service, on its own motion or by motion of a party, upon a finding that:

(a) Any allegation in the affidavit or the action is false;

(b) The action is frivolous;

(c) The action is malicious; or

(d) The action fails to state a claim upon which relief can be granted.

(~~12~~5) If a portion of the action is dismissed, the court's order dismissing the action shall also designate the issues and the defendant or respondent upon which the action is to proceed.

(~~13~~6) The court shall award reasonable costs and attorney's fees to the defendant or respondent if the court finds that:

(a) Any allegation in the prisoner's affidavit is false;

(b) The action or any part of the action is frivolous or malicious; or

(c) The action or any part of the action is dismissed for failure to state a claim upon which relief can be granted.

(~~14~~7) Orders entered under this section are not subject to interlocutory appeal.

(~~15~~8) Nothing in this section shall prevent a prisoner from authorizing payment beyond that required under the order for filing fees.

~~(16) Nothing--in-this-section-shall-be-construed-to-prohibit-a-prisoner-from-filing-an-action-without-payment-of-filing-fees-if-he-is-found to-be-an-indigent-prisoner-as-defined-in-subsection-(1)(b)-of-this--section.~~

(1~~7~~9) If the court authorizes the commencement of the action or any part of the action without payment of fees upon a finding that the prisoner is ~~an-indigent-prisoner~~ unable to pay all court fees at the time of filing the action, and the court later finds that a prisoner is ~~no longer--an--indigent-prisoner~~ then able to pay all court fees, the court ~~may~~ shall order the prisoner to ~~comply-with-the-requirements-of--subsection--(2)-of-this-section~~ pay all unpaid court fees within two (2) business days and enter an order for court fees. The court's finding under this subsection may be based on information con~~tained~~ in affidavits or other information available to the court. The court shall dismiss the action if the prisoner fails to comply with an order entered under this subsection.

(20) If the action or any part of it is dismissed without prejudice under subsection (19) of this section, and the prisoner refiles the action, the following shall apply:

(a) The requirements under this section must be met again in their entirety; and

(b) No amount paid for court fees in any previously filed action, or any part thereof, shall be credited to the court fees required under sections 31-3201 and 31-3201A, Idaho Code.

(1~~8~~21) The court may develop a form questionnaire which it may require by local rule to be filed to implement this statute.

(1~~9~~22) In no way shall t~~T~~his section ~~is--intended--as--a--procedural guideline-only,-and-nothing-herein-shall~~ be interpreted to create a liberty interest for prisoners entitling them to due process protection under the Idaho constitution or the United States constitution.

Approved March 26, 2002.

CHAPTER 297
(S.B. No. 1388)

AN ACT

RELATING TO THE ADMISSION TO THE PRACTICE OF LAW; AMENDING SECTION 3-408, IDAHO CODE, TO PROVIDE FOR FINGERPRINT-BASED CRIMINAL HISTORY CHECKS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 3-408, Idaho Code, be, and the same is hereby amended to read as follows:

3-408. ADMISSION TO PRACTICE AND DISBARMENT PROCEEDINGS — RULES AND BYLAWS -- POWER OF BOARD TO ADOPT -- SUPERVISORY POWER OF SUPREME COURT. The board of commissioners shall have power to determine, by rules, subject to the approval of the S~~s~~upreme C~~c~~ourt, the qualifications and requirements for admission to the practice of the law and to conduct investigation and examination of applicants, and it shall from

time to time certify to the Supreme Court the names of those applicants found to be qualified. The investigation shall include a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each person listed as an applicant on an initial application shall submit a full set of fingerprints with the application. The approval by the Supreme Court of the applicants whose names are so certified, shall entitle them to enrollment, as members of the bar of this state, and to practice law upon their paying the required fees and taking the oath. The board shall formulate rules governing the conduct of all persons admitted to practice and shall investigate and pass upon all complaints that may be made concerning the professional conduct of any person admitted to the practice of the law. In all cases in which the investigation, in the opinion of a majority of the board, justifies such a course, it shall recommend to the Supreme Court such disciplinary action by public or private reprimand, suspension from the practice of the law, or exclusion and disbarment therefrom, as the case shall in its judgment warrant. Upon the making of any recommendation by the board reprimanding, suspending or excluding or disbarring any member of the Idaho State Bar from the practice of the law, the board shall cause the record of proceedings in said matter or a copy thereof certified by its secretary or president to be filed with the clerk of the Supreme Court. The Supreme Court shall thereupon enter such judgment in said matter as it deems proper. The board of commissioners shall also have power to make rules and bylaws, subject to the approval of the Supreme Court, not in conflict with any of the terms of this Act concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the board and of the Idaho State Bar.

The board of commissioners shall also have power after proceedings as in other cases of discipline to recommend to the Supreme Court the discipline of its officers and the members of its committees in the event of refusal, neglect, failure or corrupt or wrongful performance of their respective duties.

Approved March 26, 2002.

CHAPTER 298
(S.B. No. 1400)

AN ACT

RELATING TO HIGHWAY COMMISSIONERS; AMENDING SECTION 40-1305, IDAHO CODE, TO PROVIDE FOR ALTERNATIVE ELECTIONS AND TERMS OF OFFICE FOR HIGHWAY DISTRICT COMMISSIONERS.

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

SECTION 1. That Section 40-1305, Idaho Code, be, and the same is hereby amended to read as follows:

40-1305. ELECTION OF HIGHWAY COMMISSIONERS — TERM OF OFFICE. (1) On the first Tuesday of August of the next odd-numbered year following

the appointment of the first highway district commissioners, commissioners from subdistricts one and two shall be elected for a term of two (2) years. Thereafter the term of office of all commissioners shall be four (4) years. Highway district commissioners elected prior to January 1, 1994, for a term to expire on January 1, 1996, shall continue in office until October 1, 1995. Highway district commissioners elected prior to January 1, 1994, for a term to expire on January 1, 1998, shall continue in office until October 1, 1997. Elections for commissioners of each of the subdistricts shall continue on the schedule previously established.

(2) Alternative election of highway commissioners -- Term of office.

(a) Notwithstanding subsection (1) of this section, highway district commissioners may, upon the unanimous agreement of the existing board of highway district commissioners, adopt an alternative term of office, whereby a single highway district commissioner shall be elected each year for three (3) years and in the fourth year no election shall be held.

(b) An election pursuant to paragraph (a) of this subsection shall be conducted in the following manner:

(i) The commissioner representing subdistrict one shall be elected for a term of four (4) years upon the expiration of the existing term;

(ii) The commissioner representing subdistrict two shall be elected for a term of five (5) years upon the expiration of the existing term; and

(iii) Each year thereafter, one (1) commissioner shall be elected, except for the fourth year when no election shall be held.

(c) If an alternative election is held pursuant to this subsection, the highway district shall not revert to the former manner of elections and terms of office until eight (8) years after such election.

Each highway commissioner shall be elected on a district wide basis.

Approved March 26, 2002.

CHAPTER 299
(S.B. No. 1402)

AN ACT

RELATING TO MOTOR VEHICLE SERVICE CONTRACTS; AMENDING SECTION 49-2803, IDAHO CODE, TO REMOVE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE FROM THE LIST OF PERSONS WHO ARE REQUIRED TO RECEIVE ADVANCE NOTICE OF CANCELLATION OF A SERVICE CONTRACT LIABILITY INSURANCE POLICY; AMENDING SECTION 49-2807, IDAHO CODE, TO DELETE THE REQUIREMENT FOR REVIEW OF CERTAIN EXAMINATIONS BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE; REPEALING SECTION 49-2808, IDAHO CODE; AND AMENDING SECTION 49-2809, IDAHO CODE, TO PROVIDE THAT PERSONS MARKETING, SELLING OR OFFERING TO SELL MOTOR VEHICLE SERVICE CONTRACTS FOR MOTOR VEHICLE SERVICE CONTRACT PROVIDERS AND MOTOR VEHICLE SERVICE CONTRACT PROVIDERS ARE EXEMPT FROM THE LICENSING REQUIREMENTS OF CHAPTER 10, TITLE 41, IDAHO CODE.

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

SECTION 1. That Section 49-2803, Idaho Code, be, and the same is hereby amended to read as follows:

49-2803. SERVICE CONTRACT REIMBURSEMENT POLICY REQUIREMENTS. (1) Mandatory insurance.

(a) No motor vehicle service contract shall be issued, sold, or offered for sale in this state unless the motor vehicle service contract provider is insured under a service contract liability policy issued by an insurer admitted to do business in this state. The policy shall provide that the insurer will pay to, or on behalf of, the motor vehicle service contract provider all sums which the motor vehicle service contract provider is legally obligated to pay according to the motor vehicle service contract provider's contractual obligations under the motor vehicle service contracts issued or sold by the motor vehicle service contract provider.

(b) All service contract liability policies insuring motor vehicle service contracts issued, sold or offered for sale in this state must conspicuously state that, upon failure of the motor vehicle service contract provider to perform under the contract, the issuer of the policy shall pay on behalf of the provider any sums which the provider is legally obligated to perform, according to the provider's contractual obligations under the motor vehicle service contracts issued or sold by the provider.

(2) Reserves. The reserve to be maintained on service contract liability policies issued:

(a) Covering new vehicles shall be one which generates an unearned premium reserve not less than the unearned premium reserve which is generated by applying the "reverse sum of the digits" earnings method to each policy issued;

(b) Covering used vehicles shall be a reserve of not less than the unearned premium reserve which is generated by the "straight line" or "prorated" earnings method; or

(c) Shall be by such other methods as are certified annually by a competent actuary who is a member of the American society of actuaries.

(3) Premiums. Premiums are defined as those funds paid by or on behalf of the motor vehicle service contract provider to the liability insurance policy issuer for such risks covered under such liability insurance policy. Such premiums or the method of developing such premiums shall be filed with the director of the department of insurance for approval.

(4) Cancellation of service contract liability insurance policy. The issuer of a service contract liability policy may not cancel the policy until a thirty (30) days' advance notice of cancellation has been mailed or delivered to ~~the director of the department of insurance and to~~ each motor vehicle service contract provider. The cancellation of a service contract liability policy shall not reduce the insurer's responsibility for motor vehicle service contracts issued by motor vehicle service contract providers prior to the date of the cancellation.

SECTION 2. That Section 49-2807, Idaho Code, be, and the same is hereby amended to read as follows:

49-2807. RECORDKEEPING REQUIREMENTS. All motor vehicle service contract providers shall keep accurate accounts, books and records concerning transactions regulated under the provisions of this act. A motor vehicle service contract provider's accounts, books and records shall include:

(1) Copies of all motor vehicle service contracts issued;

(2) The name and address of each motor vehicle service contract holder; and

(3) Claim files.

All motor vehicle service contract providers shall retain all records pertaining to each motor vehicle service contract holder for at least three (3) years after the specified period of coverage has expired. It shall be the responsibility of the insurer issuing the liability policy to make an examination at least every two (2) years of each motor vehicle service contract provider which they insure to assure that each provider is in compliance with the recordkeeping requirements. ~~Copies of these examinations shall be subject to review by the director of the department of insurance.~~

SECTION 3. That Section 49-2808, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 49-2809, Idaho Code, be, and the same is hereby amended to read as follows:

49-2809. LICENSING. Persons marketing, selling or offering to sell motor vehicle service contracts for motor vehicle service contract providers and motor vehicle service contract providers ~~that comply with this act~~ are exempt from the licensing requirements of chapter 10, title 41, Idaho Code. Motor vehicle service contracts issued by the motor vehicle manufacturer, importer, distributor, or by a wholly owned affiliate of the motor vehicle manufacturer which is not an insurance company, shall not be subject to regulation under title 41, Idaho Code.

Approved March 26, 2002.

CHAPTER 300
(S.B. No. 1406)

AN ACT

RELATING TO MORTGAGE GUARANTY INSURANCE; AMENDING SECTION 41-2651, IDAHO CODE, TO REVISE THE DEFINITION OF "AUTHORIZED REAL PROPERTY SECURITY."

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

SECTION 1. That Section 41-2651, Idaho Code, be, and the same is hereby amended to read as follows:

41-2651. DEFINITIONS. In this chapter unless context or subject matter otherwise requires:

(1) "Mortgage guaranty insurance" means:

(a) Insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real property, provided the improvement on such real property is a residential building or buildings designed for occupancy by not more than four (4) families, or a condominium unit.

(b) Insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real property, provided the improvement on such real property is a building or buildings designed for occupancy by five (5) or more families or designed to be occupied for industrial or commercial purposes.

(c) Insurance against financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real property, provided the improvement on such real property is a building or buildings designed to be occupied for industrial or commercial purposes.

(2) "Authorized real property security" for the purposes of paragraphs (a) and (b) of subsection (1) of this section means an amortized note, bond or other evidence of indebtedness, not exceeding one hundred three percent (100~~3~~%) of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument constituting a first lien or charge on real property with any percentage in excess of one hundred percent (100%) being used to finance fees and closing costs on such indebtedness; provided:

(a) The real property loan secured in such manner is one which a bank, savings and loan association, or an insurance company, which is supervised and regulated by a department of this state or an agency of the federal government, is authorized to make.

(b) The improvement on such real property is a building or buildings designed for occupancy as specified by paragraphs (a) and (b) of subsection (1) of this section.

(c) The lien on such real property may be subject and subordinate to the following:

(i) The lien of any public bond, assessment, or tax, when no installment, call or payment of or under such bond, assessment or tax is delinquent.

(ii) Outstanding mineral, oil or timber rights, rights-of-way, easements or rights-of-way of support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon such real property under which rents or profits are reserved to the owner thereof.

(3) "Contingency reserve" means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles or losses.

(4) "Policyholders' surplus" means the aggregate of paid-in capital stock, surplus and contingency reserve.

Approved March 26, 2002.

CHAPTER 301
(S.B. No. 1407)

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; AMENDING SECTION 28-41-201, IDAHO CODE, TO REVISE THE LIST OF ACTIVITIES THAT CONSTITUTE A SALE, LOAN, OR MODIFICATION OF A SALE OR LOAN FOR PURPOSES OF APPLICATION OF CHAPTER 41, TITLE 28, IDAHO CODE, AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-41-302, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 28-45-201, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-46-108, IDAHO CODE, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF FINANCE TO ISSUE CERTAIN ORDERS WITH RESPECT TO UNCONSCIONABLE AGREEMENTS OR FRAUDULENT OR UNCONSCIONABLE CONDUCT; AMENDING SECTION 28-46-113, IDAHO CODE, TO STRIKE A PROHIBITION AGAINST IMPOSITION OF CERTAIN STATUTORY CIVIL PENALTIES IN REGARD TO UNCONSCIONABLE AGREEMENTS OR FRAUDULENT OR UNCONSCIONABLE CONDUCT AND TO MAKE A TECHNICAL CORRECTION; AMENDING THE HEADING TO CHAPTER 49, TITLE 28, IDAHO CODE; REPEALING SECTION 28-49-101, IDAHO CODE; AMENDING CHAPTER 49, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-49-101, IDAHO CODE, TO PROVIDE FOR THE RELATIONSHIP TO OTHER LAWS; AND REPEALING SECTIONS 28-49-102, 28-49-103, 28-49-104 AND 28-49-106, IDAHO CODE.

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

SECTION 1. That Section 28-41-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-201. TERRITORIAL APPLICATION. (1) Except as otherwise provided in this section, this act applies to sales and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales and loans, wherever made. For purposes of this act a sale, loan, or modification of a sale or loan is made in this state if:

(a) A ~~sale or modification of a sale agreement is made in this state if the buyer's~~ written agreement evidencing the obligation or offer ~~to purchase or to modify~~ of the consumer is received by the ~~seller~~ creditor in this state; ~~and~~ or

(b) A ~~loan or modification of a loan agreement is made in~~ consumer who is a resident of this state ~~if a writing signed by the debtor and evidencing the debt is received by the lender in this state~~ enters into the transaction with a creditor who has solicited or advertised in this state by any means including, but not limited to, mail, brochure, telephone, print, radio, television, internet or any other electronic means.

~~(2) With respect to sales made pursuant to open-end credit, this act applies if the buyer's communication or indication of his intention to establish the account is received by the seller in this state. If no communication or indication of intention is given by the buyer before the first sale, this act applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this state~~ Notwithstanding subsection (1)(b) of this section, unless made subject to this act by agreement of the parties, a

sale, loan, or modification of a sale or loan is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) ~~With--respect-to-loans-made-pursuant-to-a-lender-credit-card-or similar-arrangement,-this-act-applies-if-the-debtor's--communication--or indication-of-his-intention-to-establish-the-arrangement-with-the-lender is--received-by-the-lender-in-this-state.-If-no-communication-or-indication-of-intention-is-given-by-the-debtor-before-the-first-loan,-this-act applies-if-the-lender's-communication-notifying-the-debtor-of-the-privilege-of-using-the-arrangement-is-mailed-or-personally-delivered-in--this state.~~

~~(4)~~ The part on limitations on creditors' remedies, part 1 of the chapter on remedies and penalties, chapter 45, title 28, Idaho Code, applies to actions or other proceedings brought in this state to enforce rights arising from regulated credit sales or regulated loans, or extortionate extensions of credit, wherever made.

(~~5~~4) If a regulated credit sale or regulated loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A seller, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the chapter on finance charges and related provisions; and

(b) A seller, lender, or assignee of his rights, may not enforce rights against the buyer or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices, part 3 of chapter 43, title 28, Idaho Code.

(~~6~~5) Except as provided in subsection (~~4~~3), a sale, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, loan or modification was made is valid and enforceable according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(~~7~~6) For the purposes of this act, the residence of a buyer or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(~~8~~7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (~~4~~3), this act does not apply if the buyer or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) This act applies if the buyer or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(~~9~~8) Except as provided in subsection (~~8~~7), the following agreements by a buyer or debtor are invalid with respect to regulated credit sales, regulated loans, or modifications thereof, to which this act applies:

(a) That the law of another state shall apply;

(b) That the buyer or debtor consents to the jurisdiction of another state; and

(c) That fixes venue.

(~~10~~9) The following provisions of this act specify the applicable law governing certain cases:

(a) Applicability, section 28-46-102, Idaho Code, of the part on powers and functions of administrator, part 1, of the chapter on administration, chapter 46, title 28, Idaho Code; and

(b) Applicability, section 28-46-201, Idaho Code, of the part on notification and fees, part 2, of the chapter on administration, chapter 46, title 28, Idaho Code.

SECTION 2. That Section 28-41-302, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-302. FEDERAL CONSUMER CREDIT PROTECTION ACT -- DEFINED. In this act "Federal Consumer Credit Protection Act" means the consumer credit protection act, Public Law 90-321; 82 Stat. 146, as amended, ~~including, without limitation, as amended by the Truth in Lending Simplification and Reform Act, Title VI of Public Law 96-221, and as the same may be further amended~~ to and including January 1, 2002, or a subsequent date if so defined by administrative rule, and includes regulations issued pursuant to that act, as ~~it has been so~~ amended ~~by the Truth in Lending Simplification and Reform Act and as the same may be further amended~~ to and including January 1, 2002, or a subsequent date if so defined by administrative rule.

SECTION 3. That Section 28-45-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-45-201. EFFECT OF VIOLATIONS ON RIGHTS OF PARTIES. (1) If a creditor has violated any provision of this act applying to collection of an excess charge or amount or enforcement of rights, subsection (~~5~~4) of section 28-41-201, Idaho Code, authority to make regulated consumer loans, section 28-46-301, Idaho Code, restrictions on interests in land as security, section 28-43-309, Idaho Code, limitations on the schedule of payments or loan terms for regulated consumer loans, section 28-43-310, Idaho Code, attorney's fees, section 28-43-311, Idaho Code, receipts, statements of account, and evidences of payment, section 28-43-204, Idaho Code, form of insurance premium loan agreement, section 28-43-205, Idaho Code, security in sales, section 28-43-301, Idaho Code, no assignments of earnings, section 28-43-304, Idaho Code, certain negotiable instruments prohibited, section 28-43-306, Idaho Code, referral sales, section 28-43-308, Idaho Code, limitations on default charges, section 28-45-301, Idaho Code, assignees subject to claims and defenses, subsection (3) of section 28-45-302, Idaho Code, or assurance of discontinuance, section 28-46-109, Idaho Code, the debtor has a cause of action to recover actual damages and also a right in an action other than a class action, to recover from the person violating this act a penalty in an amount determined by the court not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). With respect to violations arising from consumer credit sales or consumer loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two (2) years after the violations occurred. With respect to violations arising from other regulated consumer credit transactions, no action pursuant to this subsection may be brought more

than one (1) year after the scheduled or accelerated maturity of the debt.

(2) A debtor is not obligated to pay a charge in excess of that allowed by this act and has a right of refund of any excess charge paid. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

(3) If a creditor has contracted for or received a charge in excess of that allowed by this act, or if a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from the creditor or the person liable in an action other than a class action a penalty in an amount determined by the court not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000). With respect to excess charges arising from consumer credit sales or consumer loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than two (2) years after the violation or passage of a reasonable time for refund occurs. With respect to excess charges arising from other regulated consumer credit transactions, no action pursuant to this subsection may be brought more than one (1) year after the scheduled or accelerated maturity of the debt. For purposes of this subsection, a reasonable time is presumed to be thirty (30) days.

(4) Except as otherwise provided, a violation of this act does not impair rights on a debt.

(5) If an employer discharges an employee in violation of the provisions prohibiting discharge, section 28-45-105, Idaho Code, the employee within ninety (90) days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring reinstatement of the employee. Damages recoverable shall not exceed lost wages for six (6) weeks.

(6) A creditor is not liable for a penalty under subsection (1) or (3) of this section if he notifies the debtor of a violation before the creditor receives from the debtor written notice of the violation or the debtor has brought an action under this section, and the creditor corrects the violation within forty-five (45) days after notifying the debtor. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the violation is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund. The administrator and any official or agency of this state having supervisory authority over a supervised financial organization shall give prompt notice to a creditor of any violation discovered pursuant to an examination or investigation of the transactions, business, records, and acts of the creditor, sections 28-46-305, 28-46-105 and 28-46-106, Idaho Code.

(7) A creditor may not be held liable in an action brought under this section for a violation of this act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(8) In an action in which it is found that a creditor has violated

this act, the court shall award to the debtor the costs of the action and his attorney's fees. In determining the attorney's fees, the amount of the recovery on behalf of the debtor is not controlling.

SECTION 4. That Section 28-46-108, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-108. ADMINISTRATIVE ENFORCEMENT ORDERS. (1) After notice and hearing the administrator may order a creditor or a person acting in his behalf to cease and desist from violating this act. A respondent aggrieved by an order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the court for enforcement of his order in the district court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within thirty (30) days after service of the petition for review upon the administrator, or within any further time the court allows, the administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may:

(a) Reverse or modify the order if the findings of fact of the administrator are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(b) Grant temporary relief or restraining order it deems just; and

(c) Enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the administrator, or remanding the case to the administrator for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the administrator.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree is subject to review by the supreme court in the same manner and form and with the same effect as in appeals from a final judgment or decree. The administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section shall be initiated within thirty (30) days after a copy of the order of the administrator is received. If no proceeding is so initiated, the administrator may obtain an order of the court for enforcement of his order upon showing that his order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after a copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by ~~the respondent~~ persons licensed to make regulated consumer loans, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction, section

28-46-111, Idaho Code, or any other action which the administrator is authorized to bring under this act.

(7) With respect to unconscionable agreements or fraudulent or unconscionable conduct by an unlicensed person, the administrator may issue a cease and desist order without prior notice or hearing, and may bring a civil action for an injunction, or any other action which the administrator is authorized to bring under this act.

SECTION 5. That Section 28-46-113, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-113. CIVIL ACTIONS BY ADMINISTRATOR. (1) After demand, the administrator may bring a civil action against a creditor to recover actual damages sustained and excess charges paid by one (1) or more debtors who have a right to recover explicitly granted by this act. In a civil action under this subsection, penalties may not be recovered by the administrator. The court shall order amounts recovered under this subsection to be paid to each debtor or set off against his obligation. A debtor's action, except a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that debtor. A debtor's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions, but the administrator may intervene. An administrator's action on behalf of a class of debtors takes precedence over a debtor's subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action under this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a creditor in a civil action brought by a debtor is available to him in a civil action brought under this subsection.

(2) The administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty of no more than five thousand dollars ($5,000) for repeatedly and intentionally violating this act. A civil penalty pursuant to this subsection may not be imposed for a violation of this act occurring more than two (2) years before the action is brought. ~~or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.~~

(3) The administrator may bring a civil action against a creditor for failure to file notification in accordance with the provisions on notification, section 28-46-202, Idaho Code, or to pay fees in accordance with the provisions on fees, section 28-46-203, Idaho Code, to recover the fees the defendant has failed to pay and a civil penalty in an amount determined by the court not exceeding the greater of three (3) times the amount of fees the defendant has failed to pay or one thousand dollars ($1,000), plus the administrator's costs and attorney's fees.

SECTION 6. That the heading for Chapter 49, Title 28, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 49
RELATIONSHIP TO OTHER LAWS, EFFECTIVE DATE, ~~REPEALER,~~
AND OVERRIDE OF FEDERAL PREEMPTION

SECTION 7. That Section 28-49-101, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Chapter 49, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-49-101, Idaho Code, and to read as follows:

28-49-101. RELATIONSHIP TO OTHER LAWS. (1) All political subdivisions of this state shall be prohibited from enacting and enforcing ordinances, resolutions and regulations pertaining to the financial or lending activities of persons who:

(a) Are subject to the jurisdiction of the department of finance of the state of Idaho, including activities subject to this chapter;

(b) Are subject to the jurisdiction or regulatory supervision of the board of governors of the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal deposit insurance corporation, the federal trade commission or the United States department of housing and urban development; or

(c) Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in subsection (1)(a) or (1)(b) of this section or assist or facilitate such transactions.

(2) The requirements of this section shall apply to all ordinances, resolutions and regulations pertaining to financial or lending activities, including any ordinances, resolutions or regulations disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

SECTION 9. That Sections 28-49-102, 28-49-103, 28-49-104 and 28-49-106, Idaho Code, be, and the same are hereby repealed.

Approved March 26, 2002.

CHAPTER 302
(S.B. No. 1410)

AN ACT

RELATING TO FINANCE CHARGES; AMENDING SECTION 28-42-301, IDAHO CODE, TO INCREASE THE MAXIMUM AMOUNT OF CERTAIN CHARGES ALLOWED IN PRECOMPUTED CONSUMER CREDIT TRANSACTIONS, CONSUMER LOANS SECURED BY SECURITY INTERESTS IN REAL PROPERTY AND ALL OTHER REGULATED CONSUMER CREDIT TRANSACTIONS AND TO PROVIDE THAT PARTIES MAY CONTRACT FOR DELINQUENCY CHARGES ON INSTALLMENTS OR SCHEDULED PAYMENTS NOT PAID IN FULL WITHIN TEN DAYS AFTER THE SCHEDULED DUE DATE.

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

SECTION 1. That Section 28-42-301, Idaho Code, be, and the same is hereby amended to read as follows:

28-42-301. DELINQUENCY CHARGES. (1) With respect to a precomputed regulated consumer credit transaction, the parties may contract for a delinquency charge on any installment not paid in full within ten (10) days after its due date, as originally scheduled or as deferred, in an amount which is not more than five percent (5%) of the unpaid amount of the installment, or ~~five~~ twelve dollars and fifty cents ($~~5.00~~12.50), whichever is greater.

(2) With respect to a regulated consumer loan secured by a security interest in real property which is used or expected to be used as the residence of the debtor which is not a precomputed regulated consumer loan, the parties may contract for a delinquency charge on any installment not paid in full within fifteen (15) days after its scheduled due date in an amount not exceeding five percent (5%) of the unpaid amount of the installment, or ~~five~~ fifteen dollars ($15.00), whichever is greater.

(3) With respect to all other regulated consumer credit transactions, whether secured or unsecured, and whether such credit transactions are classified as open-end credit or closed-end credit, the parties may contract for a delinquency charge on any installment or scheduled payment not paid in full within ~~fifteen~~ ten (~~15~~10) days after its scheduled due date in an amount not exceeding five percent (5%) of the unpaid amount of the installment or scheduled payment, or ~~ten~~ fifteen dollars ($~~10~~15.00), whichever is greater.

(4) A delinquency charge under subsection (1), subsection (2) or subsection (3) of this section may be collected only once on an installment or scheduled payment, however long it remains in default. No delinquency charge may be collected if the installment or scheduled payment has been deferred and a deferral charge, section 28-42-302, Idaho Code, has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(5) No delinquency charge may be collected on an installment or payment which is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment or scheduled payment or a delinquency charge on an earlier installment or scheduled payment may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or scheduled payments and then to delinquent installments or scheduled payments.

(6) If two (2) installments or parts thereof of a precomputed regulated consumer credit transaction are in default for ten (10) days or more, the creditor may elect to convert the credit transaction from a precomputed regulated consumer credit transaction to one in which the finance charge is based on unpaid balances. In this event, he shall make a rebate pursuant to the provisions on rebate upon prepayment, section 28-42-307, Idaho Code, as of the maturity date of the first delinquent installment, and thereafter may make a finance charge as authorized by the provisions on finance charge for regulated consumer credit transactions. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge, section 28-42-307, Idaho Code.

Approved March 26, 2002.

CHAPTER 303
(S.B. No. 1412)

AN ACT
RELATING TO READING ASSESSMENTS; AMENDING SECTION 33-1616, IDAHO CODE, TO DEFINE THE STUDENTS WHO SHALL BE INCLUDED IN CALCULATIONS RELATING TO READING ASSESSMENT.

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

SECTION 1. That Section 33-1616, Idaho Code, be, and the same is hereby amended to read as follows:

33-1616. EVALUATIONS AND INTERVENTIONS. Reports shall be submitted by the school districts in such a manner that it is possible to determine for each school building in each school district the percentage of students who are achieving at or above the appropriate grade level on the reading assessment. In order to maintain the commitment made by the legislature to reading excellence, the statewide goal for reading achievement for spring 2004 shall be not less than fifty-five percent (55%) at or above grade level for kindergarten and not less than sixty percent (60%) at or above grade level for first grade; the goal for spring 2005 shall be not less than fifty-five percent (55%) at or above grade level for kindergarten, not less than sixty-five percent (65%) at or above grade level for first grade, and not less than seventy percent (70%) at or above grade level for second grade; the goal for spring 2006 shall be not less than sixty percent (60%) at or above grade level for kindergarten, not less than seventy percent (70%) at or above grade level for first grade, not less than eighty percent (80%) at or above grade level for second grade and not less than eighty-five percent (85%) at or above grade level for third grade. Notwithstanding the statewide reading achievement goals provided herein, an individual school building will also be deemed to have met the achievement goal if the percentage reading at or above grade level is five percent (5%) or more greater than the percentage for the immediately preceding year fall scores. For purposes of this section, the calculations shall be based on students who were enrolled ninety percent 90% of the possible total days of attendance at that school between the fall and spring reading test within that same school year.

The state department of education shall extract data from the reporting forms, after the spring assessment period, and specifically identify those schools whose average reading scores for any grade level have not met the targeted level by the specified date. The department shall prepare a list of these schools and the grade or grades not attaining the achievement goal. This list shall be made available for the public, shall be published in the next issue of the state publication of the department and may be made available on the internet following the spring assessment. In addition, each school so identified shall be notified by the department that should the school experience a similar shortfall in the next ensuing year, a school intervention program may be initiated. The state department of education shall provide for an intervention program which will consist of at least, but not limited to, a site visit by designated personnel from schools that have achieved the

state standard and may include others who are familiar with reading achievement. The intervention team shall make recommendations to the district on means for improvement in order to meet and exceed the state's reading goals.

Approved March 26, 2002.

CHAPTER 304
(S.B. No. 1422)

AN ACT

RELATING TO THE USE OF A PUBLIC POSITION FOR PERSONAL GAIN; AMENDING SECTION 18-1359, IDAHO CODE, TO PROVIDE THAT CERTAIN PUBLIC EMPLOYEES MAY RETAIN THEIR POSITIONS AND RECEIVE COMPENSATION AND BENEFITS DESPITE BEING RELATED TO SUBSEQUENTLY ELECTED LOCAL GOVERNMENT OFFICIALS, TO CLARIFY THAT NO PROPERTY RIGHTS IN THE POSITION ARE CREATED AND TO PROVIDE THAT AN EMPLOYEE WILL CONTINUE TO BE SUBJECT TO CERTAIN DISCIPLINARY ACTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-1359, Idaho Code, be, and the same is hereby amended to read as follows:

18-1359. USING PUBLIC POSITION FOR PERSONAL GAIN. (1) No public servant shall:

(a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars ($50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves.

(d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of office, or appoint or furnish employment to any person whose salary, wages, pay or compensation is to be paid out of public funds or fees of office, and who is related by either blood or marriage within the second degree to any other public servant when such appointment is made on the agreement or promise of such other public

servant or any other public servant to appoint or furnish employment to anyone so related to the public servant making or voting for such appointment. Any public servant who pays out of any public funds under his control or who draws or authorizes the drawing of any warrant or authority for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible person, knowing him to be ineligible, is guilty of a misdemeanor and shall be punished as provided in this chapter.

(2) No person related to any member of the legislature by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty within the legislative branch of government or otherwise be employed by the legislative branch of government when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(3) No person related to a mayor or member of a city council by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the mayor's or city council's city when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(4) No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(5) (a) An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary, benefits and bonuses.

(b) Nothing in this section shall be construed as creating any property rights in the position held by an employee subject to this section, and all authority in regard to disciplinary action, transfer, dismissal, demotion or termination shall continue to apply to the employee.

(6) The prohibitions contained within this section shall not include conduct defined by the provisions of section 59-703(4), Idaho Code.

(67) The prohibitions within this section and section 18-1356, Idaho Code, as it applies to part-time public servants, does not include those actions or conduct involving the public servant's business, profession or occupation and unrelated to the public servant's official conduct, and does not apply to a pecuniary benefit received in the normal course of a legislator's business, profession or occupation and unrelated to any bill, legislation, proceeding or official transaction.

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 26, 2002.

CHAPTER 305
(S.B. No. 1424)

AN ACT

RELATING TO THE IDAHO SCHOOL BOND GUARANTY ACT; AMENDING SECTION 33-5303, IDAHO CODE, TO AUTHORIZE THE PLEDGE OF THE STATE SALES TAX FOR PAYMENT OF REFUNDING BONDS ISSUED ON AND AFTER MARCH 1, 1999, FOR VOTER APPROVED BONDS WHICH WERE VOTED UPON BY THE ELECTORATE PRIOR TO MARCH 1, 1999; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-5303, Idaho Code, be, and the same is hereby amended to read as follows:

33-5303. STATE'S GUARANTEE -- MONITORING OF FINANCIAL SOLVENCY CONTRACT WITH BONDHOLDERS -- GUARANTEE -- LIMITATION AS TO CERTAIN REFUNDED BONDS.

(1) (a) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair, or limit the rights vested by the default avoidance program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(b) Notwithstanding subsection (1)(a) of this section, nothing contained in this chapter precludes an alteration, impairment, or limitation if adequate provision is made by law for the protection of the holders of the bonds.

(c) Each school district may refer to this pledge and undertaking by the state in its bonds.

(2) (a) The sales tax of the state is pledged to guarantee full and timely payment of the principal of (either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, <u>refunding bonds issued on and after March 1, 1999, for voter approved bonds which were voted on by the electorate prior to March 1, 1999, and</u> voter approved bonds which were voted on by the electorate on and after March 1, 1999, as such payments shall become due (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration).

(b) This guaranty does not extend to the payment of any redemption premium.

(c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under provisions of this chapter.

(3) (a) Any bond guaranteed under this chapter that is refunded and considered paid for, no longer has the benefit of the guaranty provided by this chapter from and after the date on which that bond was considered to be paid.

(b) Any refunding bond issued by a board that is itself secured by

government obligations until the proceeds are applied to pay refunded bonds is not guaranteed under the provisions of this chapter, until the refunding bonds cease to be secured by government obligations.

(4) Only validly issued bonds issued after the effective date of this chapter are guaranteed under this chapter.

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

Approved March 26, 2002.

CHAPTER 306
(S.B. No. 1425)

AN ACT

RELATING TO WATER RIGHT DESCRIPTIONS; AMENDING SECTION 42-202B, IDAHO CODE, TO DEFINE "DIGITAL BOUNDARY"; AMENDING SECTION 42-219, IDAHO CODE, TO PROVIDE THAT CERTAIN LAND DESCRIPTIONS IN LICENSES FOR THE USE OF WATER FOR IRRIGATION MAY BE DESCRIBED USING DIGITAL BOUNDARIES; AND AMENDING SECTION 42-1411, IDAHO CODE, TO PROVIDE THAT CERTAIN LAND DESCRIPTIONS SETTING FORTH THE PLACE OF USE OF WATER MAY BE DESCRIBED USING DIGITAL BOUNDARIES.

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) "Digital boundary" means the boundary encompassing and defining an area consisting of or incorporating the place of use or permissible place of use for a water right prepared and maintained by the department of water resources using a geographic information system in conformance with the national standard for spatial data accuracy or succeeding standard.

(3) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.

(~~3~~4) "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(10), Idaho Code.

(45) "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.

(56) "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.

(67) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

(78) "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 42-219, Idaho Code, be, and the same is hereby amended to read as follows:

42-219. ISSUANCE OF LICENSE -- PRIORITY. (1) Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall be issued under the seal of the office of the department of water resources, and shall state the name and post-office address of such user, the purpose for which such water is used, the quantity of water which may be used, which in no case shall be an amount in excess

of the amount that has been beneficially applied. A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary, as defined in section 42-202B, Idaho Code. If the use is for municipal purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs.

(3) Such license shall bear the date of the application for, and the number of, the permit under which the works from which such water is taken were constructed; the capacity of such works; the date when proof of beneficial use of such water was made, and also the date of the priority of the right confirmed by such license.

(4) The date of priority confirmed by the license shall be the date of the application for the permit for the construction of the works from which the water is taken, and to which the right relates, provided there has been no loss of priority under the provisions of this chapter. Whenever proof of the beneficial application of water shall be offered subsequent to the date stated in the permit, or in any authorized extension thereof, when such beneficial application shall be made, the proof shall be taken, if received by the department within the sixty (60) days prescribed in the preceding section. If the proof taken is satisfactory to the department of water resources, a license shall be issued by the department the same as though proof had been made before the date fixed for such beneficial application. The priority of the right established by the proof shall not date back to the date of the application for the permit to which the right would relate under the provisions of this chapter, but shall bear a date which shall be subsequent to the date of the application, a time equal to the difference between the date set in the permit, or extension thereof, for such beneficial application of water and the date of proof.

(5) For irrigation projects where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or within irrigation districts organized and existing as such under the laws of the state of Idaho, the license issued shall be issued to the persons, association, company, corporation or irrigation district owning the project, and final proof may be made by such owners for the benefit of the entire project. It shall not be necessary to give a description of the land by legal subdivisions but a general description of the entire area under the canal system shall be sufficient. The water diverted and the water right acquired thereby shall relate to the entire project and the diver-

sion of the water for the beneficial use under the project shall be sufficient proof of beneficial use without regard as to whether each and every acre under the project is irrigated or not.

(6) For an irrigation project developed under a permit held by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres, the license issued shall be issued to the permit holder. For the place of use description in the license issued for the irrigation project, it shall be sufficient to provide a general description of the area within which the total number of acres developed under the permit are located and within which the location of the licensed acreage can be moved provided there is no injury to other water rights.

(7) Subject to other governing law, the location of the acreage irrigated within a generally described place of use, as defined in accordance with subsections (5) and (6) of this section and as filed with the department pursuant to section 43-323, Idaho Code, may be changed without approval under the provisions of section 42-222, Idaho Code. However, the change shall not result in an increase in either the rate of flow diverted or in the total number of acres irrigated under the water right and shall cause no injury to other water rights. If the holder of any water right seeks to challenge such a change, the challenge may only be brought as an action initiating a contested case before the department, pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code. Nothing in this section shall be construed to grant, deny or otherwise affect an irrigation district's authority to deliver water to areas outside the boundaries of such district.

(8) In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. Notice of such action shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section 42-1701A(3), Idaho Code.

SECTION 3. 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~~ that the place of use may be described using a general description in the manner provided under section 42-219, Idaho Code, which may consist of a digital boundary as defined in section 42-202B, Idaho Code, if the irrigation project would qualify to be so described under section 42-219, Idaho Code;
(i) conditions on the exercise of any water right included in any decree, license, or approved transfer application; and
(j) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

(3) The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights.

(4) The director shall file the director's report with the district court, and the director's report shall be a part of the record. Upon filing with the court, the director's report, except for the explanatory material referred to in subsection (1) of this section, shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law. The unobjected to portions of the director's report shall be decreed as reported.

(5) Each claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right. Since the director's report is prima facie evidence of the nature and extent of the water rights acquired under state law, a claimant of a water right acquired under state law has the burden of going forward with the evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report. Any party filing an objection to any portion of the director's report shall have the burden of going forward with the evidence to rebut the director's report as to all issues raised by the objection. 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.

Approved March 26, 2002.

CHAPTER 307
(S.B. No. 1454)

AN ACT

RELATING TO LIENS; AMENDING SECTION 45-507, IDAHO CODE, TO PROVIDE THAT A COPY OF A CLAIM OF LIEN SHALL BE PERSONALLY DELIVERED OR MAILED NO LATER THAN FIVE BUSINESS DAYS FOLLOWING THE FILING OF SUCH CLAIM OF LIEN; AND AMENDING CHAPTER 5, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-525, IDAHO CODE, TO REQUIRE THAT GENERAL CONTRACTORS DISCLOSE CERTAIN INFORMATION TO OWNERS AND PURCHASERS OF RESIDENTIAL REAL PROPERTY.

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

SECTION 1. That Section 45-507, Idaho Code, be, and the same is hereby amended to read as follows:

45-507. CLAIM OF LIEN. (1) Any person claiming a lien pursuant to the provisions of this chapter must file a claim for record with the county recorder for the county in which such property or some part thereof is situated.

(2) The claim shall be filed within ninety (90) days after the completion of the labor or services, or furnishing of materials.

(3) The claim shall contain:

(a) A statement of his demand, after deducting all just credits and offsets;

(b) The name of the owner, or reputed owner, if known;

(c) The name of the person by whom he was employed or to whom he furnished the materials; and

(d) A description of the property to be charged with the lien, sufficient for identification.

(4) Such claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just.

(5) A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than ~~twenty-four~~ <u>five</u> (~~24~~<u>5</u>) ~~hours~~ <u>business days</u> following the filing of said claim of lien.

SECTION 2. That Chapter 5, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a <u>NEW SECTION,</u> to be known and designated as Section 45-525, Idaho Code, and to read as follows:

45-525. GENERAL CONTRACTORS -- RESIDENTIAL PROPERTY -- DISCLOSURES. (1) Legislative intent. This section is intended to protect owners and purchasers of residential real property by requiring that general contractors provide adequate disclosure of potential liens.

(2) General contractor information. Prior to entering into any contract in an amount exceeding two thousand dollars ($2,000) with a homeowner or residential real property purchaser to construct, alter or

repair any improvements on residential real property, or with a residential real property purchaser for the purchase and sale of newly constructed property, the general contractor shall provide to the homeowner a disclosure statement setting forth the information specified in this subsection. The statement shall contain an acknowledgment of receipt to be executed by the homeowner or residential real property purchaser. The general contractor shall retain proof of receipt and shall provide a copy to the homeowner or residential real property purchaser. The disclosure shall include the following:

(a) The homeowner or residential real property purchaser shall have the right at the reasonable expense of the homeowner or residential real property purchaser to require that the general contractor obtain lien waivers from any subcontractors providing services or materials to the general contractor;

(b) The homeowner or residential real property purchaser shall have the right to receive from the general contractor proof that the general contractor has a general liability insurance policy including completed operations in effect and proof that the general contractor has worker's compensation insurance for his employees as required by Idaho law;

(c) The homeowner or residential real property purchaser shall be informed of the opportunity to purchase an extended policy of title insurance covering certain unfiled or unrecorded liens; and

(d) The homeowner or residential real property purchaser shall have the right to require, at the homeowner's or residential real property purchaser's expense, a surety bond in an amount up to the value of the construction project.

(3) Subcontractor, materialmen and rental equipment information.

(a) A general contractor shall provide to a prospective residential real property purchaser or homeowner a written disclosure statement, which shall be signed by the general contractor listing the business names, addresses and telephone numbers of all subcontractors, materialmen and rental equipment providers having a direct contractual relationship with the general contractor and who have supplied materials or performed work on the residential property of a value in excess of five hundred dollars ($500). A general contractor is not required under this subsection to disclose subcontractors, materialmen or rental equipment providers not directly hired by or directly working for the general contractor. Such information shall be provided within a reasonable time prior to:

(i) The closing on any purchase and sales agreement with a prospective residential real property purchaser; or

(ii) The final payment to the general contractor by a homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.

(b) All subcontractors, materialmen and rental equipment providers listed in the disclosure statement are authorized to disclose balances owed to the prospective real property purchasers or homeowners and to the agents of such purchasers or homeowners.

(c) The general contractor shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this section if the error, inaccuracy or omission was not within the personal knowledge of the general contractor.

(4) Failure to disclose. Failure to provide complete disclosures as required by this section to the homeowner or prospective residential real property purchaser shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

(5) Definitions. For purposes of this section:

(a) "General contractor" means a person who enters into an agreement in excess of two thousand dollars ($2,000) with:

(i) A homeowner or prospective residential real property purchaser for the construction, alteration or repair of residential real property; or

(ii) A prospective residential real property purchaser for the purchase and sale of newly constructed property.

The term "general contractor" does not include subcontractors, materialmen or rental equipment providers who do not have a direct contractual relationship with the homeowner or residential real property purchaser.

(b) "Residential real property" shall include owner and nonowner occupied real property consisting of not less than one (1) nor more than four (4) dwelling units.

Approved March 26, 2002.

CHAPTER 308
(S.B. No. 1458, As Amended)

AN ACT

RELATING TO AGRICULTURAL COMMODITY LIENS; AMENDING SECTION 45-1801, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 45-1803, IDAHO CODE, TO STRIKE REFERENCE TO LIEN ATTACHMENT ON THE DATE THE AGRICULTURAL PRODUCT IS SOLD TO A PRODUCER AND TO PROVIDE FOR LIEN ATTACHMENT; AND AMENDING SECTION 45-1804, IDAHO CODE, TO EXTEND THE PERIOD OF A LIEN, TO STRIKE REFERENCE TO CERTAIN CRITERIA PURSUANT TO WHICH A LIEN CAN BE EXTENDED, TO STRIKE AN INCORRECT CODE REFERENCE, TO STRIKE REFERENCE TO THE DATE CERTAIN LIENS ARE CREATED, TO EXTEND THE PERIOD FOR FILING CERTAIN LIENS AND TO PROVIDE THAT CERTAIN LIENS SHALL CONTINUE FOR A YEAR.

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

SECTION 1. That Section 45-1801, Idaho Code, be, and the same is hereby amended to read as follows:

45-1801. DEFINITIONS. As used in this chapter:

(1) "Agricultural product" means wheat, corn, oats, barley, rye, lentils, soybeans, grain sorghum, dry beans and peas, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed or other small seed, or any other agricultural commodity, including any of the foregoing, whether cleaned, processed, treated, reconditioned or whether mixed, rolled or combined in any fashion or by any means to create a product used as animal, poultry or fish feed.

(2) "Agricultural commodity dealer" means any person who contracts

for or solicits any agricultural product from an agricultural producer or negotiates the consignment or purchase of any agricultural product, or receives for sale, resale or shipment for storage, processing, cleaning or reconditioning, any agricultural product, or who buys during any calendar year, at least ten thousand dollars ($10,000) worth of agricultural products from the producer or producers of the commodity. Agricultural commodity dealer shall not mean a person who purchases agricultural products for his own use as seed or feed.

(3) "Agricultural commodity producer" means the owner, tenant or operator of land ~~in this state~~ who receives all or part of the proceeds from the sale, under contract, bailment or otherwise, or delivery under contract or bailment, of agricultural products produced on that land.

(4) "Person" means an individual, trust, partnership, ~~business trust~~ limited liability company, corporation, or unincorporated association or any other legal or commercial entity.

SECTION 2. That Section 45-1803, Idaho Code, be, and the same is hereby amended to read as follows:

45-1803. WHEN LIEN ATTACHES. The lien created by section 45-1802, Idaho Code, attaches to the agricultural product and to the proceeds of the subsequent sale of the agricultural product ~~on the date the agricultural product is sold to the purchaser or~~ on the date the agricultural product is physically delivered to the purchaser or on the date any final payment is due, and unpaid, to the agricultural commodity producer or agricultural commodity dealer under any contract or bailment, whichever occurs last.

SECTION 3. That Section 45-1804, Idaho Code, be, and the same is hereby amended to read as follows:

45-1804. DURATION OF LIEN -- NOTICE OF LIEN. (1) The lien provided for by section 45-1802, Idaho Code, remains in effect for a period of ~~ninety (90)~~ one hundred eighty (180) days after the date of attachment, ~~or the date any final payment is due to the agricultural commodity producer or agricultural commodity dealer under any contract or bailment, whichever occurs last,~~ except as provided in subsections (2) ~~and (3)~~ of this section.

(2) The lien provided for by section 45-1802, Idaho Code, is ~~created~~ continued for a period of one (1) year from the date of filing if a written notice of lien, on a form prescribed by the secretary of state, is filed with the secretary of state by the agricultural commodity producer or the agricultural commodity dealer within ~~ninety (90)~~ one hundred eighty (180) days after the date of attachment~~, or ninety (90) days after the date that final payment is due to the agricultural commodity producer or agricultural commodity dealer under any contract or bailment, whichever occurs last~~. The form for the notice of lien shall require the following information:

(a) A statement of the amount claimed by the agricultural commodity producer or agricultural commodity dealer after deducting all credits and offsets;

(b) The name, address and signature of the agricultural commodity producer or agricultural commodity dealer claiming the lien;

(c) The name and address of the person who purchased the agricul-

tural product from the agricultural commodity producer or agricultural commodity dealer;

(d) A description of the agricultural product charged with the lien including crop year; and

(e) Such other information as the form prescribed by the secretary of state may require.

(3) The notice of lien shall be entered in a searchable database maintained by the secretary of state.

Approved March 26, 2002.

CHAPTER 309
(S.B. No. 1460)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-520, IDAHO CODE, TO PROVIDE THAT A COURT MAY COMMIT A JUVENILE TO THE LEGAL CUSTODY OF THE DEPARTMENT OF JUVENILE CORRECTIONS FOR A PERIOD OF TIME NOT TO EXCEED THE JUVENILE'S NINETEENTH BIRTHDAY UNLESS THE CUSTODY REVIEW BOARD DETERMINES THAT EXTENDED TIME IN CUSTODY IS NECESSARY TO ADDRESS COMPETENCY DEVELOPMENT, ACCOUNTABILITY AND COMMUNITY PROTECTION, TO PROVIDE THAT NO JUVENILE SHALL REMAIN IN THE CUSTODY OF THE DEPARTMENT BEYOND THE JUVENILE'S TWENTY-FIRST BIRTHDAY AND TO PROVIDE THAT THE DEPARTMENT SHALL ADOPT RULES IMPLEMENTING THE CUSTODY REVIEW BOARD AND THE OPERATIONS AND PROCEDURES OF THE BOARD; AMENDING SECTION 20-532, IDAHO CODE, TO PROVIDE THAT A JUVENILE OFFENDER COMMITTED TO A SECURE FACILITY SHALL REMAIN UNTIL THE OFFENDER REACHES NINETEEN YEARS OF AGE, IS RETAINED FOR EXTENDED CUSTODY OR IS RELEASED OR DISCHARGED AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 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 tc exceed three (3) years from the date of the order, except the court

may place a juvenile on formal probation for a period not to exceed the juvenile's twenty-first birthday if the court finds that the juvenile has committed a crime of a sexual nature;

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

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

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

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

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

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

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

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

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

ments to be observed by the parents, guardian or custodian;

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

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

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

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

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

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

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

(q) Commit the juvenile to the legal custody of the department of juvenile corrections for an indeterminate period of time not to exceed the juvenile's ~~twenty-first~~ nineteenth birthday, unless, in the opinion of the custody review board, extended ~~jurisdiction~~ time in custody is necessary to ~~complete the~~ address competency development, ~~and~~ accountability, ~~goals of the~~ and community protection; provided however, that no juvenile shall remain in the custody of the department beyond the juvenile's twenty-first birthday. The department shall adopt rules implementing the custody review board and the operations and procedures of such board;

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

(2) When an order is entered pursuant to this section, the juvenile

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

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

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

SECTION 2. That Section 20-532, Idaho Code, be, and the same is hereby amended to read as follows:

20-532. TERM OF COMMITMENT -- REVIEW AFTER COMMITMENT. A juvenile offender committed to a secure facility shall remain until the offender reaches ~~age twenty-one~~ nineteen (~~21~~19) years of age, is retained for extended custody pursuant to section 20-520(1)(q), Idaho Code, or is released or discharged. A juvenile offender committed to a secure facility shall appear before the department within ninety (90) days after commitment, for review of treatment plans.

SECTION 3. This act shall be in full force and effect on and after January 1, 2003.

Approved March 26, 2002.

CHAPTER 310
(S.B. No. 1461)

AN ACT

RELATING TO THE INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL; AMENDING SECTION 67-5745C, IDAHO CODE, TO REVISE THE GENERAL POWERS AND DUTIES OF THE COUNCIL.

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

SECTION 1. That Section 67-5745C, Idaho Code, be, and the same is hereby amended to read as follows:

67-5745C. GENERAL POWERS AND DUTIES OF THE COUNCIL. The council shall:

(1) Review and evaluate the information technology and telecommunications systems presently in use by state agencies;

(2) ~~Recommend policies and~~ Prepare statewide short-range and long-range information technology and telecommunications systems plans to meet the needs of state agencies;

(3) Within the context of its strategic plans, establish statewide information technology and telecommunications policies, standards, guidelines, conventions and comprehensive risk assessment criteria that will assure uniformity and compatibility of such systems within state agencies;

(4) Recommend and coordinate the use and application of state agencies' information technology and telecommunications resources;

(5) Review and approve large-scale information technology and telecommunications projects including, but not limited to, risk assessment methodologies used by state agencies using council risk assessment criteria, for state agencies;

(6) Review state agencies' compliance with statewide information technology and telecommunications systems plans;

(7) Recommend cost-efficient procedures for state agencies' acquisition and procurement of information technology and telecommunications systems;

(8) Upon request, provide technical expertise to state government and any other governmental entity;

(9) Maintain a continuous and comprehensive inventory of information technology and telecommunications systems within state agencies;

(10) In accordance with statutes governing the availability or confidentiality of public records and information, establish guidelines for the accessing of public information by the public;

(11) On an annual basis, publish a report of the activities of the council for provision to the governor and the legislature;

(12) Recommend the enactment or promulgation of any statutes or rules necessary to carry out the statewide information technology and telecommunications systems plans;

(13) Enter into contracts for professional services and assistance not otherwise available in state government;

(14) Encourage and promote the development and growth of the information technology industry in the state in accordance with sound business principles and practices;

(15) Encourage and promote cooperative information technology efforts and activities between the state, private enterprise and the public;

(16) Encourage and support education and training opportunities relating to information technology and telecommunications; and

(17) Perform any additional functions consistent with the purpose of this act which are necessary and appropriate for the proper conduct of the council.

Approved March 26, 2002.

CHAPTER 311
(S.B. No. 1477)

AN ACT
RELATING TO TELECOMMUNICATIONS SERVICE; AMENDING SECTION 56-904, IDAHO CODE, TO PROVIDE THAT CERTAIN SURCHARGES SHALL BE IMPOSED ONLY ON CUSTOMERS OF MOBILE WIRELESS CARRIERS WITH A PLACE OF PRIMARY USE IN IDAHO AND TO DEFINE "PLACE OF PRIMARY USE"; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

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

SECTION 1. That Section 56-904, Idaho Code, be, and the same is hereby amended to read as follows:

56-904. RECOVERY OF TELECOMMUNICATIONS SERVICE REVENUE REDUCTIONS -- ADMINISTRATION. (1) The Idaho public utilities commission shall determine and impose a uniform statewide monthly surcharge on each end user's business, residential and wireless access service. The surcharge shall be an amount sufficient to reimburse each carrier of residential basic local exchange service for the total amount of telephone assistance discounts provided as well as the carrier's and the administrator's expenses of administering the plan. Such surcharge shall be effective concurrent with the discounts given eligible subscribers. The surcharge shall be explicitly stated on end user billings but shall not be imposed on eligible subscribers.

(2) The Idaho public utilities commission may adopt rules or issue orders necessary to receive matching federal low income telephone assistance and to implement the Idaho telephone assistance program, including procedures for adjustment and true-up of the subscriber surcharge. The commission may contract with a neutral third party to collect the surcharge, distribute assistance revenues, and perform other tasks as assigned.

(3) All carriers of telecommunications services shall remit the assistance surcharge revenues to the fund administrator designated by the commission on a monthly basis, unless less frequent remittances are authorized by order of the public utilities commission. The administrator shall distribute telecommunication service assistance program revenues monthly to eligible telecommunication carriers in an amount that equals their costs of administering the program and the monthly discount provided to eligible subscribers.

(4) The surcharge imposed in subsection (1) of this section, when collected from customers of mobile wireless carriers, shall be imposed only on customers with a place of primary use in Idaho. As used in this section and as defined in 4 U.S.C. section 124, "place of primary use" means the residential street address or the primary business street address in Idaho where the customer's use of the wireless service primarily occurs.

SECTION 2. This act shall be in full force and effect on and after July 1, 2002, and shall apply to bills issued after August 1, 2002.

Approved March 26, 2002.

CHAPTER 312
(S.B. No. 1478, As Amended, As Amended in the House)

AN ACT

RELATING TO ORGANIZATION OF LIBRARY DISTRICTS; AMENDING SECTION 33-2701, IDAHO CODE, TO CLARIFY THE PURPOSE OF THE CHAPTER; AMENDING SECTION 33-2702, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 33-2715, IDAHO CODE, TO PROVIDE FOR ELECTION TO BE HELD ON THE UNIFORM ELECTION DATE IN MAY AND TO GOVERN TERMS OF MEMBERS; AMENDING SECTION 33-2718, IDAHO CODE, TO GOVERN CREATION OF TRUSTEE ZONES AND TO PROVIDE THAT ELECTION FROM ZONES SHALL BE LIMITED TO RESIDENTS OF THE ZONE; AMENDING SECTION 33-2719, IDAHO CODE, TO DISTINGUISH MEETING REQUIREMENTS FOR ADMINISTRATIVE ONLY DISTRICTS AND TO GOVERN DISTRICT MEETINGS; AMENDING SECTION 33-2720, IDAHO CODE, TO SPECIFY ADDITIONAL POWERS AND DUTIES OF THE BOARD OF TRUSTEES; AMENDING SECTION 33-2721, IDAHO CODE, TO CLARIFY DUTIES OF LIBRARY DIRECTORS AND DIRECTOR TEAMS; AMENDING SECTION 33-2722, IDAHO CODE, TO CLARIFY APPLICATION OF STATE AND FEDERAL LAW; AMENDING SECTION 33-2723, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 33-2725, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 33-2727, IDAHO CODE, TO CLARIFY POWERS TO PARTICIPATE IN CONTRACTS, JOINT POWERS AGREEMENTS AND NONPROFIT CORPORATIONS.

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

SECTION 1. That Section 33-2701, Idaho Code, be, and the same is hereby amended to read as follows:

33-2701. PURPOSE AND POLICY. It is hereby declared to be the policy of the state of Idaho, as a part of the provisions for public education, to promote the establishment and development of public library service for all the people of Idaho. By so declaring, the state acknowledges that the ability of its citizens to access information has a critical impact on the state's educational success, economic development, provision for an informed electorate, and overall quality of life. It is the purpose of this ~~act~~ chapter to ~~make more adequate provision for an informed electorate by integrating, extending, and adding~~ integrate, extend and add to existing library services and resources so that public library service may be available to ~~children in their formative years and to adults for their continuing education~~ all residents of the state from infancy through adulthood, beginning in the formative years and continuing for lifelong learning.

SECTION 2. That Section 33-2702, Idaho Code, be, and the same is hereby amended to read as follows:

33-2702. DEFINITIONS. As used in this chapter:

(1) "Administrative only district" is a library district that does not serve the public directly and has no direct service outlets or collections, but which contracts with other library entities to provide various public library services.

(2) "City library" means a library established by a city ordinance and operating under the provisions of chapter 26, title 33, Idaho Code.

(3) "Home county" means the county where the designated district headquarters is located when a public library district's boundaries include territory located in more than one (1) county.

(~~2~~4) "Library director" or "library director team" means ~~the~~ an employee or group of employees of a public library district ~~who is~~ charged with the administration and management of library services for that district.

(~~3~~5) "Public library district trustee" means a qualified elector living within the boundaries of a public library district who is elected or~~,~~ appointed temporarily~~,~~ to fulfill the duties described in this chapter related to the governance of a public library district.

(6) "Public library service" means the provision of planned collections of materials and information services provided by a library established under the provisions of chapter 26 or 27, title 33, Idaho Code, and paid for primarily through tax support provided under these statutes. These services shall be provided at a facility, accessible to the public at regularly scheduled hours and set aside for this purpose. The services shall be governed by a citizen board appointed or elected for this purpose and shall be administered and operated by paid staff who have received appropriate training in library skills and management. The services shall meet standards established by the state library board.

(~~4~~7) "Qualified elector" means any person voting, or offering to vote, at an election to create a library district, add territory thereto, or elect trustees thereof~~,~~. A qualified elector must be, at the time of the election, a resident of the area involved for thirty (30) days prior to the date of the election, registered and an elector within the meaning of section 2, article VI, of the Constitution of the state of Idaho.

SECTION 3. That Section 33-2715, Idaho Code, be, and the same is hereby amended to read as follows:

33-2715. BOARD OF TRUSTEES -- SELECTION -- NUMBER -- QUALIFICATIONS -- TERM -- OATH -- APPOINTMENT OF FIRST BOARD. Each library district shall be governed by a board of trustees of five (5) members elected or appointed as provided by law, who at the time of their selection and during their terms of office shall be qualified electors of the district and if trustee zones have been established under section 33-2718, Idaho Code, shall be a resident of the trustee zone. One (1) trustee shall be elected at each annual trustee election, held on the uniform election date in May. The regular term of a trustee shall be for five (5) years, or until his successor has been elected and qualified. Within ten (10) days after his appointment an appointed trustee shall qualify and assume the duties of his office. An elected trustee shall qualify and assume the duties of his office at the annual meeting. All trustees qualify by taking the oath of office required of state officers, to be administered by one (1) of the present trustees or by a trustee retiring.

Following the initial establishment of a library district, the board of county commissioners of the home county within five (5) days shall appoint the members of the first board of trustees, who shall serve until the next annual election of trustees or until their successors are elected and qualified. The initial election of trustees shall be for terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Addition of new territory to an existing library district

shall not be considered an initial establishment. The first board of trustees shall be sworn by a member of the board of county commissioners of the home county of the district.

At its first meeting, and after each trustee election, the board shall organize and elect from its membership a chairman and other officers necessary to conduct the affairs of the district.

Members of the board shall serve without salary but shall receive their actual and necessary expenses while engaged in business of the district.

SECTION 4. That Section 33-2718, Idaho Code, be, and the same is hereby amended to read as follows:

33-2718. CREATION OF TRUSTEE ZONES. Each library district may be divided into five (5) trustee zones with each zone having approximately the same population. To the maximum extent possible, boundaries of trustees zones shall follow the existing boundaries of the electoral precincts of the county. They shall be revised, as necessary, to equalize population and to follow new electoral precinct boundaries following the publication of the report of each decennial census. In order for a library district to be divided into trustee zones, the board of trustees shall pass a motion declaring the district to be divided into trustee zones and ~~present~~ providing a legal description of each trustee zone. The board of trustees shall transmit the motion along with the legal description of the trustee zones to the board or boards of county commissioners in the county or counties where the library district is contained and to the state library board. The board or boards of county commissioners shall have forty-five (45) days from the receipt of the motion and legal description to reject, by adoption of a motion, the establishment of trustee zones proposed by formal motion of the board of trustees of the library district. If the board or boards of county commissioners do not reject the establishment of the trustee zones within the time limit specified, they shall be deemed to be in full force and effect. If a library district is contained in more than one (1) county, a motion of rejection adopted by one (1) board of county commissioners shall be sufficient to keep the trustee zone plan from going into effect. A board of county commissioners shall notify the library board of trustees in writing if a proposal is rejected.

If a proposal for the establishment of trustee zones is rejected by a board of county commissioners, the boundaries of the trustee zones, if any, shall return to the dimensions they were before the rejection. Trustee zones may be redefined and changed, but not more than once every two (2) years after a new set of trustee zones are formally established and in full force and effect.

At the next regular meeting of the board of trustees of the library district following the ~~approval--of--a--trustee--zone--proposal--by--the board(s)--of--county-commissioners~~ creation of trustee zones, the public library district board shall appoint from its membership or from other qualified electors resident in each trustee zone, a person from that zone to serve as a trustee until the next regularly scheduled trustee election from that zone. ~~All-other-matters-relating-to-library-district trustee-zones-shall-be-as-provided-in-chapters-4-and-5,-title-33,--Idaho Code,-relating-to-school-district-trustee-zones.~~ The initial election of trustees for the trustee zones shall be for terms of one (1), two (2),

three (3), four (4) and five (5) years respectively, with each zone being assigned an initial term length by a random drawing of the numbers one (1) through five (5). Thereafter, a trustee from each zone shall be elected once every five (5) years on a rotating basis with one (1) zone voting each year. Only residents of the zone electing a trustee may vote. The elector must be a resident of the same trustee zone as the candidate or candidates for library district trustee for whom the elector offers to vote for at least thirty (30) days preceding the election in which the elector desires to vote.

SECTION 5. That Section 33-2719, Idaho Code, be, and the same is hereby amended to read as follows:

33-2719. BOARD OF TRUSTEES -- MEETINGS. The annual meeting of a library district board shall be on the date of its first regular meeting following each trustee election. The purposes of the annual meeting are to administer the oath of office to the newly elected or re-elected trustee or trustees, to elect the officers of the board, to establish a regular meeting date, and to review, amend, repeal or adopt bylaws, policies and procedures. The regular meetings of the board of trustees of an administrative only district shall be held at least once in each quarter~~,~~. All other library district boards shall meet at least once every two (2) months at a uniform day of the month as the board of trustees shall determine at its annual meeting. Special or adjourned meetings may be held from time to time as the board may determine, but written notice thereof shall be given to the members at least two (2) days prior to the day of the meeting. A quorum shall consist of three (3) members, but a smaller number may adjourn. All meetings shall be held under the provisions of section 67-2340 through 67-2347, Idaho Code. It is the duty of each trustee to attend all meetings of the board of trustees.

SECTION 6. That Section 33-2720, Idaho Code, be, and the same is hereby amended to read as follows:

33-2720. POWERS AND DUTIES OF THE BOARD OF TRUSTEES. (1) ~~It is the duty of each trustee to attend all meetings of the board of trustees.~~ The board of trustees of each library district shall have the following powers and duties consistent with the laws of the state of Idaho:

~~1.~~(a) To establish bylaws for its own government;

~~2.~~(b) To establish policies for the ~~government~~ administration, operation and use of the library or libraries under its control;

(c) To employ and evaluate a library director or library director team to administer the library;

(d) To create job descriptions, personnel policies, and compensation packages for library personnel;

(e) To establish an annual budget and to oversee the financial management of the library district;

~~3.~~(f) To establish and locate libraries, branch libraries or stations to serve the district and to provide suitable rooms, structures, facilities, furniture, apparatus and appliances necessary for the conduct thereof;

~~4.~~(g) To acquire by purchase, devise, lease, or otherwise, and to own and hold real and personal property and to construct buildings

for the use and purposes of the library district, and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the district, and to insure the real and personal property of the district;

~~5.~~(h) To accept gifts of real or personal property for the use and purposes of the library district; ~~under terms as may be a condition of the gift;~~

~~6.~~(i) To establish policies for the purchase and ~~distribute~~ distribution of library materials;

~~7.~~(j) To issue warrants, if used, in the manner specified for the issuance of warrants by school districts;

~~8.~~(k) To invest any funds of the district in accordance with the public depository law and other applicable state and federal laws;

~~9.~~(l) To pay actual and necessary expenses of members of the library staff when on business of the district;

~~10.~~(m) To see to the proper conduct of library district elections;

(n) To maintain legal records of all board business;

~~11.~~(o) To exercise other powers, not inconsistent with law, necessary for the effective use and management of the library.

(2) Individual trustees shall have no authority to make decisions about the policies of the library except as specifically authorized by the board.

(3) It shall be the duty of each trustee to attend all board meetings and committee meetings for committees to which he or she has been assigned.

SECTION 7. That Section 33-2721, Idaho Code, be, and the same is hereby amended to read as follows:

33-2721. ~~LIBRARIAN~~ LIBRARY DIRECTOR -- DIRECTOR TEAM -- EMPLOYEES. (1) Except for an administrative only district, t~~T~~he board of trustees of each library district shall appoint ~~the~~ a library director~~,~~ or director team who shall ~~serve as administrator of~~ administer the library district. ~~and~~ The director or one (1) member of the director team assigned by the board shall serve as the secretary for the board without voting rights. The library director or director team shall advise the board, implement policy set by the board, and shall acquire library materials, equipment and supplies. The director or director team shall attend all executive sessions of the board of trustees, except those called to consider the evaluation, dismissal, or disciplining, or to hear complaints or charges against the library director or director team member. ~~With the recommendation of the library director, the board shall employ other persons as may be necessary in the administration of the affairs of the library district~~ No library director or director team member shall be an employee or board member of a library or other agency with which the district has a contract to provide library services.

(2) The board ~~may~~ shall fix and pay ~~their~~ employee salaries and compensation, classify employees, ~~and~~ adopt ~~schedules of salaries~~ personnel policies, and discipline or discharge any ~~librarian or other employee~~ library director or director team member for cause. The library director or director team shall hire or oversee the hiring of all other employees based on the policies, procedures, and job descriptions created by the library board, and shall discipline and discharge any

employee for cause, as necessary, according to the written policies of the board.

SECTION 8. That Section 33-2722, Idaho Code, be, and the same is hereby amended to read as follows:

33-2722. TREASURER -- CLERK. The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as treasurer of the library district. This person shall, on taking office, give bond to the library district, with sureties approved by the board of trustees, in the amount of at least five thousand dollars ($5,000), which bond shall be paid for by the district, and shall be conditioned upon faithful performance of the duties of his office and his accounting for all moneys of the library district received by him or under his control. The treasurer shall supervise all moneys raised for the library district by taxation or received by the district from any other sources and shall supervise all disbursements of funds of the district by order of the board of trustees.

Under the direction of the board of trustees, the treasurer shall have all moneys of the district deposited in accordance with the public depository law and other applicable state and federal laws.

The board of trustees of each library district shall appoint some qualified person, who may or may not be a member of the board of trustees, to act as clerk of the library board. The clerk shall conduct library district elections, other than for excision, annexation, consolidation, or division; shall prepare and distribute legal notices; and shall have other duties as the board may prescribe.

SECTION 9. That Section 33-2723, Idaho Code, be, and the same is hereby amended to read as follows:

33-2~~723~~507. STATE TREASURER TRUSTEE OF LIBRARY FUNDS WHEN REQUIRED. When the conditions of the grant or appropriation so require, the state treasurer ~~shall serve~~ as trustee of funds appropriated to the state from any appropriation made by the federal government, the state, or any other agency for providing and equalizing library service in Idaho.

SECTION 10. That Section 33-2725, Idaho Code, be, and the same is hereby amended to read as follows:

33-2725. LIBRARY DISTRICT BUDGET -- PUBLIC HEARING -- NOTICE -- ADJUSTMENTS. The board of trustees of each library district shall prepare for the ensuing fiscal year a budget and prior to its adoption shall have called and caused to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed, or having general circulation within the district or in the county or counties in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of this notice, a summary statement of the budget for the ensuing year prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison.

During the year the board of trustees may proceed to adjust the budget as adopted to reflect the receipt of unanticipated revenue, grants, or donations from federal, state or local government or private sources, provided that there shall be no increase in the ~~ad-valorem~~ property tax portion of the annual certified budget. Prior to the adoption of the budget adjustment, the library board shall have called and cause to be held a public hearing thereon at a regular or special meeting. Notice of the time and place of the hearing shall be published at least once in a newspaper printed or having general circulation within the district or in the county~~(ies)~~ or counties in which the library district may lie. The board of trustees of each library district shall also prepare and publish, as a part of this notice, a summary of the budget and the adjustments prepared in a manner consistent with standard accounting practices and indicating amounts previously budgeted for the then current year for purposes of comparison.

SECTION 11. That Section 33-2727, Idaho Code, be, and the same is hereby amended to read as follows:

33-2727. ~~PURCHASE AND SALE OF--LIBRARY--SERVICES----~~ CONTRACTS -- JOINT POWERS AGREEMENTS -- PARTICIPATION IN NONPROFIT CORPORATIONS. (1) In lieu of, or in addition to, establishing an independent library, the board of trustees may purchase specified library services by contract from any taxing unit, or public or private agency maintaining a library~~, providing that this unit or agency shall file an annual report with the board of trustees of the library district showing in detail the manner in which the funds of the library district have been spent~~. Contracts for services shall contain provisions on annual budget procedures, accounting for funds, dispute resolution procedures, ownership of assets purchased with district funds, annual reports and procedures for ending the contract.

(2) The board of trustees of a library district may sell specified library services to any taxing unit, or public or private agency which ~~agrees~~ contracts to make an acceptable annual appropriation for these services.

(3) Any purchase or sale of library services shall be under a written contract ~~for a term of three (3) years, which contract shall be automatically renewed at the end of this three (3) year period unless either party thereto gives notice not less than six (6) months before the termination of any existing contract, of intention not to renew the contract~~ that is in accordance with all applicable state and federal laws.

(4) In order to improve or expand public library services, library districts may participate in the joint exercise of powers with other public agencies as specified by law.

(5) In order to improve or expand public library services, library districts may become corporate partners in nonprofit corporations.

Approved March 26, 2002.

CHAPTER 313
(S.B. No. 1479)

AN ACT
APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Industrial Commission the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. COMPENSATION:					
FROM:					
Industrial Administration Fund	$2,214,800	$ 967,500	$ 64,000	$1,376,200	$ 4,622,500
Federal Grant Fund	2,700	2,300			5,000
Miscellaneous Revenue Fund		20,800			20,800
TOTAL	$2,217,500	$ 990,600	$ 64,000	$1,376,200	$ 4,648,300
II. REHABILITATION:					
FROM:					
Industrial Administration Fund	$2,608,500	$ 670,300	$111,900		$ 3,390,700
III. CRIME VICTIMS COMPENSATION:					
FROM:					
Crime Victims Compensation Fund	$ 412,200	$ 184,800	$ 9,000	$2,105,400	$ 2,711,400
Federal Grant Fund				524,700	524,700
TOTAL	$ 412,200	$ 184,800	$ 9,000	$2,630,100	$ 3,236,100
IV. ADJUDICATION:					
FROM:					
Industrial Administration Fund	$1,331,700	$ 490,300	$ 19,000		$ 1,841,000
GRAND TOTAL	$6,569,900	$2,336,000	$203,900	$4,006,300	$13,116,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Industrial Commission is authorized no more than one hundred thirty-six and one-half (136.5) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 26, 2002.

CHAPTER 314
(S.B. No. 1480)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; REAPPROPRIATING CERTAIN FUNDS FOR CAPITAL OUTLAY; AUTHORIZING THE CONTINUOUS APPROPRIATION OF CERTAIN FUNDS TO OPERATE THE DEPARTMENT'S ENTREPRENEURIAL BUDGET SYSTEM; AUTHORIZING THE TRANSFER OF CERTAIN FUNDS INTO THE PARK LAND TRUST FUND; AUTHORIZING THE TRANSFER OF CERTAIN FUNDS TO THE PARKS AND RECREATION FUND; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO THE BILLINGSLEY CREEK BOND PAYMENT; APPROPRIATING MONEYS TO THE LAVA HOT SPRINGS FOUNDATION FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Parks and Recreation the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT SERVICES DIVISION:					
FROM:					
General Fund	$ 1,403,200	$ 680,600			$ 2,083,800
Indirect Cost Recovery Fund	137,100	36,700	$ 1,000		174,800
Parks and Recreation Fund	497,500	586,300	20,000	$ 50,000	1,153,800
Recreational Fuels Fund	347,200	62,100	12,000	2,118,700	2,540,000
Parks and Recreation Registration Fund	124,100	213,300	1,000	6,971,000	7,309,400
Miscellaneous Revenue Fund	3,000	17,600			20,600
Petroleum Price Violation Fund				300,000	300,000
Federal Grant Fund	78,700	5,200		1,492,400	1,576,300
TOTAL	$ 2,590,800	$1,601,800	$ 34,000	$10,932,100	$15,158,700
II. PARK OPERATIONS:					
FROM:					
General Fund	$ 4,353,000	$ 785,900			$ 5,138,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Indirect Cost Recovery Fund		2,400			2,400
Parks and Recreation Fund	1,488,400	835,200			2,323,600
Recreational Fuels Fund	237,900	105,000	$1,190,000		1,532,900
Parks and Recreation Registration Fund	236,400	175,100	47,000		458,500
Miscellaneous Revenue Fund	6,700	77,500			84,200
Public Recreation Enterprise Fund	254,400	694,900	150,000		1,099,300
Parks and Recreation Expendable Trust Fund	240,100	263,700	150,000		653,800
Federal Grant Fund	901,600	305,800			1,207,400
TOTAL	$ 7,718,500	$3,245,500	$1,537,000		$12,501,000
III. CAPITAL DEVELOPMENT:					
FROM:					
General Fund				$ 1,400,000	$ 1,400,000
Recreational Fuels Fund			$ 950,000		950,000
Parks and Recreation Expendable Trust Fund			2,050,000		2,050,000
Federal Grant Fund			800,000		800,000
TOTAL			$3,800,000	$ 1,400,000	$ 5,200,000
GRAND TOTAL	$10,309,300	$4,847,300	$5,371,000	$12,332,100	$32,859,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Parks and Recreation is authorized no more than one hundred fifty-eight and twenty-five one-hundredths (158.25) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. Notwithstanding Section 67-3511(2), Idaho Code, the trustee and benefit payments in the Management Services Program may be transferred to the Capital Development Program to reflect project grants awarded to the Department of Parks and Recreation. Unexpended and unen-

cumbered capital outlay balances in the Capital Development Program for fiscal year 2002 are hereby reappropriated for capital outlay in that program for the period July 1, 2002, through June 30, 2003.

SECTION 4. All revenue generated from the operation of an Entrepreneurial Budget System (EBS) shall be deposited in the department's special revenue funds and is hereby continuously appropriated to the department to cover expenses directly related to EBS activities. The department shall prepare fiscal year annual reports for the Joint Finance-Appropriations Committee showing receipts and expenditures.

SECTION 5. Upon the request of the director of the Department of Parks and Recreation, the State Controller shall transfer $1,000,000 to the Park Land Trust Fund from the General Funds appropriated in Section 1 of this act for trustee and benefit payments in the Park Development Program. All moneys provided to the Park Land Trust Fund for the acquisition of state lands at Ponderosa State Park are hereby continuously appropriated.

SECTION 6. The State Controller is hereby directed to transfer the sum of $150,000 from the Park Land Trust Fund to the Parks and Recreation Fund for fiscal year 2003.

SECTION 7. It is legislative intent that in addition to the $400,000 appropriated in Section 1 of this act for the Billingsley Creek bond payment, the University of Idaho Hagerman Research Center shall provide an additional $80,000 toward the payment, which is consistent with the intent of the Cooperative Development Plan for the Billingsley Recreation/Research Facility.

SECTION 8. There is hereby appropriated to the Lava Hot Springs Foundation the following amounts, to be expended according to the designated expense classes from the listed fund for the period July 1, 2002, through June 30, 2003:

LAVA HOT SPRINGS FOUNDATION:

FOR:	
Personnel Costs	$ 549,900
Operating Expenditures	536,300
Capital Outlay	37,300
TOTAL	$1,123,500
FROM:	
Public Recreation Enterprise - Lava Hot Springs Fund	$1,123,500

SECTION 9. In accordance with Section 67-3519, Idaho Code, the Lava Hot Springs Foundation is authorized no more than ten (10) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, for the program specified in Section 7 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 26, 2002.

CHAPTER 315
(S.B. No. 1481)

AN ACT
APPROPRIATING MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission on Aging the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
COMMISSION ON AGING:				
FROM:				
General Fund	$500,000	$ 58,700	$4,071,700	$ 4,630,400
Federal Grant Fund	363,200	109,400	5,764,100	6,236,700
Miscellaneous Revenue Fund		35,000		35,000
TOTAL	$863,200	$203,100	$9,835,800	$10,902,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on Aging is authorized no more than fifteen (15) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 26, 2002.

CHAPTER 316
(S.B. No. 1482)

AN ACT
APPROPRIATING MONEYS TO THE LEGISLATIVE COUNCIL FOR FISCAL YEAR 2003; AND PROVIDING THAT THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL DIRECT THE STATE CONTROLLER TO REDUCE THE FUNDS TRANSFER TO THE LEGISLATIVE FUND.

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

SECTION 1. There is hereby appropriated to the Legislative Council the following amounts to be expended from the listed funds for the period July 1, 2002, through June 30, 2003:

A. LEGISLATIVE SERVICES OFFICE:	
FROM:	
General Fund	$3,704,200
Miscellaneous Revenue Fund	44,000
Professional Services Fund	1,083,800
TOTAL	$4,832,000
B. LEGISLATIVE TECHNOLOGY:	
FROM:	
General Fund	$ 153,200
C. OFFICE OF PERFORMANCE EVALUATIONS:	
FROM:	
General Fund	$ 599,700
GRAND TOTAL	$5,584,900

SECTION 2. On or before June 1, 2003, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall direct the State Controller to reduce by $224,000 the amount transferred from the General Fund to the Legislative Fund pursuant to Section 67-451(2), Idaho Code, for the period July 1, 2002, through June 30, 2003.

Approved March 26, 2002.

CHAPTER 317
(S.B. No. 1485)

AN ACT

RELATING TO CLOSURE OF SCHOOLS; AMENDING SECTION 33-511, IDAHO CODE, RELATING TO THE PROPOSED CLOSURE OF SECONDARY UNITS THIRTY MILES OR MORE DISTANT FROM ANOTHER SECONDARY ATTENDANCE UNIT, ONLY THE PATRONS RESIDENT IN THIS ATTENDANCE AREA SHALL BE ELIGIBLE TO VOTE IN AN ELECTION REGARDING THE CLOSURE EXCEPT FOR ATTENDANCE UNITS, OR PORTIONS OF THEM, CREATED AFTER JANUARY 1, 2002, IN WHICH CASE QUALIFIED SCHOOL DISTRICT ELECTORS THROUGHOUT THE SCHOOL DISTRICT SHALL BE ELIGIBLE TO VOTE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 33-511, Idaho Code, be, and the same is hereby amended to read as follows:

33-511. MAINTENANCE OF SCHOOLS. The board of trustees of each school district shall have the following powers and duties:

1. Each elementary school district shall maintain at least one (1) elementary school, and each other school district shall maintain at least one (1) elementary school and one (1) secondary school;

2. To employ necessary help and labor to maintain and operate the schools of the district;

3. To discontinue any school within the district whenever it shall find such discontinuance to be in the best interests of the district and

of the pupils therein. For the purposes of this section, discontinuing a school shall mean no longer maintaining a school of any kind, at the same location, except in the case of secondary units as herein provided.

When any school proposed to be discontinued is one which was operated and maintained by a former district now wholly incorporated within the boundaries of the district operated by said board of trustees, and, immediately following reorganization and the dissolution of said former district such school has been continuously operated and maintained at the same location by the presently organized district, the board of trustees must first give notice of such proposal not later than the first day of July next preceding the date of the proposed discontinuance. Such notice shall be posted, and published once, in the manner provided in section 33-401, Idaho Code, and shall identify the school proposed to be discontinued.

If, not later than the first day of August following the posting and publishing of the notice of discontinuance, five (5) or more qualified school district electors residing within the school district shall petition the board of trustees for an election to be held within the school district on the question of discontinuance of that school, the board of trustees shall forthwith order an election to be held within fourteen (14) days of the date of said order, and shall give notice of the election.

Notice of such election shall be posted at or near the main door of the school proposed to be discontinued and at or near the main door of the administrative offices of the school district, and shall also be published in one (1) issue of a newspaper printed in the county in which is situate the school proposed to be discontinued. The notice shall state the date the election is to be held, the place of voting, and the hours between which the polls shall be open. In addition, the notice of election shall describe the area of the particular attendance unit of the school district and shall identify the school proposed to be discontinued; and it shall state that only qualified school district electors residing within the school district may vote on the question of discontinuing the school.

The election shall be held within the school district and there shall be submitted to the electors a ballot containing the proposal:

For discontinuing the school located at ....,

Against discontinuing the school located at .....

If a majority of the qualified electors, hereinabove defined and voting in the election, shall vote against discontinuing that school, then said school shall not be discontinued; and no proposal to discontinue the same school shall be made by the board of trustees of the district within nine (9) months after the date of the election.

If a secondary unit which the trustees of a district propose to close is more than thirty (30) miles by all-weather road from the attendance unit to which it is proposed to transfer such students, then, notwithstanding other provisions of this section, five (5) electors residing within the attendance area of the unit proposed to be closed may, as provided by this section, petition the board of trustees requesting an election to determine whether or not such attendance unit, or any portion of it, shall be closed. The board shall forthwith call and hold an election as herein provided. However, for the purpose of this section relating to the secondary attendance unit thirty (30) miles or more distant from another secondary attendance unit, only the patrons resident

in this attendance area shall be eligible to vote, except for attendance units, or portions of them, created after January 1, 2002, in which case qualified school district electors throughout the school district shall be eligible to vote. The election shall be deemed passed and the unit shall not be closed if a majority of those voting in the election vote in favor of retaining the attendance unit.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2002.

Approved March 26, 2002.

CHAPTER 318
(S.B. No. 1487)

AN ACT

APPROPRIATING MONEYS FOR GENERAL EDUCATION PROGRAMS AT BOISE STATE UNIVERSITY, IDAHO STATE UNIVERSITY, LEWIS-CLARK STATE COLLEGE, THE UNIVERSITY OF IDAHO AND FOR THE OFFICE OF THE STATE BOARD OF EDUCATION FOR FISCAL YEAR 2003; LIMITING THE AMOUNT OF THE GENERAL FUND APPROPRIATION TO BE USED BY THE OFFICE OF THE STATE BOARD OF EDUCATION; ESTABLISHING AN AMOUNT OF THE GENERAL FUND APPROPRIATION THAT IS TO BE EXPENDED FOR RESEARCH; ESTABLISHING AN AMOUNT OF THE GENERAL FUND APPROPRIATION TO BE EXPENDED FOR COMPETITIVE TECHNOLOGY GRANTS, AND FOR PARTICIPATION IN THE WESTERN GOVERNORS' ASSOCIATION'S VIRTUAL UNIVERSITY AND THE IDAHO ELECTRONIC CAMPUS; ESTABLISHING AN AMOUNT OF THE GENERAL FUND APPROPRIATION TO BE EXPENDED FOR TEACHER PREPARATION ACTIVITIES; ESTABLISHING AN AMOUNT OF THE GENERAL FUND APPROPRIATION TO BE EXPENDED FOR THE GOVERNOR'S COLLEGE AND UNIVERSITY EXCELLENCE INITIATIVE; MAKING CERTAIN IDAHO CODE PROVISIONS SPECIFICALLY AVAILABLE TO THE STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO; REQUIRING THE STATE BOARD OF EDUCATION TO TRACK AND REPORT FACULTY, NONFACULTY EXEMPT AND CLASSIFIED STAFF TURNOVER; AND REAPPROPRIATING ANY NON-GENERAL FUND UNEXPENDED AND UNENCUMBERED BALANCES.

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

SECTION 1. There is hereby appropriated to the State Board of Education and the Board of Regents of the University of Idaho for Boise State University, Idaho State University, Lewis-Clark State College, the University of Idaho, and the Office of the State Board of Education the following amount, to be expended for the designated programs from the listed funds for the period July 1, 2002, through June 30, 2003:

FOR:

General Education Programs $294,322,000

FROM:

General Fund	$213,558,800
Agricultural College Endowment Fund	1,136,100
Charitable Institutions Endowment Earnings Fund	1,085,400
Normal School Endowment Earnings Fund	3,676,400
Science School Endowment Fund	4,241,700
University Endowment Fund	3,496,300
Unrestricted Current Fund	24,990,000
Restricted Current Fund	42,137,300
TOTAL	$294,322,000

SECTION 2. Of the amount appropriated from the General Fund in Section 1 of this act, an amount not to exceed $75,000 shall be used by the Office of the State Board of Education for system-wide needs.

SECTION 3. Of the amount appropriated from the General Fund in Section 1 of this act, an amount not to exceed $1,600,000 may be used for matching awards, research centers, and infrastructure, with commercial application as a goal.

SECTION 4. Of the amount appropriated from the General Fund in Section 1 of this act, an amount not to exceed $1,750,000 may be used for a competitive grant program to foster innovative learning approaches using technology and to develop, enhance and promote the Idaho Electronic Campus; and for Idaho's participation in the Western Governors' Association's Virtual University.

SECTION 5. Of the amount appropriated from the General Fund in Section 1 of this act, an amount not to exceed $500,000 may be used for teacher preparation activities associated with Idaho's Comprehensive Literacy Act as prescribed in Section 33-1207A, Idaho Code.

SECTION 6. Of the amount appropriated from the General Fund in Section 1 of this act, an amount not to exceed $1,300,000 may be used for the Governor's College and University Excellence Initiative.

SECTION 7. The provisions of Sections 67-3608, 67-3609, 67-3610 and 67-3611, Idaho Code, are hereby made available to the State Board of Education and the Board of Regents of the University of Idaho for the period July 1, 2002, through June 30, 2003, the provisions of Section 67-3516(1), Idaho Code, with respect to the Unrestricted Current Fund and Restricted Current Fund only, and Section 67-3516(3) and (4), Idaho Code, notwithstanding.

SECTION 8. The State Board of Education shall establish a standardized system for tracking and reporting meaningful data about faculty, nonfaculty exempt and classified staff turnover at the state's institutions for higher education. These statistics shall be included with each year's higher education appropriation request.

SECTION 9. There is hereby reappropriated to the State Board of Education and the Board of Regents of the University of Idaho for Boise State University, Idaho State University, the University of Idaho, Lewis-Clark State College and the Office of the State Board of Educa-

tion, the unexpended and unencumbered balance of any non-General Fund appropriation contained in Section 1, Chapter 314, Laws of 2001, to be used for nonrecurring expenditures, for the period July 1, 2002, through June 30, 2003.

Approved March 26, 2002.

CHAPTER 319
(S.B. No. 1488)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF FAMILY AND COMMUNITY SERVICES FOR FISCAL YEAR 2003; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SUBSTANCE ABUSE PREVENTION; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SALARY SAVINGS.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for the Division of Family and Community Services the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. CHILDREN'S SERVICES:				
FROM:				
General Fund	$ 9,651,500	$ 1,373,400	$10,244,200	$ 21,269,100
Cooperative Welfare Fund (Federal)	14,571,300	6,690,900	11,518,600	32,780,800
Cooperative Welfare Fund (Dedicated)	530,300	763,100		1,293,400
TOTAL	$24,753,100	$ 8,827,400	$21,762,800	$ 55,343,300
II. DEVELOPMENTAL DISABILITIES SERVICES:				
FROM:				
General Fund	$ 5,456,000	$ 1,691,100	$ 3,228,600	$ 10,375,700
Cooperative Welfare Fund (Federal)	3,220,100	2,433,800	1,415,700	7,069,600
Cooperative Welfare Fund (Dedicated)	911,700			911,700
TOTAL	$ 9,587,800	$ 4,124,900	$ 4,644,300	$ 18,357,000
III. COMMUNITY MENTAL HEALTH SERVICES:				
FROM:				
General Fund	$ 7,064,600	$ 2,149,400	$ 1,837,600	$ 11,051,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Federal)	3,040,300	1,171,200	350,800	4,562,300
Cooperative Welfare Fund (Dedicated)	2,652,900			2,652,900
TOTAL	$12,757,800	$ 3,320,600	$ 2,188,400	$ 18,266,800
IV. IDAHO STATE SCHOOL AND HOSPITAL (ISSH):				
FROM:				
General Fund	$ 4,079,000	$ 869,400	$ 96,400	$ 5,044,800
Medical Assistance Fund		3,500		3,500
Cooperative Welfare Fund (Dedicated)	665,000	122,400	10,200	797,600
Cooperative Welfare Fund (Federal)	12,438,800	2,161,300	194,000	14,794,100
TOTAL	$17,182,800	$ 3,156,600	$ 300,600	$ 20,640,000
V. STATE HOSPITAL NORTH:				
FROM:				
General Fund	$ 3,943,300	$ 136,400	$ 3,800	$ 4,083,500
Alcohol Intoxication Treatment Fund	698,200	28,100		726,300
Cooperative Welfare Fund (Dedicated)	142,800			142,800
State Hospital North Endowment Income Fund	462,600	579,500	43,200	1,085,300
TOTAL	$ 5,246,900	$ 744,000	$ 47,000	$ 6,037,900
VI. STATE HOSPITAL SOUTH:				
FROM:				
General Fund	$ 6,896,100	$ 1,002,600	$ 219,600	$ 8,118,300
Cooperative Welfare Fund (Dedicated)	4,565,300	986,700	10,800	5,562,800
Mental Hospital Endowment Fund	1,619,000	286,000		1,905,000
Cooperative Welfare Fund (Federal)		28,800	1,000	29,800
TOTAL	$13,080,400	$ 2,304,100	$ 231,400	$ 15,615,900
VII. SUBSTANCE ABUSE SERVICES:				
FROM:				
General Fund	$ 1,700		$ 3,094,900	$ 3,096,600
Prevention of Minors' Access to Tobacco Fund	24,600	$ 46,800		71,400
Alcohol Intoxication Treatment Fund	227,700	218,200	1,252,000	1,697,900
Cooperative Welfare Fund (Dedicated)		3,900		3,900
Substance Abuse Treatment Fund			8,800	8,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Federal)	253,100	2,246,500	6,259,800	8,759,400
TOTAL	$ 507,100	$ 2,515,400	$10,615,500	$ 13,638,000
GRAND TOTAL	$83,115,900	$24,993,000	$39,790,000	$147,898,900

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare any unexpended and unencumbered balances of the Cooperative Welfare Fund for fiscal year 2002, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare is hereby authorized to expend all receipts collected as noncognizable funds for the period July 1, 2002, through June 30, 2003.

SECTION 5. It is legislative intent that, of the total moneys appropriated for Substance Abuse Prevention in Section 1 of this act for Mental Health Services, $100,000 be used to purchase radio and television advertising, targeted to adolescents, with factual messages concerning alcohol, drugs, and tobacco. At least half of this amount is to be used for messages on alcohol.

SECTION 6. Notwithstanding the provisions of Section 67-3511(1), Idaho Code, it is hereby declared to be the intent of the Idaho Legislature that the appropriation for personnel costs, as contained in Section 1 of this act, shall be utilized only for personnel costs for the period July 1, 2002, through March 1, 2003, which the Legislature intends will result in salary savings. It is further legislative intent that carryover funds from fiscal year 2002 shall be available for nonrecurring expenditures other than salaries during fiscal year 2003. It is further legislative intent that in January 2003, the department shall report to the Joint Finance-Appropriations Committee regarding its salary savings and expenditures for operating expenses and capital outlay during the first half of fiscal year 2003. Salary savings during fiscal year 2003 will be available to the department for object transfers for the purposes set out in Section 67-3511(1), Idaho Code, upon consent of the Joint Finance-Appropriations Committee during the First Regular Session of the Fifty-seventh Idaho Legislature.

Approved March 26, 2002.

CHAPTER 320
(S.B. No. 1489)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR INDIRECT SUPPORT SERVICES AND INDEPENDENT COMMISSIONS AND COUNCILS FOR FISCAL YEAR 2003; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SALARY SAVINGS.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for Indirect Support Services and the Independent Commissions and Councils the following amounts to be expended for the designated programs according to the designated expense classes from the various funds listed for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. INDIRECT SUPPORT SERVICES:				
FROM:				
General Fund	$ 7,821,900	$ 6,002,100		$13,824,000
Cooperative Welfare Fund (Federal)	5,668,700	10,411,900		16,080,600
Cooperative Welfare Fund (Dedicated)	565,100	599,900		1,165,000
TOTAL	$14,055,700	$17,013,900		$31,069,600
II. INDEPENDENT COMMISSIONS AND COUNCILS:				
A. DOMESTIC VIOLENCE COUNCIL:				
FROM:				
General Fund	$ 13,000			$ 13,000
Domestic Violence Project Fund	124,900	$ 100,800	$ 168,600	394,300
Cooperative Welfare Fund (Federal)	45,600	74,500	2,668,200	2,788,300
Cooperative Welfare Fund (Dedicated)		21,000		21,000
TOTAL	$ 183,500	$ 196,300	$2,836,800	$ 3,216,600
B. DEVELOPMENTAL DISABILITIES COUNCIL:				
FROM:				
General Fund	$ 69,100		$ 12,300	$ 81,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Cooperative Welfare Fund (Federal)	219,100	$ 175,200	27,200	421,500
Cooperative Welfare Fund (Dedicated)		15,000		15,000
TOTAL	$ 288,200	$ 190,200	$ 39,500	$ 517,900
C. COUNCIL ON THE DEAF AND HARD OF HEARING:				
FROM:				
General Fund	$ 107,800	$ 23,400		$ 131,200
Cooperative Welfare Fund (Dedicated)		7,500		7,500
Cooperative Welfare Fund (Federal)		104,500		104,500
TOTAL	$ 107,800	$ 135,400		$ 243,200
DIVISION TOTAL	$ 579,500	$ 521,900	$2,876,300	$ 3,977,700
GRAND TOTAL	$14,635,200	$17,535,800	$2,876,300	$35,047,300

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare any unexpended and unencumbered balances of the Cooperative Welfare Fund as appropriated for fiscal year 2002, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare is hereby authorized to expend all receipts collected as noncognizable funds for the period July 1, 2002, through June 30, 2003.

SECTION 5. In accordance with Section 67-3519, Idaho Code, the Department of Health and Welfare is authorized no more than two thousand nine hundred ninety-nine and one-hundredth (2,999.01) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 6. Notwithstanding the provisions of Section 67-3511(1), Idaho Code, it is hereby declared to be the intent of the Idaho Legislature that the appropriation for personnel costs, as contained in Section 1 of this act, shall be utilized only for personnel costs for the period July 1, 2002, through March 1, 2003, which the Legislature intends will result in salary savings. It is further legislative intent that carryover funds from fiscal year 2002 shall be available for nonrecurring expenditures other than salaries during fiscal year 2003. It is further legislative intent that in January 2003, the department shall report to the Joint Finance-Appropriations Committee regarding its salary savings and expenditures for operating expenses and capital outlay during the first half of fiscal year 2003. Salary savings during fiscal year 2003 will be available to the department for object transfers for the purposes set out in Section 67-3511(1), Idaho Code, upon consent of the Joint Finance-Appropriations Committee during the First Regular Session of the Fifty-seventh Idaho Legislature.

Approved March 26, 2002.

CHAPTER 321
(S.B. No. 1490)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR MEDICAL ASSISTANCE SERVICES FOR FISCAL YEAR 2003; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE CHILDREN'S HEALTH INSURANCE PROGRAM; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO ADULT DENTAL SERVICES; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE UTILIZATION MANAGEMENT PILOT PROJECT; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SALARY SAVINGS; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR MEDICAL ASSISTANCE SERVICES FOR FISCAL YEAR 2002; REDUCING THE FISCAL YEAR 2002 APPROPRIATION TO THE DEPARTMENT OF HEALTH AND WELFARE FOR MEDICAL ASSISTANCE SERVICES; AND DECLARING AN EMERGENCY FOR SECTIONS 6, 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 Department of Health and Welfare for Medical Assistance Services the following amounts to be expended according to the designated expense classes from the various funds listed for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
MEDICAL ASSISTANCE SERVICES:				
FROM:				
General Fund	$ 4,869,100	$ 6,644,900	$228,785,400	$240,299,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Medical Assistance Fund			2,500	2,500
Liquor Control Fund			639,200	639,200
Cooperative Welfare Fund (Federal)	7,127,400	18,147,900	565,370,800	590,646,100
Cooperative Welfare Fund (Dedicated)			26,169,300	26,169,300
TOTAL	$11,996,500	$24,792,800	$820,967,200	$857,756,500

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare any unexpended and unencumbered balances in the Cooperative Welfare Fund as appropriated for fiscal year 2002, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare is hereby authorized to expend all receipts collected as noncognizable funds for the period July 1, 2002, through June 30, 2003.

SECTION 5. It is the intent of the Idaho Legislature that the federal Title XXI Children's Health Insurance Program, as appropriated in Section 1 of this act, not exceed $3,800,000 in General Fund expenditures for the period July 1, 2002, through June 30, 2003. In addition, the director of the Department of Health and Welfare is hereby authorized to control program costs by lowering or raising income eligibility criteria in order to stay within budget; however, under no circumstance shall the department exceed one hundred fifty percent (150%) of the federal poverty level that is used in determining eligibility without prior legislative approval.

SECTION 6. It is the intent of the Idaho Legislature that, notwithstanding Section 56-209d(4)(c), Idaho Code, adult dental services covered by the state's Title XIX Medicaid program shall be limited to emergency services only.

SECTION 7. It is hereby declared to be the intent of the Idaho Legislature that the Utilization Management Pilot Project underway in Region II be continued as a pilot project for the remainder of fiscal year 2002, and not be expanded beyond the existing region. It is further legislative intent that, in the interim, the department implement by

rule a requirement that all plans for delivery of developmental disability and mental health services of every kind, except emergency services in all areas of the state not within the utilization management pilot, must be preauthorized by the department. The department will have no authorization to enter into an IAP contract or develop a utilization management automated system. A written report shall be presented at the fall meeting of the Joint Finance-Appropriations Committee on the Utilization Management Pilot Project.

SECTION 8. Notwithstanding the provisions of Section 67-3511(1), Idaho Code, it is hereby declared to be the intent of the Idaho Legislature that the appropriation for personnel costs, as contained in Section 1 of this act, shall be utilized only for personnel costs for the period July 1, 2002, through March 1, 2003, which the Legislature intends will result in salary savings. It is further legislative intent that carryover funds from fiscal year 2002 shall be available for nonrecurring expenditures other than salaries during fiscal year 2003. It is further legislative intent that in January 2003, the department shall make a written report to the Joint Finance-Appropriations Committee regarding its salary savings and expenditures for operating expenses and capital outlay during the first half of fiscal year 2003. Salary savings during fiscal year 2003 will be available to the department for object transfers for the purposes set out in Section 67-3511(1), Idaho Code, only upon consent of the Joint Finance-Appropriations Committee during the First Regular Session of the Fifty-seventh Idaho Legislature.

SECTION 9. In addition to the appropriation made in Section 1, Chapter 368, Laws of 2001, there is hereby appropriated to the Department of Health and Welfare for Medical Assistance Services the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 2001, through June 30, 2002:

FOR:	
Personnel Costs	$ 275,100
Operating Expenditures	10,251,500
Capital Outlay	768,900
TOTAL	$11,295,500
FROM:	
General Fund	$ 4,352,100
Cooperative Welfare Fund (Federal)	6,943,400
TOTAL	$11,295,500

SECTION 10. Notwithstanding any other provision of law to the contrary, the appropriation of moneys made to the Department of Health and Welfare for Medical Assistance Services in Section 1, Chapter 368, Laws of 2001, is hereby reduced in trustee and benefit payments by the following amounts from the listed funds for the period July 1, 2001, through June 30, 2002:

FROM:	
General Fund	$ 268,100
Cooperative Welfare Fund (Dedicated)	1,212,300
Cooperative Welfare Fund (Federal)	655,600
TOTAL	$2,136,000

SECTION 11. An emergency existing therefor, which emergency is hereby declared to exist, Sections 6, 9 and 10 of this act shall be in full force and effect on and after passage and approval.

Approved March 26, 2002.

CHAPTER 322
(S.B. No. 1491)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR PUBLIC HEALTH SERVICES FOR FISCAL YEAR 2003; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; SUPERSEDING THE PROVISIONS OF SECTION 57-1702, IDAHO CODE; AND EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SALARY SAVINGS.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for Public Health Services, the following amounts to be expended for the designated programs according to the designated expense classes from the various funds listed for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. PHYSICAL HEALTH SERVICES:				
FROM:				
General Fund	$1,382,500	$ 1,536,300	$ 2,233,300	$ 5,152,100
Cancer Control Fund	50,000	93,200	258,400	401,600
Central Tumor Registry Fund			182,700	182,700
Food Safety Fund			413,800	413,800
Cooperative Welfare Fund (Federal)	3,249,300	9,107,300	19,717,900	32,074,500
Cooperative Welfare Fund (Dedicated)	766,100	576,400	5,129,700	6,472,200
TOTAL	$5,447,900	$11,313,200	$27,935,800	$44,696,900
II. EMERGENCY MEDICAL SERVICES:				
FROM:				
General Fund	$ 175,600	$ 116,800	$ 63,100	$ 355,500
Emergency Medical Services Fund I & II	1,034,500	633,300	192,600	1,860,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Emergency Medical Services Fund III			1,205,400	1,205,400
Cooperative Welfare Fund (Dedicated)	190,500	118,900		309,400
Cooperative Welfare Fund (Federal)	132,500	78,800		211,300
TOTAL	$1,533,100	$ 947,800	$ 1,461,100	$ 3,942,000
III. LABORATORY SERVICES:				
FROM:				
General Fund	$1,580,700	$ 160,800		$ 1,741,500
Cooperative Welfare Fund (Dedicated)	682,900	902,400		1,585,300
Cooperative Welfare Fund (Federal)	252,300	87,900		340,200
TOTAL	$2,515,900	$ 1,151,100		$ 3,667,000
GRAND TOTAL	$9,496,900	$13,412,100	$29,396,900	$52,305,900

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare any unexpended and unencumbered balances of the Cooperative Welfare Fund as appropriated for fiscal year 2002, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare is hereby authorized to expend all receipts collected as noncognizable funds for the period July 1, 2002, through June 30, 2003.

SECTION 5. It is legislative intent that the appropriation of moneys from the Cancer Control Fund specifically supersedes the provisions of Section 57-1702, Idaho Code.

SECTION 6. Notwithstanding the provisions of Section 67-3511(1), Idaho Code, it is hereby declared to be the intent of the Idaho Legislature that the appropriation for personnel costs, as contained in Section 1 of this act, shall be utilized only for personnel costs for the period July 1, 2002, through March 1, 2003, which the Legislature intends will

result in salary savings. It is further legislative intent that carry-over funds from fiscal year 2002 shall be available for nonrecurring expenditures other than salaries during fiscal year 2003. It is further legislative intent that in January 2003, the Department shall make a written report to the Joint Finance-Appropriations Committee regarding its salary savings and expenditures for operating expenses and capital outlay during the first half of the fiscal year 2003. Salary savings during fiscal year 2003 will be available to the Department for object transfers for the purposes set out in Section 67-3511(1), Idaho Code, only upon consent of the Joint Finance-Appropriations Committee during the First Regular Session of the Fifty-seventh Idaho Legislature.

Approved March 26, 2002.

CHAPTER 323
(S.B. No. 1492)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE DIVISION OF WELFARE FOR FISCAL YEAR 2003; PROVIDING THAT THE STATE CONTROLLER SHALL MAKE TRANSFERS FROM THE GENERAL FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES OF MONEYS; AUTHORIZING THE EXPENDITURE OF ALL RECEIPTS COLLECTED; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO SALARY SAVINGS; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO REINSTATEMENT OF WELFARE FRAUD INVESTIGATORS; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR THE SELF-RELIANCE PROGRAMS FOR FISCAL YEAR 2002; AND DECLARING AN EMERGENCY FOR SECTION 7 OF THIS ACT.

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

SECTION 1. There is hereby appropriated to the Department of Health and Welfare for the Division of Welfare, the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. SELF-RELIANCE PROGRAMS:				
FROM:				
General Fund	$12,690,000	$ 4,683,900	$ 7,731,800	$ 25,105,700
Cooperative Welfare Fund (Federal)	14,776,100	16,135,500	48,685,300	79,596,900
Cooperative Welfare Fund (Dedicated)	1,480,900	1,430,900		2,911,800
TOTAL	$28,947,000	$22,250,300	$56,417,100	$107,614,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. TAFI AND AABD BENEFIT PAYMENTS:				
FROM:				
General Fund			$ 9,902,900	$ 9,902,900
Cooperative Welfare Fund (Federal)			5,251,900	5,251,900
TOTAL			$15,154,800	$ 15,154,800
GRAND TOTAL	$28,947,000	$22,250,300	$71,571,900	$122,769,200

SECTION 2. As appropriated, the State Controller shall make transfers of the General Fund to the Cooperative Welfare Fund, periodically, as requested by the Director of the Department of Health and Welfare and approved by the Board of Examiners.

SECTION 3. There is hereby reappropriated to the Department of Health and Welfare any unexpended and unencumbered balances of the Cooperative Welfare Fund as appropriated for fiscal year 2002, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003. The reappropriation shall be computed by the Department of Health and Welfare from available moneys.

SECTION 4. Notwithstanding the provisions of Section 67-3516(2), Idaho Code, the Department of Health and Welfare is hereby authorized to expend all receipts collected as noncognizable funds for the period July 1, 2002, through June 30, 2003.

SECTION 5. Notwithstanding the provisions of Section 67-3511(1), Idaho Code, it is hereby declared to be the intent of the Idaho Legislature that the appropriation for personnel costs, as contained in Section 1 of this act, shall be utilized only for personnel costs for the period July 1, 2002, through March 1, 2003, which the Legislature intends will result in salary savings. It is further legislative intent that carryover funds from fiscal year 2002 shall be available for nonrecurring expenditures other than salaries during fiscal year 2003. It is further legislative intent that in January 2003, the Department shall make a written report to the Joint Finance-Appropriations Committee regarding its salary savings and expenditures for operating expenses and capital outlay during the first half of the fiscal year 2003. Salary savings during fiscal year 2003 will be available to the Department for object transfers for the purposes set out in Section 67-3511(1), Idaho Code, only upon consent of the Joint Finance-Appropriations Committee during the First Regular Session of the Fifty-seventh Idaho Legislature.

SECTION 6. It is hereby declared to be the intent of the Idaho Legislature that welfare fraud investigators be reinstated in each region of the state with at least one per each region.

SECTION 7. In addition to the appropriation made in Section 1, Chapter 369, Laws of 2001, there is hereby appropriated to the Department of Health and Welfare for the Self-Reliance Programs the following amounts to be expended according to the designated expense class from the listed fund for the period July 1, 2001, through June 30, 2002:

FOR:	
Operating Expenditures	$300,000
FROM:	
General Fund	$102,000
Cooperative Welfare Fund (Federal)	198,000
TOTAL	$300,000

SECTION 8. An emergency existing therefor, which emergency is hereby declared to exist, Section 7 of this act shall be in full force and effect on and after passage and approval.

Approved March 26, 2002.

CHAPTER 324
(S.B. No. 1493)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Juvenile Corrections the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General Fund	$ 1,580,700	$ 737,000			$ 2,317,700
Miscellaneous Revenue Fund	84,300	117,000	$4,300		205,600
TOTAL	$ 1,665,000	$ 854,000	$4,300		$ 2,523,300
II. COMMUNITY SERVICES:					
FROM:					
General Fund	$ 883,700	$ 140,300		$ 3,400,900	$ 4,424,900
Juvenile Corrections - Cigarette/Tobacco Tax Fund				4,550,000	4,550,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Juvenile Corrections Fund	35,800	168,500			204,300
Federal Grant Fund	39,600				39,600
Miscellaneous Revenue Fund				70,000	70,000
TOTAL	$ 959,100	$ 308,800		$ 8,020,900	$ 9,288,800
III. INSTITUTIONS:					
FROM:					
General Fund	$12,919,700	$1,244,100		$11,735,900	$25,899,700
State Juvenile Corrections Center Fund		1,272,100			1,272,100
Federal Grant Fund	221,100	91,700		1,110,000	1,422,800
Miscellaneous Revenue Fund		362,000		870,000	1,232,000
TOTAL	$13,140,800	$2,969,900		$13,715,900	$29,826,600
IV. JUVENILE JUSTICE COMMISSION:					
FROM:					
General Fund	$ 83,500	$ 11,500		$ 56,000	$ 151,000
Federal Grant Fund	183,000	339,900		2,585,600	3,108,500
TOTAL	$ 266,500	$ 351,400		$ 2,641,600	$ 3,259,500
GRAND TOTAL	$16,031,400	$4,484,100	$4,300	$24,378,400	$44,898,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Juvenile Corrections is authorized no more than three hundred forty-nine (349) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 26, 2002.

CHAPTER 325
(S.B. No. 1494)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE OFFICE OF SPECIES CONSERVATION FOR FISCAL YEAR 2003; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Office of Species Conservation the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:				
General Fund	$458,600	$104,300		$ 562,900
Miscellaneous Revenue Fund		15,000		15,000
Federal Grant Fund	100,000	300,000	$1,788,000	2,188,000
TOTAL	$558,600	$419,300	$1,788,000	$2,765,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Office of Species Conservation is authorized no more than six (6) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 26, 2002.

CHAPTER 326
(S.B. No. 1495)

AN ACT

RELATING TO THEFT; AMENDING SECTION 18-2407, IDAHO CODE, TO FURTHER DEFINE GRAND THEFT TO INCLUDE THE THEFT OF CHECKS, DRAFTS OR ORDERS FOR PAYMENT UPON BANKS, FINANCIAL TRANSACTION CARDS, OR THE ACCOUNT NUMBERS RELATING TO SUCH CHECKS, DRAFTS, ORDERS FOR PAYMENT OR FINANCIAL TRANSACTION CARDS.

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

SECTION 1. That Section 18-2407, Idaho Code, be, and the same is hereby amended to read as follows:

18-2407. GRADING OF THEFT. Theft is divided into two (2) degrees, grand theft and petit theft.

(1) Grand theft.

(a) A person is guilty of grand theft when he commits a theft as defined in this chapter and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

1. Cause physical injury to some person in the future; or
2. Cause damage to property; or
3. Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(b) A person is guilty of grand theft when he commits a theft as defined in this chapter and when:

1. The value of the property taken exceeds one thousand dollars ($1,000); or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of a ~~credit--card~~ check, draft or order for the payment of money upon any bank, or a check, draft or order account number, or a financial transaction card or financial transaction card account number as those terms are defined in section 18-3122, Idaho Code; or
4. The property, regardless of its nature or value, is taken from the person of another; or
5. The property, regardless of its nature and value, is obtained by extortion; or
6. The property consists of one (1) or more firearms, rifles or shotguns; or
7. The property taken or deliberately killed is livestock or any other animal exceeding one hundred fifty dollars ($150) in value.
8. When any series of thefts, comprised of individual thefts having a value of one thousand dollars ($1,000) or less, are part of a common scheme or plan, the thefts may be aggregated in one (1) count and the sum of the value of all of the thefts shall be the value considered in determining whether the value exceeds one thousand dollars ($1,000); or
9. The property has an aggregate value over fifty dollars ($50.00) and is stolen during three (3) or more incidents of theft during a criminal episode. For purposes of this subparagraph a "criminal episode" shall mean a series of unlawful acts committed over a period of up to three (3) days.

(2) Petit theft. A person is guilty of petit theft when he commits a theft as defined in this chapter and his actions do not constitute grand theft.

Approved March 26, 2002.

CHAPTER 327
(S.B. No. 1499)

AN ACT

RELATING TO WOLVES; AMENDING SECTION 36-715, IDAHO CODE, TO EXTEND THE TIME IN WHICH THE DEPARTMENT OF FISH AND GAME IS AUTHORIZED TO WORK IN CONJUNCTION WITH THE WOLF OVERSIGHT COMMITTEE IN DEVELOPMENT AND IMPLEMENTATION OF AN IDAHO WOLF MANAGEMENT PLAN.

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

SECTION 1. That Section 36-715, Idaho Code, be, and the same is hereby amended to read as follows:

36-715. DUTIES OF THE DEPARTMENT OF FISH AND GAME REGARDING THE ENDANGERED SPECIES ACT. (1) Since wolf/dog hybridizations are known to exist within Idaho and these hybrids are not protected by the United States endangered species act, a biological evaluation shall be required of the animal to determine species priority before the department of fish and game may take any action in accordance with the United States endangered species act.

(2) The department of fish and game shall not be authorized to expend funds, transfer assets or enter into a cooperative agreement with any agency, department or entity of the United States government concerning wolves unless expressly authorized by state statute except that the department is authorized to provide a representative to participate on the northern rocky mountain wolf recovery team and to participate in activities regarding nuisance wolves, and except that the department is allowed to meet and confer with state, local and federal agencies, departments or entities or federally recognized Indian tribes to discuss those federal or tribal entities' plans for wolf reintroduction or for monitoring wolf reintroduction and wolf recovery programs. Additionally, the department may cooperate with counties, federal agencies, departments or entities or federally recognized Indian tribes regarding damage complaints, depredation, and conflicts regarding wolves in this state. The department of fish and game is not authorized to participate in investigations or enforcement actions involving violations of the final rules of the United States fish and wildlife service or section 9 of the United States endangered species act, as the final rules and section 9 regulate the reintroduction of wolves into central Idaho.

(3) If a wolf is sighted, the burden of proof concerning the reported presence of the wolf within Idaho shall rest with the observer and the department of fish and game shall take no action to enforce the United States endangered species act regarding wolves in absence of that proof.

(4) From the effective date of this act through December 31, 200~~2~~3, the department of fish and game is authorized to work in conjunction with the wolf oversight committee, as established by the wolf EIS participation plan dated February, 1992, in the development and implementation of an Idaho wolf management plan, provided that:

(a) The department is authorized to work in conjunction with the wolf oversight committee to develop and coordinate wolf management plans with state agency officials of the states of Wyoming and Montana.

(b) Any Idaho wolf management plan so developed by the department and wolf oversight committee shall take into consideration local economies, custom, culture, and private property rights. The department and the wolf oversight committee may consult with federal entities and coordinate with state and local government entities in the development of the plan.

(c) Upon completion of an Idaho wolf management plan, the department and the wolf oversight committee shall provide a report to the senate resources and environment committee and to the house resources and conservation committee and shall provide written copies to all interested parties. When the plan is complete, the speaker of the house of representatives and the president pro tempore of the senate may authorize a joint meeting of the senate resources and environment committee and the house resources and conservation committee to be held during the interim to review the Idaho wolf management plan.

(d) Members of the wolf oversight committee shall serve without compensation, but shall be reimbursed actual expenses for attending meetings of the committee from funds provided by the department of fish and game at prevailing state rates.

Approved March 26, 2002.

CHAPTER 328
(S.B. No. 1289, As Amended)

AN ACT

RELATING TO LICENSING OF FARM LABOR CONTRACTORS; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 44, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE EXEMPTIONS, TO PROVIDE FOR LICENSING OF FARM LABOR CONTRACTORS, TO REQUIRE PROOF OF FINANCIAL RESPONSIBILITY, TO SPECIFY AN APPLICATION FEE AND TO PROVIDE FOR APPROPRIATION OF FEES COLLECTED, TO PROVIDE DUTIES OF THE DEPARTMENT WITH REGARD TO LICENSING AND TO SPECIFY CONDITIONS OF THE LICENSE, TO PROVIDE DUTIES OF THE FARM LABOR CONTRACTOR, TO SPECIFY PROHIBITED ACTS, TO PROVIDE FOR DENIAL, REVOCATION, SUSPENSION AND REFUSAL TO RENEW A LICENSE, TO PROVIDE NOTICE OF DENIAL OF AN APPLICATION, REFUSAL TO RENEW A LICENSE, REVOCATION OR SUSPENSION OF A LICENSE AND TO PROVIDE FOR A HEARING, TO PROVIDE FOR JOINT LIABILITY OF AN AGRICULTURAL EMPLOYER AND AN UNLICENSED FARM LABOR CONTRACTOR, TO PROVIDE CLAIM FOR WAGES, TO PROVIDE FOR PRIVATE RIGHT OF ACTION, TO PROVIDE SERVICE OF PROCESS WHEN UNLICENSED CONTRACTOR IS UNAVAILABLE, TO PROVIDE THAT RETALIATION IS PROHIBITED, TO PROVIDE VIOLATIONS AND PENALTIES, TO PROVIDE RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND TO PROVIDE SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 16, Title 44, Idaho Code, and to read as follows:

CHAPTER 16
FARM LABOR CONTRACTOR LICENSING

44-1601. DEFINITIONS. As used in this chapter:

(1) "Agricultural association" means any nonprofit or cooperative association of farmers, growers or ranchers, incorporated or qualified under applicable state law.

(2) "Agricultural employer" means any person engaged in any activity included within the definition of "agriculture" in subsection (3) of this section.

(3) "Agriculture" includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural, aquacultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals or poultry; and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operation, including preparation for market, delivery to storage or to market or to carriers for transportation to market. This definition shall not include forestry, lumbering operations or logging contractors.

(4) "Department" means the department of labor of the state of Idaho.

(5) "Director" means the director of the department of labor.

(6) "Farm labor contracting activity" means recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal agricultural worker.

(7) "Farm labor contractor" means any person who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

(8) "Immediate family member" means the spouse, children, brother, sister, mother or father.

(9) "Migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or temporary nature, and who is required to be absent overnight from his permanent place of residence. This term does not include any immediate family member of an agricultural employer or a farm labor contractor.

(10) "Person" means an individual, association, partnership, limited liability company, corporation or other business entity.

(11) "Seasonal agricultural worker" means an individual who is employed in agricultural employment of a seasonal or temporary nature and is not required to be absent overnight from his permanent place of residence. This term does not include any immediate family member of an agricultural employer or a farm labor contractor.

44-1602. EXEMPTIONS. The provisions of this chapter shall not apply to the following:

(1) An agricultural association engaged in farm labor contracting activities exclusively for members of that association.

(2) Any individual engaged in farm labor contracting for an agricultural operation owned or operated exclusively by such individual or a member of such individual's immediate family, if such activities are performed only for such operation and exclusively by such individual, but without regard to whether such individual has incorporated or otherwise organized for business purposes.

(3) Agricultural employers exchanging agricultural labor or services with each other, provided the work is performed on land owned or leased by the agricultural employers.

(4) Any common carrier that would be a farm labor contractor solely because it is engaged in transporting any migrant or seasonal agricultural worker. For purposes of this section, a common carrier is one that holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and holds a valid certificate or authorization for such purpose from an appropriate local, state or federal agency.

(5) Any nonprofit charitable organization, public entity or private nonprofit educational institution.

(6) Any employee of a person described in subsections (1) through (5) of this section when performing farm labor contracting activities exclusively for such person, unless the employee receives a commission or fee based upon the number of workers recruited.

44-1603. LICENSE -- APPLICATION -- CONTENTS. (1) Except as otherwise provided, no person shall act as a farm labor contractor unless such person holds a valid license issued by the department.

(2) An application for a farm labor contractor's license shall be sworn to by the applicant and shall be submitted on a form prescribed by the department that shall require, but not be limited to, the following information and documentation:

(a) The applicant's name, Idaho address and all other temporary and permanent addresses the applicant uses or knows will be used in the future;

(b) Two (2) recent, passport sized, color photographs of the applicant, or the applicant's authorized agent when the applicant is not a natural person;

(c) A statement by the applicant of all facts required by the department concerning the applicant's fitness, competency, and qualifications to engage in the business of farm labor contracting;

(d) A statement by the applicant of all facts required by the department concerning the manner and method by which the applicant proposes to conduct operations as a farm labor contractor;

(e) A certificate of insurance issued by the applicant's auto insurance carrier listing the department as the certificate holder and providing for a thirty (30) day cancellation notice for all vehicles used in the operation of the farm labor contracting business;

(f) A certificate of workers' compensation insurance issued by the applicant's workers' compensation insurance carrier listing the department as the certificate holder and providing for a thirty (30) day cancellation notice;

(g) Whether the applicant has or was ever granted a farm labor contractor's license in any other jurisdiction;

(h) Whether the applicant was ever denied a license or had a license revoked or suspended under the farm labor contractor laws of any other jurisdiction;

(i) The names and addresses of all persons financially interested, whether as partners, limited liability company members, shareholders, associates, or profit sharers in the applicant's proposed operation as a farm labor contractor, together with the amount of

their respective interests, and whether or not, to the best of the applicant's knowledge, any such persons were ever denied a license or had a license revoked or suspended under the farm labor contractor laws of any jurisdiction; and

(j) The following declaration by the applicant, or the applicant's authorized agent when the applicant is not a natural person: "With regards to any action filed against the applicant concerning the applicant's activities as a farm labor contractor, the applicant appoints the director of the Idaho Department of Labor as the applicant's lawful agent to accept service of summons when the applicant is not present in the jurisdiction in which such action is commenced or have in any other way become unavailable to accept service.".

44-1604. APPLICANT -- PROOF OF FINANCIAL RESPONSIBILITY -- PAYMENT OF CLAIMS. (1) Each applicant shall submit with the application and shall continually maintain proof of financial responsibility to ensure the prompt payment of employees' wages pursuant to chapter 6, title 45, Idaho Code, and the payment of any claims awarded pursuant to section 44-1613, Idaho Code.

(2) Proof of financial responsibility shall be in the form of a surety bond from a company licensed to do business in the state of Idaho. The surety bond shall be in the amount of ten thousand dollars ($10,000) if the farm labor contractor employs no more than twenty (20) employees, and thirty thousand dollars ($30,000) if the contractor employs more than twenty (20) employees.

(3) The surety bond shall be for the benefit of the farm labor contractor's employees and shall be conditioned upon the payment of all sums legally owing to them.

(4) The surety bond shall be executed to cover the farm labor contractor's liability for the period for which the license is issued, during which time the bond cannot be canceled or otherwise terminated.

(5) All claims against the bond shall be unenforceable unless request for payment of a court judgment, or lien pursuant to section 45-620, Idaho Code, has been sent by certified mail to the surety. The surety company shall make prompt and periodic payments on the farm labor contractor's liability to the extent of the total amount of the bond.

(6) In lieu of the surety bond required by this section, an applicant or farm labor contractor may deposit with the department cash or other security acceptable to the director. The deposit shall not be less than ten thousand dollars ($10,000) if the farm labor contractor employs no more than twenty (20) employees, and thirty thousand dollars ($30,000) if the farm labor contractor employs more than twenty (20) employees. The security deposited with the director in lieu of the surety bond shall be returned to the farm labor contractor at the expiration of two (2) years after the farm labor contractor's license has expired or been otherwise terminated, unless the director has received written notice that a legal or administrative action has been instituted against the farm labor contractor for failing to comply with the requirements of this chapter.

44-1605. APPLICATION FEE -- APPROPRIATION. Each application shall be accompanied by a nonrefundable fee of two hundred fifty dollars ($250). All fees collected shall be continuously appropriated to the department and used for the administration of this chapter.

44-1606. DEPARTMENT -- LICENSING DUTIES -- LICENSE -- TERM -- RENEWAL FEE. (1) The department shall issue licenses to persons who are at least eighteen (18) years of age and who have shown themselves to be fit, competent and qualified to engage in the business of farm labor contracting. Factors to be considered by the department in making this determination shall include, but not be limited to, the following:

(a) Whether an applicant has unsatisfied judgments or administrative decisions requiring the payment of unpaid wages;

(b) Whether an applicant has worker's compensation coverage for each employee;

(c) Whether an applicant has paid unemployment insurance contributions when due;

(d) Whether an applicant has violated any provision of this chapter or the rules adopted hereunder;

(e) Whether an applicant was ever denied a license or had a license revoked, suspended or not renewed under the farm labor contractor laws of any jurisdiction;

(f) Whether an applicant has employed an agent who has had a farm labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated any provisions of this chapter or the rules adopted hereunder; and

(g) Whether an applicant, when required by law, has failed or refused to seek food, water, shelter or medical attention, or to provide any other goods or services required for the safety and health of the applicant's employees.

(2) The industrial commission shall make records available to the department, including records that are otherwise exempt from disclosure under section 9-340B, Idaho Code, for the purpose of determining an applicant's qualifications under subsection (1)(b) of this section. Records disclosed under this subsection shall not be further disclosed by the department.

(3) The department shall issue a license within fifteen (15) business days of receipt of a completed application if the department determines the applicant to be fit, competent and qualified to engage in the business of farm labor contracting. An application shall be deemed completed when all required information and documentation has been submitted to the department.

(4) The license shall not be transferable or assignable.

(5) The first year of licensing shall run from April 1st to the following March 31st and each license shall expire on March 31st following the date of its issuance unless sooner revoked or otherwise terminated by the department. Beginning January 1, 2004, the licensing year shall run from January 1st to the following December 31st and each license shall expire on December 31st following the date of its issuance unless sooner revoked or otherwise terminated by the department.

(6) A license may be renewed annually upon payment of a nonrefundable fee of two hundred fifty dollars ($250) and by providing the following:

(a) Proof of financial responsibility as required by section 44-1604, Idaho Code;

(b) A certificate of insurance as required by section 44-1603(2)(e), Idaho Code; and

(c) A certificate of insurance as required by section 44-1603(2)(f), Idaho Code.

The department may require any person seeking renewal to file a new application showing the person to be fit, competent and qualified to continue to engage in the business of farm labor contracting.

(7) The department shall maintain a central public registry of all persons issued a farm labor contractor's license.

44-1607. FARM LABOR CONTRACTOR -- DUTIES. A farm labor contractor shall:

(1) Carry his farm labor contractor license at all times and exhibit such license upon request to anyone with whom the farm labor contractor intends to deal in his capacity as a farm labor contractor.

(2) File immediately at the United States post office serving the farm labor contractor's address as noted on the license a correct change of address and notify the department each time an address change is made.

(3) Pay or distribute promptly when due to the persons entitled all money or other things of value entrusted to the farm labor contractor for that purpose.

(4) Comply with the terms and provisions of all agreements or contracts entered into by the farm labor contractor.

(5) Comply with all applicable state laws and rules.

(6) Provide to the department certified copies of payroll records for any payment period requested by the department.

(7) Provide to each employee at the time of hiring, recruiting, soliciting or supplying such employee, whichever occurs first, a written statement in English or, as necessary and reasonable, in Spanish or other language common to agricultural workers who are not fluent or literate in English, that contains a description of:

(a) The rate of compensation and the method of computing the rate of compensation;

(b) The terms and conditions of employment, including the name and address of the farm labor contractor, the place of employment, the approximate length of the period of employment and the approximate starting and ending dates;

(c) The terms and conditions of any bonus offered and the manner of determining when the bonus is earned;

(d) The terms and conditions of any loan made to the employee;

(e) The terms and conditions of any housing, transportation, equipment, health care, day care or any other employee benefit to be provided by the farm labor contractor or the farm labor contractor's agent, and the costs to be charged for each item;

(f) The name and address of the surety on the farm labor contractor's bond;

(g) The employee's rights and remedies, including an employee's right to make a claim against the farm labor contractor's surety bond.

(8) Provide to the employee each time the employee receives a compensation payment from the farm labor contractor a written statement

itemizing the total payment, the amount and purpose of each deduction therefrom, the hours worked and, if the work was done on a piece basis, the number of pieces completed.

(9) For each employee make, keep and preserve for three (3) years the following information:

(a) The basis on which wages were paid;

(b) The number of piecework units earned, if paid on a piecework basis;

(c) The number of hours worked;

(d) The total pay period earnings;

(e) The specific sums withheld and the reason for withholding each sum;

(f) The net pay; and

(g) The name and address of the owner of all operations, or the owner's agent, where the employee worked.

44-1608. FARM LABOR CONTRACTOR -- APPLICANT FOR LICENSE -- PROHIBITED ACTS. A farm labor contractor or an applicant for a farm labor contractor's license shall not:

(1) Make misrepresentations or false statements on the application for a license.

(2) Make or cause to be made, to any person, any false, fraudulent or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent or misleading information concerning the terms, conditions or existence of any employment.

(3) Solicit, induce or cause to be solicited or induced the violation of an existing contract of employment.

(4) Violate, or assist another person to violate the requirements of this chapter.

(5) By any force, intimidation, or threat, including threat of deportation, induce any employee of the farm labor contractor to give up any part of the compensation to which the employee is entitled under federal or state wage payment laws.

44-1609. LICENSE -- DENIAL, REVOCATION, SUSPENSION, REFUSAL TO RENEW. (1) The department may deny, revoke, suspend or refuse to renew a farm labor contractor license when:

(a) The applicant or licensee, or the agent of the applicant or licensee, has had his farm labor contractor's license denied or revoked in any jurisdiction within three (3) years of the date of application;

(b) The licensee or his agent has violated or failed to comply with any provision of this chapter or the rules promulgated hereunder;

(c) The applicant or licensee has an unsatisfied court judgment or final administrative decision against him for unpaid wages;

(d) The applicant or licensee made false or misleading statements on, or provided false or misleading information with, his application for a license;

(e) The applicant or licensee fails to maintain proof of financial responsibility as required by section 44-1604, Idaho Code;

(f) The applicant or licensee fails to provide, or the department receives notice of cancellation of any certificates of insurance required by section 44-1603, Idaho Code;

(g) The applicant or licensee fails to pay unemployment insurance contributions when due; or

(h) The applicant or licensee, when required by law, fails or refuses to seek food, water, shelter or medical attention, or to provide any other goods or services required for the safety and health of his employees.

(2) Before the department denies, revokes, suspends or refuses to renew a license, the applicant or licensee shall be given written notice of the reasons for the licensing action and an opportunity for a hearing.

44-1610. ACTION AGAINST LICENSE -- HEARING. (1) The contested case provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall not apply to licensing actions under this chapter.

(2) When it appears, pursuant to section 44-1609, Idaho Code, that sufficient cause exists for the denial of any application for, the revocation or suspension of, or refusal to renew any license required by this chapter, the department shall serve notice, in the manner provided for in subsection (7) of this section, to the applicant or license holder stating the proposed adverse action to be taken, the grounds on which such action is based, and that the department's proposed action shall become final unless, within ten (10) calendar days of the date of mailing of the notice, the aggrieved party files with the department a written request for a hearing.

(3) A written request for a hearing may be filed by personal delivery, by mail, or by fax to the wage and hour section of the department at the address indicated on the notice. The date of personal delivery shall be noted on the request and shall be deemed the date of filing. If mailed, the hearing request shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed request that is received by the wage and hour section by 5:00 p.m. on a business day shall be deemed filed on that date. A faxed request that is received by the wage and hour section on a weekend, holiday or after 5:00 p.m. on a business day shall be deemed filed on the next business day.

(4) Reasonable notice of the hearing, containing the date, time, place and purpose of the hearing, shall be served on all parties to the hearing in the manner provided for in subsection (7) of this section.

(5) The hearing shall be conducted by an employee of the department designated by the director to be the hearing officer, who shall not be bound by statutory rules of evidence or by technical or formal rules of procedure. A record shall be made of the sworn testimony. Every party to the proceeding shall have the right to counsel at their own expense and a full opportunity to be heard, including such cross-examination as may be appropriate. The hearing officer, as soon after the conclusion of the hearing as possible, on the basis of the record made at the hearing, shall issue a decision and serve it on all parties to the hearing in the manner provided for in subsection (7) of this section.

(6) The decision of the hearing officer shall be a final agency order and shall be effective on the date it is issued, subject only to the judicial review provisions of chapter 52, title 67, Idaho Code.

(7) Any notice or decision required by this section shall be deemed served if delivered to the person being served or if mailed to his last known address. Service by mail shall be deemed completed on the date of mailing. The date indicated on the notice or decision as the "date of

mailing" shall be presumed to be the date the document was deposited in the United States mail, unless otherwise shown by a preponderance of competent evidence.

44-1611. JOINT LIABILITY. (1) If an agricultural employer uses a farm labor contractor who is properly licensed and bonded under the provisions of this chapter, that agricultural employer shall not be jointly and severally liable for any unpaid wages determined to be due and owing pursuant to chapter 6, title 45, Idaho Code, to any employee of the farm labor contractor who performed work for that agricultural employer.

(2) An agricultural employer who knowingly uses the services of an unlicensed farm labor contractor shall be jointly and severally liable for any unpaid wages determined to be due and owing pursuant to chapter 6, title 45, Idaho Code, to any employee of the unlicensed farm labor contractor who performed work for that agricultural employer. In making determinations under this section, any user of a farm labor contractor may rely upon either the license issued by the department to the farm labor contractor under section 44-1603, Idaho Code, or the department's representation that such contractor is licensed as required by this chapter.

44-1612. CLAIM FOR WAGES -- EXCLUSIVE REMEDY. A claim for unpaid wages by an employee of a farm labor contractor shall be treated as a claim for wages under chapter 6, title 45, Idaho Code.

44-1613. PRIVATE RIGHT OF ACTION. Except as provided for in section 44-1612, Idaho Code, any person aggrieved by a violation of this chapter may bring a civil action in a court of competent jurisdiction for injunctive relief, damages or both. If the court finds that any person violated any of the provisions of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages, or one thousand dollars ($1,000) per violation, whichever is greater. The court shall also award a prevailing plaintiff reasonable attorney's fees and costs. No action under this section may be commenced later than two (2) years after the date of the violation giving rise to the right of action.

44-1614. SERVICE OF PROCESS WHEN UNLICENSED CONTRACTOR IS UNAVAILABLE. In any action arising out of the activities of an unlicensed farm labor contractor within this state who is not in the state or is otherwise unavailable for service of process in this state, the unlicensed farm labor contractor may be served by mailing a certified true copy of the summons and complaint to the director; the last-known address, if any, of the unlicensed farm labor contractor; and any other address the use of which the plaintiff knows, or on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

44-1615. RETALIATION PROHIBITED. No farm labor contractor may discharge or in any other manner discriminate against an employee because that employee made a claim against the farm labor contractor pursuant to this chapter, testified or is about to testify in any proceedings brought pursuant to this chapter, or discussed or consulted with anyone concerning the employee's rights under this chapter.

44-1616. VIOLATIONS -- PENALTY. (1) Any person who intentionally defaces, alters or changes a farm labor contractor license, or who uses the license of another, or who knowingly permits another person to use his license or acts as a farm labor contractor without a license shall be guilty of a misdemeanor, punishable by a fine not to exceed one thousand dollars ($1,000), or up to sixty (60) days in jail or both. Each violation shall constitute a separate offense.

(2) Any person who violates any other provision of this chapter shall be guilty of a misdemeanor, punishable by a fine not to exceed three hundred dollars ($300), or up to thirty (30) days in jail or both. Each violation shall constitute a separate offense.

44-1617. DEPARTMENT -- ADMINISTRATIVE RULES. The department may adopt rules reasonably necessary for the administration of this chapter.

44-1618. SEVERABILITY. The provisions of this chapter are hereby declared to be severable, and if any provision is declared void, invalid, or unenforceable in whole or in part, such declaration shall not affect the remaining provisions of this chapter.

SECTION 2. This act shall be in full force and effect on and after January 1, 2003.

Approved March 27, 2002.

CHAPTER 329
(S.B. No. 1319)

AN ACT

RELATING TO THE CREATION OF A TRAUMA REGISTRY; PROVIDING A STATEMENT OF PURPOSE; AMENDING TITLE 57, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 20, TITLE 57, IDAHO CODE, TO PROVIDE A PURPOSE OF THE REGISTRY, TO DEFINE TERMS, TO PROVIDE ESTABLISHMENT OF A TRAUMA REGISTRY, TO REQUIRE PARTICIPATION IN THE PROGRAM, TO PROVIDE CREATION OF A TRAUMA REGISTRY FUND AND THE PURPOSES OF THE FUND, TO PROVIDE CONFIDENTIALITY FOR CERTAIN RECORDS, AND TO LIMIT LIABILITY FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER; AMENDING SECTION 9-340C, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM PROVISIONS OF THE OPEN RECORDS LAW FOR TRAUMA REGISTRY DATA AND TO MAKE A TECHNICAL CORRECTION; PROVIDING AN EFFECTIVE DATE WITH AUTHORITY TO PROMULGATE RULES; AND PROVIDING FOR SUNSET OF THE PROVISIONS OF THIS CHAPTER.

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

SECTION 1. The Legislature finds and declares that it is in the interests of the citizens of this state to authorize a comprehensive trauma reporting system in order to record information in a central location which will enable policymakers to assess availability and effectiveness of trauma care. The Legislature specifically intends that the system shall not rely upon general funds, but shall be funded entirely from sources provided for that purpose. Furthermore, the implementation of the trauma registry shall not impose additional costs involuntarily upon hospitals or health care facilities. The trauma reg-

istry shall not result in a classification system for hospitals or a system of mandated referrals based upon a classification system.

SECTION 2. That Title 57, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 20, Title 57, Idaho Code, and to read as follows:

CHAPTER 20
TRAUMA REGISTRY

57-2001. PURPOSE OF THE REGISTRY. (1) The specific issues to be identified and evaluated through the trauma registry are:

(a) Injury surveillance;

(b) Geographic patterns of trauma incidence;

(c) Types of injuries treated in hospitals in Idaho;

(d) Areas or regions of the state where improvements in the emergency medical system may be needed;

(e) Public education and prevention needs and efforts; and

(f) Other factors to consider in recommending, designing or implementing a statewide trauma system.

(2) The data collected by the trauma registry shall be of such a nature as to allow the department to identify at least the following:

(a) Access to care;

(b) Performance of the out-of-hospital and hospital emergency medical systems;

(c) Costs of trauma care; and

(d) Outcomes of persons who are victims of trauma.

(3) The department shall evaluate the data collected, as well as data collected from other relevant sources, and, beginning one (1) year after the effective date of this chapter, shall prepare an annual report.

57-2002. TRAUMA REGISTRY -- DEFINITIONS. When used in this chapter:

(1) "Confidential information" means information which may identify a patient, health care facility or health care practitioner.

(2) "Contractor" means that individual, partnership, corporation or other entity performing trauma registry services under a contractual agreement with the department.

(3) "Deidentified information" means records and information contained in the trauma registry, including compilations and analyses thereof, which does not contain information which might identify a patient, health care facility or health care practitioner.

(4) "Department" means the bureau of emergency medical services of the Idaho department of health and welfare.

(5) "Trauma" is the result of an act or event that damages, harms or hurts a human being resulting in intentional or unintentional damage to the body resulting from acute exposure to mechanical, thermal, electrical, or chemical energy or from the absence of such essentials as heat or oxygen.

(6) "Trauma registry" means the population based data system that provides ongoing and systematic collection, analysis, interpretation, and dissemination of information related to injury for system improvement, prevention and research activities. Elements in the registry shall describe the nature and scope of the injury problem, identify the inci-

dence and prevalence of traumatic injury, severity of injury, performance of out-of-hospital and hospital emergency medical systems, patient outcome, and the impact of trauma on the health care system.

(7) "Trauma system" means the organized approach to treating injured patients that establishes and promotes standards for patient transportation, equipment, and information analysis for effective and coordinated trauma care. Trauma systems represent a continuum of care that is fully integrated into the emergency medical services system and is a coordinated effort between out-of-hospital and hospital providers with the close cooperation of medical specialists in each phase of care. The focus is on prevention, coordination of acute care, and aggressive rehabilitation. Ideally, systems are designed to be inclusive of all injured patients requiring acute care facilities, striving to meet the needs of the patient, regardless of the severity of injury, geographic location or population density. Ultimately, a trauma system seeks to prevent injuries from happening and the reduction of death and disability when it does happen.

57-2003. ESTABLISHMENT OF TRAUMA REGISTRY. The department, or an authorized contractor of the department, shall:

(1) Establish a trauma registry to collect and analyze information on the incidence, severity, causes and outcomes of trauma, and other such data necessary to evaluate trauma and the health system's response to it;

(2) Establish the data elements and data dictionary, including child specific data elements that hospitals must report, and the time frame and format for reporting by adoption of rules in the manner provided in chapter 52, title 67, Idaho Code;

(3) Support, where necessary, data collection and abstraction by providing:

(a) A data collection system and technical assistance to each hospital; and

(b) Funding or, at the discretion of the department, personnel for collection and abstraction for each hospital.

57-2004. PARTICIPATION IN PROGRAM. (1) Each licensed hospital shall report each case of trauma which meets the inclusion criteria to the department or the authorized contractor of the department within one hundred eighty (180) days of treatment.

(2) Each report of trauma shall include information as defined by the department.

(3) The department or authorized contractor of the department shall have physical access to all records which would identify reportable cases and/or establish characteristics, treatment or medical status of reportable cases in the event that there has been a failure to report as delineated in subsections (1) and (2) of this section.

(4) Nothing in this chapter shall prevent the department or authorized contractor from identifying and reporting cases using data linkages with death records, other trauma registries, and other potential sources.

57-2005. CREATION OF TRAUMA REGISTRY FUND — PURPOSE. There is hereby created and established in the state treasury a fund to be known as the "Trauma Registry Fund" to which shall be deposited the revenues

derived from grants, appropriations or other sources of funds. All moneys now or hereafter in the trauma registry fund are hereby dedicated for the purpose of contracting for and obtaining the services of a continuous registry of all trauma incident patients in the state of Idaho and maintaining cooperative exchange of information with other states providing a similar trauma incident registry. The department of health and welfare, bureau of emergency medical services, is charged with the administration of this fund for the purposes specified herein. All claims against the fund shall be examined, audited and allowed in the manner now or hereafter provided by law for claims against the state of Idaho.

57-2006. CONFIDENTIALITY. (1) Information and records contained in the trauma registry shall be kept confidential and may be released only as provided by this chapter and the rules of the department.

(2) The department and authorized contractor may enter into agreements to exchange confidential information with other trauma registries in order to obtain complete reports of Idaho residents treated in other states and to provide information to other states regarding their residents treated in Idaho. Agreements sharing information from the trauma registry shall include a provision requiring the receiving agency to keep such information confidential.

(3) The department and authorized contractor may, in their discretion, publish or furnish to health researchers and the public, deidentified information including compilations and analyses thereof.

(4) The department and authorized contractor may furnish confidential information to other trauma registries, federal trauma programs, or health researchers in order to perform and collaborate with research studies. Persons and entities receiving confidential information for research purposes must comply with rules of the department relating to the confidentiality of trauma registry records and information.

(5) The department and authorized contractor may furnish confidential information relating to a specific licensed hospital, including compilations and analyses of such confidential information, to the specific licensed hospital to which it relates.

(6) Trauma registry records and information shall not be available for purposes of litigation except by order of the court. Any such order shall contain such protective provisions as are reasonable and necessary to prevent the public or further disclosure of the records and information and shall contain a provision requiring the destruction of the records and information when no longer needed for the litigation.

57-2007. LIABILITY. (1) No action for damages arising from the disclosure of confidential information may be maintained against any reporting entities or employees of such entities that participate in good faith in the reporting of trauma registry data in accordance with this chapter.

(2) No license of a health care facility or health care practitioner may be denied, suspended or revoked for the good faith disclosure of confidential information in accordance with this chapter.

(3) The immunity granted in subsections (1) and (2) of this section shall not be construed to apply to the unauthorized disclosure of confidential information when such disclosure is due to gross negligence or willful misconduct of the reporting entities.

SECTION 3. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

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

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

(4) Records of a personal nature as follows:

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

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

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

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

(e) Vital statistics records.

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

the provisions of section 63-3045B, Idaho Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Mortgage portfolio loan documents;

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

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

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

SECTION 4. This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation of rules as provided in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002.

SECTION 5. The provisions of this act shall be null, void and of no force and effect on and after January 1, 2008.

Approved March 27, 2002.

CHAPTER 330
(S.B. No. 1344)

AN ACT

RELATING TO CRIMINAL PROCEDURE AND HUMAN EMBRYOS OR FETUSES; AMENDING SECTION 18-4001, IDAHO CODE, TO PROVIDE THAT MURDER INCLUDES THE UNLAWFUL KILLING OF A HUMAN EMBRYO OR FETUS UNDER CERTAIN CONDITIONS; AMENDING SECTION 18-4006, IDAHO CODE, TO PROVIDE THAT MANSLAUGHTER INCLUDES THE UNLAWFUL KILLING OF A HUMAN EMBRYO OR FETUS WITHOUT MALICE AND CONSISTS OF THREE KINDS; AMENDING CHAPTER 40, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-4016, IDAHO CODE, TO PROVIDE A DEFINITION OF EMBRYO OR FETUS, TO PROHIBIT THE PROSECUTION OF CERTAIN PERSONS UNDER CERTAIN CONDITIONS AND TO PROVIDE APPLICATION; AMENDING SECTION 18-907, IDAHO CODE, TO PROVIDE THAT A PERSON COMMITS AGGRAVATED BATTERY WHO, IN COMMITTING BATTERY UPON THE PERSON OF A PREGNANT FEMALE, CAUSES GREAT BODILY HARM, PERMANENT DISABILITY OR PERMANENT DISFIGUREMENT TO AN EMBRYO OR FETUS, TO PROVIDE A DEFINITION OF "EMBRYO" OR "FETUS," TO PROHIBIT THE PROSECUTION OF CERTAIN PERSONS UNDER CERTAIN CONDITIONS AND TO PROVIDE APPLICATION.

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

SECTION 1. That Section 18-4001, Idaho Code, be, and the same is hereby amended to read as follows:

18-4001. MURDER DEFINED. Murder is the unlawful killing of a human being including, but not limited to, a human embryo or fetus, with malice aforethought or the intentional application of torture to a human being, which results in the death of a human being. Torture is the intentional infliction of extreme and prolonged pain with the intent to cause suffering. It shall also be torture to inflict on a human being extreme and prolonged acts of brutality irrespective of proof of intent to cause suffering. The death of a human being caused by such torture is murder irrespective of proof of specific intent to kill; torture causing death shall be deemed the equivalent of intent to kill.

SECTION 2. That Section 18-4006, Idaho Code, be, and the same is hereby amended to read as follows:

18-4006. MANSLAUGHTER DEFINED. Manslaughter is the unlawful killing of a human being including, but not limited to, a human embryo or fetus, without malice. It is of three (3) kinds:

1. Voluntary -- upon a sudden quarrel or heat of passion.

2. Involuntary -- in the perpetration of or attempt to perpetrate any unlawful act, other than arson, rape, robbery, kidnapping, burglary, or mayhem; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; or in the operation of any firearm or deadly weapon in a reckless, careless or negligent manner which produces death.

3. Vehicular -- in which the operation of a motor vehicle is a significant cause contributing to the death because of:

(a) the commission of an unlawful act, not amounting to a felony, with gross negligence; or

(b) the commission of a violation of section 18-8004 or 18-8006, Idaho Code; or

(c) the commission of an unlawful act, not amounting to a felony, without gross negligence.

Notwithstanding any other provision of law, any evidence of conviction under subsection 3.(b) shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of subsection 3.(b) means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

SECTION 3. That Chapter 40, 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 18-4016, Idaho Code, and to read as follows:

18-4016. DEFINITION OF HUMAN EMBRYO AND FETUS -- PROHIBITING THE PROSECUTION OF CERTAIN PERSONS. (1) For purposes of this chapter "embryo" or "fetus" shall mean any human in utero.

(2) Nothing in this chapter shall be construed to permit the prosecution:

(a) Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(b) Of any person for any medical treatment of the pregnant woman or her embryo or fetus; or

(c) Of any woman with respect to her embryo or fetus.

(3) Nothing in this chapter is intended to amend or nullify the provisions of chapter 6, title 18, Idaho Code.

SECTION 4. That Section 18-907, Idaho Code, be, and the same is hereby amended to read as follows:

18-907. AGGRAVATED BATTERY DEFINED. (1) A person commits aggravated battery who, in committing battery:

(a) Causes great bodily harm, permanent disability or permanent disfigurement; or

(b) Uses a deadly weapon or instrument; or

(c) Uses any vitriol, corrosive acid, or a caustic chemical of any nature; or

(d) Uses any poison or other noxious or destructive substance or liquid; or

(e) Upon the person of a pregnant female, causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus.

(2) For purposes of this section the terms "embryo" or "fetus" shall mean any human in utero.

(3) Nothing in this section shall be construed to permit the prosecution:

(a) Of any person for conduct relating to an abortion for which the consent of the pregnant female, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law.

(b) Of any person for any medical treatment of the pregnant female or her embryo or fetus; or

(c) Of any female with respect to her embryo or fetus.

(4) Nothing in this chapter is intended to amend or nullify the provisions of chapter 6, title 18, Idaho Code.

Approved March 27, 2002.

CHAPTER 331
(S.B. No. 1351, As Amended)

AN ACT

RELATING TO DOMESTIC VIOLENCE; AMENDING SECTION 39-6303, IDAHO CODE, TO FURTHER DEFINE AND REVISE TERMS.

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

SECTION 1. That Section 39-6303, Idaho Code, be, and the same is hereby amended to read as follows:

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

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

(a) The nature of the relationship;

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

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

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

(3) "Family ~~or household~~ member" means spouses, former spouses~~,~~ and persons related by blood, adoption or marriage.~~, persons who reside or have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.~~

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

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

(~~5~~6) "Judicial day" means any day upon which court business may be transacted as provided in sections 1-1606 and 1-1607, Idaho Code.

(~~6~~7) "Protection order" means any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued:

(a) Pursuant to this chapter;

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

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

Approved March 27, 2002.

CHAPTER 332
(S.B. No. 1375)

AN ACT

RELATING TO THE BOARD OF TAX APPEALS; AMENDING SECTION 63-3813, IDAHO CODE, TO PROVIDE A FINAL DECISION OR ORDER OF THE BOARD OF TAX APPEALS DIRECTING A MARKET VALUE CHANGE FOR TAXABLE PROPERTY THAT IS NOT FURTHER APPEALED SHALL BE FIXED FOR THE CURRENT YEAR APPEALED AND THERE SHALL BE NO INCREASE IN VALUE FOR THE SUBSEQUENT ASSESSMENT YEAR WHEN NO PHYSICAL CHANGE OCCURS TO THE PROPERTY AND TO PROVIDE THAT ANNUAL TRENDING OR EQUALIZATION APPLIED TO ALL PROPERTIES OF A PROPERTY CLASS OR CATEGORY WITHIN THE COUNTY OR A CLEARLY DEFINED AREA SHALL STILL APPLY; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3813, Idaho Code, be, and the same is hereby amended to read as follows:

63-3813. CONCLUSIVE DECISION. In all cases which are not appealed to the district court within the prescribed time, the decision of the board of tax appeals shall be conclusive and all records shall be corrected to comply with the decision of the board. A final decision or order of the board of tax appeals directing a market value change for taxable property that is not further appealed shall be fixed for the current year appealed and there shall be no increase in value for the subsequent assessment year when no physical change occurs to the property; provided however, that annual trending or equalization applied to

all properties of a property class or category within the county or a clearly defined area shall still apply. If the order requires repayment or refund of taxes these shall be repaid or refunded by the proper authorities and, if the order affirms or establishes a liability for the payment of taxes, the usual procedure for collection of such taxes shall continue or commence.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2002.

Approved March 27, 2002.

CHAPTER 333
(S.B. No. 1391, As Amended, As Amended in the House)

AN ACT

RELATING TO ANNEXATION BY MUNICIPAL CORPORATIONS; REPEALING SECTION 50-222, IDAHO CODE; AMENDING CHAPTER 2, TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 50-222, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE GENERAL AUTHORITY, TO PROVIDE FOR CLASSIFICATIONS OF LAND ANNEXATIONS, TO PROVIDE FOR EVIDENCE OF CONSENT TO ANNEXATION, TO PROVIDE FOR CERTAIN ANNEXATION PROCEDURES, TO PROVIDE JUDICIAL REVIEW AND TO PROVIDE FOR ANNEXATION OF NONCONTIGUOUS MUNICIPAL AIRFIELDS; REPEALING SECTION 50-222A, IDAHO CODE; AMENDING SECTION 55-2505, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE EXEMPTION FROM DISCLOSURE OF TRANSFERS OF NEWLY CONSTRUCTED RESIDENTIAL PROPERTY THAT PREVIOUSLY HAS NOT BEEN INHABITED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-2508, IDAHO CODE, TO PROVIDE THAT A SELLER'S DISCLOSURE STATEMENT SHALL INCLUDE THREE QUESTIONS RELATIVE TO NEWLY CONSTRUCTED RESIDENTIAL REAL PROPERTY THAT PREVIOUSLY HAS NOT BEEN INHABITED; AND AMENDING SECTION 67-6526, IDAHO CODE, TO PROVIDE A DEMAND PROCEDURE TO FACILITATE COMPLIANCE WITH LAW FOR THOSE COUNTIES AND CITIES WHICH HAVE NOT ADOPTED REQUIRED ORDINANCES PROVIDING FOR THE IDENTIFICATION OF AN AREA OF CITY IMPACT WITHIN THE UNINCORPORATED AREA OF THE COUNTY OR FOR APPLICATION OF PLANS AND ORDINANCES FOR SUCH AREA OF CITY IMPACT, TO PROVIDE FOR A REVIEW EVERY TEN YEARS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 50-222, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 2, Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 50-222, Idaho Code, and to read as follows:

50-222. ANNEXATION BY CITIES. (1) Legislative intent. The legislature hereby declares and determines that it is the policy of the state of Idaho that cities of the state should be able to annex lands which

are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax-supported and fee-supported municipal services, to enable the orderly development of private lands which benefit from the cost-effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.

(2) General authority. Cities have the authority to annex land into a city upon compliance with the procedures required in this section. In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed between the annexing city and the governing board of the highway agency providing road maintenance at the time of annexation. Provided further, that said city council shall not have the power to declare such land, lots or blocks a part of said city if they will be connected to such city only by a shoestring or strip of land which comprises a railroad or highway right-of-way.

(3) Annexation classifications. Annexations shall be classified and processed according to the standards for each respective category set forth herein. The three (3) categories of annexation are:

(a) Category A: Annexations wherein all private landowners raise no objection to annexation, or annexations of any residential enclaved lands of less that one hundred (100) privately-owned parcels, irrespective of surface area, which are surrounded on all sides by land within a city or which are bounded on all sides by lands within a city and by lands for which owner approval must be given pursuant to subsection (5)(b)(v) of this section, or which are bounded on all sides by lands within a city and by the boundary of the city's area of city impact.

(b) Category B: Annexations wherein:

(i) The subject lands contain less than one hundred (100) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation; or

(ii) The subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have evidenced their consent to annexation at the outset of the annexation process; or

(iii) The lands are the subject of a development moratorium or a water or sewer connection restriction imposed by state or local health or environmental agencies; provided such lands shall not be counted for purposes of determining the number of separate private ownerships and platted lots of record aggregated to determine the appropriate category.

(c) Category C: Annexations wherein the subject lands contain more than one hundred (100) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have not evidenced their consent to annexation at the outset of the annexation process.

(4) Evidence of consent to annexation. For purposes of this section, prior consent to annex shall be deemed given when evidenced by written authorization or approval executed by the owner or the owner's authorized agent. Consent shall be implied for the area of all lands connected to a water or wastewater collection system operated by the

city and for lands subject to a written consent to annex recorded in the county recorder's office. Written consent to annex lands, if recorded in the county recorder's office, shall be binding upon subsequent purchasers, heirs, or assigns of lands addressed in the consent. Lands need not be contiguous or adjacent to the city limits at the time the landowner consents to annexation for the property to be subject to a valid consent to annex; provided however, no annexation of lands shall occur, irrespective of consent, until such land becomes contiguous or adjacent to such city.

(5) Annexation procedures. Annexation of lands into a city shall follow the procedures applicable to the category of lands as established by this section. The implementation of any annexation proposal wherein the city council determines that annexation is appropriate shall be concluded with the passage of an ordinance of annexation.

(a) Procedures for category A annexations: Lands lying contiguous or adjacent to any city in the state of Idaho may be annexed by the city if the proposed annexation meets the requirements of category A. Upon determining that a proposed annexation meets such requirements, a city may initiate the planning and zoning procedures set forth in chapter 65, title 67, Idaho Code, to establish the comprehensive planning policies, where necessary, and zoning classification of the lands to be annexed.

(b) Procedures for category B annexations: A city may annex lands that would qualify under the requirements of category B annexation if the following requirements are met:

(i) The lands are contiguous or adjacent to the city and lie within the city's area of city impact;

(ii) The land is laid off into lots or blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres, or whenever the land is surrounded by the city. Splits of ownership which occurred prior to January 1, 1975, and which were the result of placement of public utilities, public roads or highways, or railroad lines through the property shall not be considered as evidence of an intent to develop such land and shall not be sufficient evidence that the land has been laid off or subdivided in lots or blocks. A single sale after January 1, 1975, of five (5) acres or less to a family member of the owner for the purpose of constructing a residence shall not constitute a sale within the meaning of this section. For purposes of this section, "family member" means a natural person or the spouse of a natural person who is related to the owner by blood, adoption or marriage within the first degree of consanguinity;

(iii) Preparation and publication of a written annexation plan, appropriate to the scale of the annexation contemplated, which includes, at a minimum, the following elements:

(A) The manner of providing tax-supported municipal services to the lands proposed to be annexed;

(B) The changes in taxation and other costs, using exam-

ples, which would result if the subject lands were to be annexed;

(C) The means of providing fee-supported municipal services, if any, to the lands proposed to be annexed;

(D) A brief analysis of the potential effects of annexation upon other units of local government which currently provide tax-supported or fee-supported services to the lands proposed to be annexed; and

(E) The proposed future land use plan and zoning designation or designations, subject to public hearing, for the lands proposed to be annexed;

(iv) Compliance with the notice and hearing procedures governing a zoning district boundary change as set forth in section 67-6511, Idaho Code, on the question of whether the property should be annexed and, if annexed, the zoning designation to be applied thereto; provided however, the initial notice of public hearing concerning the question of annexation and zoning shall be published in the official newspaper of the city and mailed by first class mail to every property owner with lands included in such annexation proposal not less than twenty-eight (28) days prior to the initial public hearing. All public hearing notices shall establish a time and procedure by which comments concerning the proposed annexation may be received in writing and heard and, additionally, public hearing notices delivered by mail shall include a one (1) page summary of the contents of the city's proposed annexation plan and shall provide information regarding where the annexation plan may be obtained without charge by any property owner whose property would be subject to the annexation proposal.

(v) In addition to the standards set forth elsewhere in this section, annexation of the following lands must meet the following requirements:

(A) Property, owned by a county or any entity within the county, that is used as a fairgrounds area under the provisions of chapter 8, title 31, Idaho Code, or chapter 2, title 22, Idaho Code, must have the consent of a majority of the board of county commissioners of the county in which the property lies; and

(B) Property, owned by a nongovernmental entity, that is used to provide outdoor recreational activities to the public and that has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services must have the express written permission of the nongovernmental entity owner.

(vi) After considering the written and oral comments of property owners whose land would be annexed and other affected persons, the city council may proceed with the enactment of an ordinance of annexation and zoning. In the course of the consideration of any such ordinance, the city must make express findings, to be set forth in the minutes of the city council meeting at which the annexation is approved, as follows:

(A) The land to be annexed meets the applicable requirements of this section and does not fall within the exceptions or conditional exceptions contained in this section;

(B) The annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city;

(C) The annexation is reasonably necessary for the orderly development of the city;

(vii) Notwithstanding any other provision of this section, railroad right-of-way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right-of-way.

(c) Procedures for category C annexations: A city may annex lands that would qualify under the requirements of category C annexation if the following requirements are met:

(i) Compliance with the procedures governing category B annexations; and

(ii) Evidence of consent to annexation based upon the following procedures:

(A) Following completion of all procedures required for consideration of a category B annexation, but prior to enactment of an annexation ordinance and upon an affirmative action by the city council, the city shall mail notice to all private landowners owning lands within the area to be annexed, exclusive of the owners of lands that receive water or sewer service and owners of lands that are subject to a recorded consent to annex. Such notice shall invite property owners to either give written consent or express written opposition to the annexation, include a description of how that consent or opposition can be made and where it can be filed, and inform the landowners where the entire record of the subject annexation may be examined. Such mailed notice shall also include a legal description of the lands proposed for annexation and a simple map depicting the location of the subject lands.

(B) Each landowner desiring to consent to or oppose the proposed annexation must submit the consent or opposition, in writing, to the city clerk by a date specified in the notice, which date shall not be sooner than twenty-one (21) days after the date of the mailing of such notice.

(C) After the date specified in the notice for receipt of written consent or opposition, the city clerk shall compile and present to the city council a report setting forth: (i) the total physical area sought to be annexed, and (ii) the total physical area of the lands, as expressed in acres or square feet, whose owners have consented in writing to the annexation, plus the area of all lands receiving water or sewer service from the city and the area of all lands subject to a recorded consent to annex. Objections received after the conclusion of the twenty-one (21) day period shall not be considered unless the late objection is due to the city's failure to follow the procedures provided herein. Objections received from owners of lands subject to a recorded consent to annex, or from owners receiving water or sewer service from the city, shall not be considered objections for purposes of

this section. The clerk shall report the results to the city council.

(D) Upon receiving such report, the city council shall review the results and may thereafter confirm whether consent was received from the owners of a majority of the land areas and those providing written consent, in addition to all lands subject to the implied consent provisions set forth herein and those subject to consent of record in the office of the county recorder. The results of the report shall be reflected in the minutes of the city council. If the report as accepted by the city council confirms that owners of more land area have consented to annexation than oppose such annexation, the city council may enact an ordinance of annexation, which thereafter shall be published and become effective according to the terms of the ordinance. If the report confirms that owners of more land area oppose annexation than consent to such annexation, the category C annexation shall not be authorized.

(6) The decision of a city council to annex and zone lands as a category B or category C annexation shall be subject to judicial review in accordance with the procedures provided in chapter 52, title 67, Idaho Code, and pursuant to the standards set forth in section 67-5279, Idaho Code. Any such appeal shall be filed by an affected person in the appropriate district court no later than twenty-eight (28) days after the date of publication of the annexation ordinance. All cases in which there may arise a question of the validity of any annexation under this section shall be advanced as a matter of immediate public interest and concern, and shall be heard by the district court at the earliest practicable time.

(7) Annexation of noncontiguous municipal airfield. A city may annex land that is not contiguous to the city and is occupied by a municipally owned or operated airport or landing field. However, a city may not annex any other land adjacent to such noncontiguous facilities which is not otherwise annexable pursuant to this section.

SECTION 3. That Section 50-222A, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 55-2505, Idaho Code, be, and the same is hereby amended to read as follows:

55-2505. EXEMPTIONS. The provisions of this chapter do not apply to any transfer of residential real property that is any of the following:

(1) A transfer pursuant to court order including, but not limited to, a transfer ordered by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for specific performance of a contract or other agreement between persons;

(2) A transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

(3) A transfer to a beneficiary of a deed of trust by a trustor in default;

(4) A transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage;

(5) A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale occurring within one (1) year of foreclosure on the default;

(6) A transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;

(7) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;

(8) A transfer from one (1) co-owner to one (1) or more other co-owners;

(9) A transfer made to the transferor's spouse or to one (1) or more persons in the lineal line of consanguinity of one (1) or more of the transferors;

(10) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;

(11) A transfer to or from the state, a political subdivision of the state, or another governmental entity;

(12) A transfer that involved newly constructed residential real property that previously has not been inhabited, except that disclosure of annexation and city service status shall be declared by the sellers of such newly constructed residential real property in accordance with the provisions of section 55-2508, Idaho Code;

(13) A transfer to a transferee who has occupied the property as a personal residence for one (1) or more years immediately prior to the transfer;

(14) A transfer from a transferor who both has not occupied the property as a personal residence within one (1) year immediately prior to the transfer and has acquired the property through inheritance or devise;

(15) A transfer by a relocation company to a transferee within one (1) year from the date that the previous owner occupied the property~~.~~;

(16) A transfer from a decedent's estate.

SECTION 5. That Section 55-2508, Idaho Code, be, and the same is hereby amended to read as follows:

55-2508. DISCLOSURE FORM. The disclosures required by the provisions of this article pertaining to the property proposed to be transferred are set forth in and shall be made on a copy of the following disclosure form or an alternative form as provided in section 55-2506, Idaho Code:

SELLER PROPERTY DISCLOSURE FORM

SELLER'S NAME AND ADDRESS: .....

Section 55-2501, et seq., Idaho Code, requires Sellers of residential real property to complete a property condition disclosure form.

PURPOSE OF STATEMENT: This is a statement of the conditions and information concerning the property known by the Seller. Unless otherwise advised, the Seller does not possess any expertise in construction, architectural, engineering or any other specific areas related to the construction or condition of the improvements on the property. Other than having lived at or owning the property, the Seller possesses no greater knowledge than that which could be obtained upon a careful inspection of the property by the potential buyer. Unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. It is not a warranty of any kind by the Seller or by any agent representing any Seller in this transaction. It is not a substitute for any inspections. Purchaser is encouraged to obtain his/her own professional inspections. Notwithstanding that transfer of newly constructed residential real property that previously has not been inhabited is exempt from disclosure pursuant to section 55-2505, Idaho Code, Sellers of such newly constructed residential real property shall disclose information regarding annexation and city services in the form as prescribed in questions 1., 2. and 3.

1. Is the property located in an area of city impact, adjacent or contiguous to a city limits, and thus legally subject to annexation by the city? .... Yes .... No

2. Does the property, if not within city limits, receive any city services, thus making it legally subject to annexation by the city? .... Yes .... No

3. Does the property have a written consent to annex recorded in the county recorder's office, thus making it legally subject to annexation by the city? .... Yes .... No

4. All appliances and service systems included in the sale, (such as refrigerator/freezer, range/oven, dishwasher, disposal, hood/fan, central vacuum, microwave oven, trash compactor, smoke detectors, tv antenna/dish, fireplace/wood stove, water heater, garage door opener, pool/hot tub, etc.) are functioning properly except: (please list and explain) .....
.....
.....

~~2~~5. Specify problems with the following:

Basement water .....
Foundation .....
Roof condition and age .....
Well (type) ..... problem .....
Septic system (type) ..... problem .....
Plumbing .....
Drainage .....
Electrical .....
Heating .....

~~3~~6. Describe any conditions that may affect your ability to clear title (such as encroachments, easements, zoning violations, lot line disputes, etc.): .....
.....

~~4~~7. Are you aware of any hazardous materials or pest infestations on the property? .....
~~5~~8. Have any substantial additions or alterations been made without a building permit? .....
~~6~~9. Any other problems, including legal, physical or other not listed above that you know concerning the property: .....

The Seller certifies that the information herein is true and correct to the best of Seller's knowledge as of the date signed by the Seller. The Seller is familiar with the residential real property and each act performed in making a disclosure of an item of information is made and performed in good faith.

I/we acknowledge receipt of a copy of this statement.

Seller:	Buyer:
.....	.....
Date:	Date: .....
.....	.....
Date:	Date: .....

SECTION 6. That Section 67-6526, Idaho Code, be, and the same is hereby amended to read as follows:

67-6526. AREAS OF CITY IMPACT -- NEGOTIATION PROCEDURE. (a) The governing board of each county and each city therein shall adopt by ordinance following the notice and hearing procedures provided in section 67-6509, Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted. Subject to the provisions of section 50-222, Idaho Code, an area of city impact must be established before a city may annex adjacent territory. This separate ordinance shall provide for one (1) of the following:

(1) Application of the city plan and ordinances adopted under this chapter to the area of city impact; or

(2) Application of the county plan and ordinances adopted under this chapter to the area of city impact; or

(3) Application of any mutually agreed upon plan and ordinances adopted under this chapter to the area of city impact.

Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.

(b) If the requirements of section 67-6526(a), Idaho Code, ~~are--not met--by--January--1,-2000,-the~~ have not been met, either the city or the county may demand compliance with this section by providing written notice to the other of said demand for compliance. Once a demand has been made, the city shall select its representative as hereinafter provided, within thirty (30) days of said demand, and the process set forth in this subsection shall commence. The county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days after the city officials have been confirmed by the council, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county gov-

erning boards an area of city impact together with plan and ordinance requirements. The recommendations shall be submitted to the governing boards within one hundred eighty (180) days after the selection of the three (3) ~~at-large~~ members at large and shall be acted upon by the governing boards within sixty (60) days of receipt. If the city or county fails to enact ordinances providing for an area of city impact, plan, and ordinance requirements, either the city or county may seek a declaratory judgment from the district court identifying the area of city impact, and plan and ordinance requirements. In defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future.

(c) If areas of city impact overlap, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners shall, upon a request from either city, within thirty (30) days, recommend adjustments to the areas of city impact which shall be adopted by ordinance by the cities following the notice and hearing procedures provided in section 67-6509, Idaho Code. If any city objects to the recommendation of the board of county commissioners, the county shall conduct an election, subject to the provisions of section 34-106, Idaho Code, and establish polling places for the purpose of submitting to the qualified electors residing in the overlapping impact area, the question of which area of city impact the electors wish to reside. The results of the election shall be conclusive and binding, and no further proceedings shall be entertained by the board of county commissioners, and the decision shall not be appealable by either city involved. The clerk of the board of county commissioners shall by abstract of the results of the election, certify that fact, record the same and transmit copies of the original abstract of the result of the election to the clerk of the involved cities.

(d) Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. In the event the city and county cannot agree, the judicial review process of subsection (b) of this section shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section.

(e) Prior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation. Each commission shall have a reasonable time fixed by the governing board to make its recommendations to the governing board. The governing boards shall undertake a review at least every ten (10) years of the city impact plan and ordinance requirements to determine whether renegotiations are in the best interests of the citizenry.

(f) This section shall not preclude growth and development in areas of any county within the state of Idaho which are not within the areas of city impact provided for herein.

(g) If the area of impact has been delimited pursuant to the provisions of subsection (a) (1) of this section, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the

proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission, may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code. In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of city impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of section 67-6504, Idaho Code.

Approved March 27, 2002.

CHAPTER 334
(S.B. No. 1414)

AN ACT

RELATING TO THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND; AMENDING CHAPTER 34, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-3409, IDAHO CODE, TO PROVIDE FOR A GENERAL FUND CONTINGENCY RESERVE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 34, 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 33-3409, Idaho Code, and to read as follows:

33-3409. GENERAL FUND CONTINGENCY RESERVE. The board of trustees of the Idaho school for the deaf and the blind may create and establish a general fund contingency reserve within the annual Idaho school for the deaf and the blind budget. Such general fund contingency reserve shall not exceed five percent (5%) of the total general fund appropriation to the Idaho school for the deaf and the blind. Disbursements from this continuously appropriated fund may be made as the board of trustees determines necessary for contingencies that may arise. The balance of the contingency fund may be accumulated beyond the budgeted fiscal year, but shall never exceed five percent (5%) of the current year's appropriation to the Idaho school for the deaf and the blind.

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

Approved March 27, 2002.

CHAPTER 335
(S.B. No. 1496)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8004A, IDAHO CODE, TO EXTEND THE APPLICATION OF SPECIFIED ENHANCED PENALTIES TO CERTAIN PERSONS WHO HAVE PREVIOUSLY PLED GUILTY TO OR BEEN FOUND GUILTY OF ONE OR MORE SUBSEQUENT VIOLATIONS OF DESIGNATED STATUTORY PROHIBITIONS RELATING TO ALCOHOL, DRUGS OR ANY OTHER INTOXICANTS, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 18-8004A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004A. PENALTIES — PERSONS UNDER 21 WITH LESS THAN 0.08 ALCOHOL CONCENTRATION. (1) Any person found guilty of a violation of subsection (1)(d) of section 18-8004, Idaho Code, shall be guilty of a misdemeanor; and, for a first offense:

(a) Shall be fined an amount not to exceed one thousand dollars ($1,000);

(b) Shall have his driving privileges suspended by the court for a period of one (1) year, ninety (90) days of which shall not be reduced and during which period absolutely no driving privileges of any kind may be granted. After the period of absolute suspension of driving privileges has passed, the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court;

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for any subsequent violation of the provisions of this section or any violation of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall be required to undergo an alcohol evaluation and otherwise comply with the requirements of sections 18-8005(9) and 18-8005(12), Idaho Code, as ordered by the court.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b), (c) or (d), Idaho Code, or any substantially conforming foreign criminal violation, as defined in section 18-8005(8), Idaho Code, notwithstanding the form of the judgment or withheld judgment, is guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of five (5) days, as required by 23 U.S.C. section 164, not to exceed thirty (30) days;

(b) Shall be fined an amount of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000);

(c) Shall have his driving privileges suspended by the court for a

period not to exceed two (2) years, one (1) year of which shall be absolute and shall not be reduced and during which period absolutely no driving privileges of any kind may be granted;

(d) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period; and

(e) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of this section or section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(f) Shall undergo an alcohol evaluation and comply with the other requirements of subsections (9) and (12) of section 18-8005, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b), (c) or (d), Idaho Code, or any substantially conforming foreign criminal violation, within five (5) years, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of ten (10) days, as required by 23 U.S.C. section 164, not to exceed six (6) months;

(b) Shall be fined an amount of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000);

(c) Shall surrender his driver's license or permit to the court;

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year, during which period absolutely no driving privileges of any kind may be granted, or until such person reaches the age of twenty-one (21) years, whichever is greater; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period; and

(f) Shall undergo an alcohol evaluation and comply with all other requirements imposed by the court pursuant to sections 18-8005(9) and 18-8005(12), Idaho Code.

(4) All provisions of section 18-8005, Idaho Code, not otherwise in conflict with or provided for in this section shall apply to any sentencing imposed under the provisions of this section.

(5) A person violating the provisions of section 18-8004(1)(d), Idaho Code, may be prosecuted under title ~~16~~ 20, Idaho Code.

Approved March 27, 2002.

CHAPTER 336
(S.B. No. 1504)

AN ACT

APPROPRIATING MONEYS TO THE STATE CONTROLLER FOR FISCAL YEAR 2003; PRESCRIBING BILLING METHODOLOGIES FOR STATEWIDE ACCOUNTING AND STATEWIDE PAYROLL; REQUIRING CERTAIN PURCHASES BE SUBJECT TO CERTAIN CONDITIONS; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the State Controller the following amounts, to be expended for the designated programs from the listed funds, for the period July 1, 2002, through June 30, 2003:

I. ADMINISTRATION:	
FROM:	
General Fund	$ 450,500
II. STATEWIDE ACCOUNTING:	
FROM:	
General Fund	$ 2,814,400
III. STATEWIDE PAYROLL:	
FROM:	
General Fund	$ 2,275,500
IV. COMPUTER CENTER:	
FROM:	
Data Processing Services Fund	$ 6,275,600
TOTAL	$11,816,000

SECTION 2. Any other provision of law notwithstanding, the State Controller shall assess state agencies in accordance with the statewide cost allocation plan as described in Section 67-3531, Idaho Code, for Statewide Accounting services and Statewide Payroll services. The State Controller shall issue a single bill for these services. Funds collected shall be placed in the Indirect Cost Recovery Fund. On June 30, 2003, the State Controller shall transfer the amount assessed in the statewide cost allocation plan from the Indirect Cost Recovery Fund to the General Fund.

SECTION 3. Any purchases or obligations involving information technology items for the period July 1, 2002, through June 30, 2003, are to be submitted to and coordinated with the Information Technology Resource Management Council.

SECTION 4. 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 5. There is hereby reappropriated to the State Controller, the unexpended and unencumbered cash balance of any dedicated funds appropriation made to the State Controller for fiscal year 2002, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003.

SECTION 6. In accordance with Section 67-3519, Idaho Code, the State Controller is authorized no more than one hundred one and eighty-five hundredths (101.85) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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 27, 2002.

CHAPTER 337
(S.B. No. 1519)

AN ACT

RELATING TO CRIMINAL PROCEDURE AND HUMAN EMBRYOS OR FETUSES; AMENDING SECTION 18-4016, IDAHO CODE, AS ADDED BY SECTION 3, SENATE BILL NO. 1344, ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-SIXTH IDAHO LEGISLATURE, TO PROHIBIT THE PROSECUTION OF CERTAIN PERSONS ARISING FROM THE KILLING OF AN EMBRYO OR FETUS; AND AMENDING SECTION 18-907, IDAHO CODE, AS AMENDED BY SECTION 4, SENATE BILL NO. 1344, ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-SIXTH IDAHO LEGISLATURE, TO CLARIFY WHEN THE PROSECUTION OF CERTAIN PERSONS IS PROHIBITED.

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

SECTION 1. That Section 18-4016, Idaho Code, as added by Section 3, Senate Bill No. 1344, as enacted by the Second Regular Session of the Fifty-sixth Idaho Legislature, be, and the same is hereby amended to read as follows:

18-4016. DEFINITION OF HUMAN EMBRYO AND FETUS -- PROHIBITING THE PROSECUTION OF CERTAIN PERSONS. (1) For purposes of this chapter "embryo" or "fetus" shall mean any human in utero.

(2) Nothing in this chapter, arising from the killing of an embryo or fetus, shall be construed to permit the prosecution:

(a) Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(b) Of any person for any medical treatment of the pregnant woman or her embryo or fetus; or

(c) Of any woman with respect to her embryo or fetus.

(3) Nothing in this chapter is intended to amend or nullify the provisions of chapter 6, title 18, Idaho Code.

SECTION 2. That Section 18-907, Idaho Code, as amended by Section 4, Senate Bill No. 1344, as enacted by the Second Regular Session of the Fifty-sixth Idaho Legislature, be, and the same is hereby amended to read as follows:

18-907. AGGRAVATED BATTERY DEFINED. (1) A person commits aggravated battery who, in committing battery:

(a) Causes great bodily harm, permanent disability or permanent disfigurement; or

(b) Uses a deadly weapon or instrument; or

(c) Uses any vitriol, corrosive acid, or a caustic chemical of any nature; or

(d) Uses any poison or other noxious or destructive substance or liquid; or

(e) Upon the person of a pregnant female, causes great bodily harm, permanent disability or permanent disfigurement to an embryo or fetus.

(2) For purposes of this section the terms "embryo" or "fetus" shall mean any human in utero.

(3) ~~Nothing in this section~~ There shall be ~~construed to permit the~~ no prosecution under subsection (1)(e) of this section:

(a) Of any person for conduct relating to an abortion for which the consent of the pregnant female, or person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law.

(b) Of any person for any medical treatment of the pregnant female or her embryo or fetus; or

(c) Of any female with respect to her embryo or fetus.

(4) Nothing in this chapter is intended to amend or nullify the provisions of chapter 6, title 18, Idaho Code.

Approved March 27, 2002.

CHAPTER 338
(S.B. No. 1522)

AN ACT

APPROPRIATING MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; APPROPRIATING ADDITIONAL MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 2002; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; AND DECLARING AN EMERGENCY FOR SECTION 4 OF THIS ACT.

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

SECTION 1. There is hereby appropriated to the Superintendent of Public Instruction/State Department of Education the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
STATE DEPARTMENT OF EDUCATION:					
FROM:					
General Fund	$2,829,000	$1,680,300		$ 967,700	$ 5,477,000
Driver's Education Fund	144,400	148,800		2,073,900	2,367,100
Public Instruction Fund	255,500	955,900		11,200	1,222,600
Miscellaneous Revenue Fund	120,000	326,000	$4,000		450,000
Student Tuition Recovery Fund		5,300		49,600	54,900
Federal Grant Fund	2,698,000	1,798,100		116,410,900	120,907,000
Indirect Cost Recovery Fund	317,100	187,500			504,600
Data Processing Services Fund	65,300	42,500			107,800
TOTAL	$6,429,300	$5,144,400	$4,000	$119,513,300	$131,091,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Department of Education is authorized no more than one hundred sixteen (116) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that an amount, not to exceed $1,000 of the General Fund moneys appropriated in Section 1 of this act, may be used at the discretion of the Superintendent of Public Instruction to assist in defraying expenses relating to or resulting from the discharge of his official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 4. In addition to the appropriation made in Section 1, Chapter 320, Laws of 2001, there is hereby appropriated to the Superintendent of Public Instruction/State Department of Education the following amounts, to be expended according to the designated expense classes from the listed fund for the period July 1, 2001, through June 30, 2002:

FOR:	
Personnel Costs	$215,000
Operating Expenditures	3,285,000
TOTAL	$3,500,000

FROM:

Miscellaneous Revenue Fund	$3,500,000

SECTION 5. There is hereby reappropriated to the Superintendent of Public Instruction/State Department of Education, the unexpended and unencumbered balance of any Miscellaneous Revenue Fund moneys appropriated by Section 4 of this act, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, Section 4 of this act shall be in full force and effect on and after passage and approval.

Approved March 27, 2002.

CHAPTER 339
(S.B. No. 1528)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; AND AUTHORIZING FUND DEPOSITS.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the Idaho School for the Deaf and the Blind the following amounts, to be expended from the listed funds for the period July 1, 2002, through June 30, 2003:

FROM:

General Fund	$7,051,500
Idaho School for the Deaf and the Blind Income Fund	187,000
Federal Grant Fund	127,100
Miscellaneous Revenue Fund	103,100
TOTAL	$7,468,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho School for the Deaf and the Blind is authorized no more than one hundred twenty-one and fifty-two hundredths (121.52) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. There is hereby reappropriated to the State Board of Education for the Idaho School for the Deaf and the Blind, the unexpended and unencumbered balance of any funds, except the General Fund moneys appropriated by Section 1, Chapter 266, Laws of 2001, to be used for nonrecurring expenditures only for the period July 1, 2002, through June 30, 2003.

SECTION 4. The Idaho School for the Deaf and the Blind may deposit any funds appropriated by Section 1, Chapter 266, Laws of 2001, in any contingency reserve fund that may be provided by law.

Approved March 27, 2002.

CHAPTER 340
(S.B. No. 1529)

AN ACT

RELATING TO SALARIES OF STATE ELECTIVE OFFICERS; AMENDING SECTION 59-501, IDAHO CODE, TO PROVIDE SALARIES FOR THE GOVERNOR, LIEUTENANT GOVERNOR, SECRETARY OF STATE, STATE CONTROLLER, ATTORNEY GENERAL, STATE TREASURER AND STATE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE PERIOD FROM THE FIRST MONDAY IN JANUARY 2002, UNTIL THE FIRST MONDAY IN JANUARY 2007 AND TO DELETE OBSOLETE LANGUAGE.

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

SECTION 1. That Section 59-501, Idaho Code, be, and the same is hereby amended to read as follows:

59-501. SALARIES OF STATE ELECTIVE OFFICERS -- REGULAR PAYMENT -- TRAVELING EXPENSES -- FEES PROPERTY OF STATE. (1) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction shall, during their continuance in office, receive for their services compensation as follows:

~~Commencing on the first Monday in January 1999, until the first Monday in January 2000:~~

~~Governor, $92,500 per annum;~~

~~Lieutenant governor, $24,500 per annum;~~

~~Secretary of state, $75,000 per annum;~~

~~State controller, $75,000 per annum; said salary to be audited by the legislative council;~~

~~Attorney general, $82,500 per annum;~~

~~State treasurer, $75,000 per annum; and~~

~~State superintendent of public instruction, $75,000 per annum.~~

~~Commencing on the first Monday in January 2000, until the first Monday in January 2001:~~

~~Governor, $95,500 per annum;~~

~~Lieutenant governor, $25,250 per annum;~~

~~Secretary of state, $77,500 per annum;~~

~~State controller, $77,500 per annum; said salary to be audited by the legislative council;~~

~~Attorney general, $85,500 per annum;~~

~~State treasurer, $77,500 per annum; and~~

~~State superintendent of public instruction, $77,500 per annum.~~

~~Commencing on the first Monday in January 2001, until the first Monday in January 2002:~~

~~Governor, $98,500 per annum;~~

~~Lieutenant governor, $26,000 per annum;~~

~~Secretary of state, $80,000 per annum;~~
~~State controller, $80,000 per annum; said salary to be audited by the legislative council;~~
~~Attorney general, $88,500 per annum;~~
~~State treasurer, $80,000 per annum; and~~
~~State superintendent of public instruction, $80,000 per annum.~~
Commencing on the first Monday in January 2002, until the first Monday in January 2003:
Governor, $101,500 per annum;
Lieutenant governor, $26,750 per annum;
Secretary of state, $82,500 per annum;
State controller, $82,500 per annum; said salary to be audited by the legislative council;
Attorney general, $91,500 per annum;
State treasurer, $82,500 per annum; and
State superintendent of public instruction, $82,500 per annum.

(2) Such compensation shall be paid on regular pay periods as due out of the state treasury, and shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office; but no increase in the rate of compensation shall be made during the terms of such officers; provided, however, that the actual and necessary expenses of the governor, lieutenant governor, secretary of state, attorney general, state controller, state treasurer, and superintendent of public instruction while traveling within the state, or between points within the state, in the performance of official duties, shall be allowed and paid by the state; not however, exceeding such sum as shall be appropriated for such purpose.

(3) Actual and necessary subsistence expenses of the governor while traveling in connection with the performance of official duties are hereby expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. (Standard Travel Pay and Allowance Act of 1949).

(4) No officer named in this section shall receive, for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance and deposited with the state treasurer to the credit of the state.

Approved March 27, 2002.

CHAPTER 341
(H.B. No. 488, As Amended in the Senate)

AN ACT

RELATING TO ASSESSMENT OF REAL AND PERSONAL PROPERTY; STATING LEGISLATIVE INTENT, FINDINGS AND PURPOSE; AMENDING CHAPTER 6, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-602FF, IDAHO CODE, TO PROVIDE FOR A PARTIAL PROPERTY TAX EXEMPTION FOR PARCELS OF LAND IN A RURAL HOME SITE DEVELOPMENT PLAT UPON CERTAIN CONDITIONS OCCURRING AND TO DEFINE TERMS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. LEGISLATIVE INTENT, FINDINGS AND PURPOSE. (1) It is the intent of the Legislature to foster economic development in Idaho's smaller, rural counties. The Legislature finds that economic development and the opportunity for citizen economic opportunity that accompanies economic development is not occurring at a rate desired by residents of many rural, sparsely populated counties. The Legislature further finds that the capital necessary for economic development of real estate in smaller, rural counties is not available because the higher assessments imposed as a result of filing a development plat eliminate any potential for a return on that investment due to the uncertainty of the real estate market and the time required to market such platted developments in most small, rural counties.

(2) The purpose of Section 63-602FF, Idaho Code, is to create an economic development property tax climate in rural Idaho that will attract investment in real estate and real estate development and the economic opportunities and jobs that accompany that investment.

(3) It is the intent of the Legislature to provide for continued assessment of agricultural properties as land actively devoted to agriculture in small, rural counties, until that property has been subdivided, developed and transferred to an owner whose intended use of that property is as a residential or recreational home site, and that so doing will ultimately result in an increase in the taxable value of the county and economic prosperity for county residents that would not otherwise have occurred.

SECTION 2. That Chapter 6, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-602FF, Idaho Code, and to read as follows:

63-602FF. PARTIAL EXEMPTION FOR PARCELS OF LAND IN A RURAL HOME SITE DEVELOPMENT PLAT. (1) Each parcel of land in a rural home site development plat previously eligible for the exemption pursuant to section 63-602K, Idaho Code, shall continue to be eligible for the exemption until such time as improvements are being built upon the parcel. Once construction of the improvements has begun, no acreage in the parcel shall be eligible for the exemption pursuant to section 63-602K, Idaho Code, unless the requirements of the exemption have been met.

(2) For purposes of this section, the following definitions shall apply:

(a) "Plat" means the drawing, map or plan of a subdivision or a replatting of such, including certifications, descriptions and approvals.

(b) "Rural home site development plat" means a subdivision plat for the development of property outside the boundaries of an incorporated municipality within a county of less than one hundred thousand (100,000) population, recorded with the county recorder.

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, 2002.

Approved March 27, 2002.

CHAPTER 342
(H.B. No. 538)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN; RATIFYING AND APPROVING THE COMPREHENSIVE STATE WATER PLAN FOR THE LITTLE SALMON RIVER BASIN AS ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON OCTOBER 19, 2001; AND DECLARING AN EMERGENCY.

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

SECTION 1. That pursuant to Section 42-1734B(6), Idaho Code, the Comprehensive State Water Plan for the Little Salmon River Basin, adopted by resolution of the Idaho Water Resource Board on October 19, 2001, be, and the same is hereby ratified and approved. In accordance with Section 42-1734A, Idaho Code, the basin plan includes the protected river reach designations summarized as follows:

(1) Little Salmon River, Highway 95 bridge at river mile 24.7 (above "The Falls") to its confluence with the Salmon River (24.7 miles) - Recreational.

(2) Boulder Creek, headwaters to its confluence with the Little Salmon River (18.6 miles) - Recreational.

(3) Hard Creek, headwaters to its confluence with Hazard Creek (12.0 miles) - Recreational.

(4) Hazard Creek, Hazard Lake outlet to its confluence with the Little Salmon River (12.5 miles) - Recreational.

The following activities are prohibited within these reaches:

-Construction or expansion of dams or impoundments,

-Dredge or placer mining (including recreational dredge mining), and

-Mineral or sand and gravel extraction within the stream channel.

-Other alterations of the stream channel are prohibited, except as provided below.

The following activities are allowed if they do not impede fish and boat passage:

-Construction of water diversion works for domestic, commercial, municipal, industrial, agricultural, and hydropower uses; and

-Alterations of the stream channel for protection and maintenance of private property, for flood control, for public recreation facilities, and for fish and wildlife enhancement structures.

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

Approved March 27, 2002.

CHAPTER 343
(H.B. No. 569)

AN ACT
RELATING TO WATER RIGHTS; AMENDING SECTION 42-223, IDAHO CODE, TO PROVIDE ADDITIONAL CONDITIONS AND DEFENSES GOVERNING FORFEITURE OF WATER RIGHTS FOR NONUSE.

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

SECTION 1. That Section 42-223, Idaho Code, be, and the same is hereby amended to read as follows:

42-223. EXCEPTIONS OR DEFENSES TO FORFEITURE. A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section 42-222, Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section. The legislature does not intend through enactment of this section to preclude judicial or administrative recognition of other exceptions or defenses to forfeiture recognized in Idaho case law or other provisions of the Idaho Code.

(1) A water right appurtenant to land contracted in a federal cropland set-aside program shall not be lost or forfeited for nonuse during the contracted period. The running of any five (5) year period of nonuse for forfeiture of a water right shall be tolled during the time that the land remains in the cropland set-aside program.

(2) A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs.

(3) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to, discharge from dairy lagoons used in combination with or substituted for water diverted under the water right.

(4) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section 42-233a or 42-233b, Idaho Code.

(5) A water right shall not be lost or forfeited by a failure of the owner of the right to divert and apply the water to beneficial use while the water right is placed in the water supply bank or is retained in or rented from the water supply bank pursuant to sections 42-1761 through 42-1765A, Idaho Code, or while the water right is leased pursuant to sections 43-335 through 43-342, Idaho Code, or sections 42-2501 through 42-2509, Idaho Code, or while use of the water is made under any other provision of law authorizing the rental or lease of water rights.

(6) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water

right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

(7) No portion of a water right held by an irrigation district, a Carey Act operating company, or any other company, corporation, association, or entity which holds water rights for distribution to its landowners, shareholders or members shall be lost or forfeited due to nonuse by such landowners, shareholders or members, unless the nonuse is subject to the control of such entity.

(8) No portion of a water right held by an irrigation district shall be lost, forfeited or subject to forfeiture as a result of the exclusion of land from the district pursuant to chapter 11, title 43, Idaho Code, so long as any five (5) year period of nonuse following the exclusion does not result from circumstances over which the district has control.

Approved March 27, 2002.

CHAPTER 344
(H.B. No. 582)

AN ACT

RELATING TO THE DUTIES OF THE COUNTY ASSESSOR; AMENDING SECTION 63-301A, IDAHO CODE, TO FURTHER DEFINE CONSTRUCTION TO BE SHOWN ON THE NEW CONSTRUCTION ROLL TO INCLUDE CERTAIN EQUIPMENT OR FACILITIES USED IN CONJUNCTION WITH THE GENERATION OF ELECTRICITY AND TO PROVIDE EXCEPTIONS; AND DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

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

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

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

(a) The name of the taxpayer;

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

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

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

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

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

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

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

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

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

(d) Change of land use classification; or

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

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

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

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

Approved March 27, 2002.

CHAPTER 345
(H.B. No. 586, As Amended in the Senate)

AN ACT

RELATING TO BUILDING SAFETY; REPEALING CHAPTER 32, TITLE 39, IDAHO CODE; AMENDING THE HEADING FOR CHAPTER 41, TITLE 39, IDAHO CODE; AMENDING SECTION 39-4101, IDAHO CODE, TO REVISE LEGISLATIVE FINDING AND INTENT; AMENDING SECTION 39-4102, IDAHO CODE, TO REVISE CHAPTER TITLE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4103, IDAHO CODE, TO REVISE THE SCOPE OF THE CHAPTER AND EXEMPTIONS FROM APPLICATION OF THE CHAPTER; AMENDING SECTION 39-4104, IDAHO CODE, TO PROVIDE THAT THE CHAPTER APPLIES TO THE STATE AND THAT LOCAL GOVERNMENTS THAT ADOPT BUILDING CODES, IN THEIR DISCRETION, SHALL ENFORCE

ALL OR A PORTION OF THE PROVISIONS OF CHAPTER 41, TITLE 39, IDAHO CODE, THAT GOVERN APPLICATION BY LOCAL GOVERNMENTS; AMENDING SECTION 39-4105, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 39-4106, IDAHO CODE, TO REVISE THE NAME AND AUTHORITY OF THE IDAHO BUILDING CODE BOARD, TO REVISE TERMS OF MEMBERS AND MEETING REQUIREMENTS FOR THE BOARD, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4107, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE BOARD; REPEALING SECTION 39-4108, IDAHO CODE; AMENDING CHAPTER 41, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-4108, IDAHO CODE, TO PROVIDE FOR CERTIFICATION OF BUILDING INSPECTORS; REPEALING SECTION 39-4109, IDAHO CODE; AMENDING CHAPTER 41, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-4109, IDAHO CODE, TO PROVIDE FOR APPLICATION OF BUILDING SAFETY CODES; REPEALING SECTION 39-4110, IDAHO CODE; AMENDING SECTION 39-4111, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REMOVE LANGUAGE REFERENCING PERMIT REQUIREMENTS FOR COMMERCIAL COACHES AND MODULAR BUILDINGS AND TO PROHIBIT PERSONS FROM CONSTRUCTING, IMPROVING, EXTENDING OR ALTERING BUILDINGS, RESIDENCES OR STRUCTURES IN CERTAIN LOCAL GOVERNMENT JURISDICTIONS WITHOUT FIRST PROCURING APPLICABLE PERMITS; AMENDING SECTION 39-4112, IDAHO CODE, TO REVISE MAXIMUM PERMIT FEES; AMENDING SECTION 39-4113, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE PROVISIONS RELATING TO PLAN REVIEWS, TO PROVIDE FOR LIMITED REVIEW OF SCHOOL PLANS, TO REVISE PLAN REVIEW FEES, TO REMOVE LANGUAGE REQUIRING MANUFACTURERS TO CERTIFY BUILDING PLANS, TO REVISE REVIEW AND INSPECTION REQUIREMENTS FOR SCHOOL DISTRICT BUILDINGS AND FACILITIES, TO ADD REFERENCES TO SCHOOL FACILITIES AND TO PROVIDE THAT THE CHAPTER SHALL NOT LIMIT LOCAL GOVERNMENTS IN ISSUING PERMITS, REVIEWING PLANS AND PROVIDING BUILDING CODE ENFORCEMENT ACTIVITIES RELATED TO SCHOOL BUILDINGS AND FACILITIES WITHIN THEIR JURISDICTION; REPEALING SECTION 39-4114, IDAHO CODE; AMENDING SECTION 39-4115, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REVISE PROVISIONS RELATING TO DIVISION PERSONNEL; REPEALING SECTION 39-4116, IDAHO CODE; AMENDING CHAPTER 41, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-4116, IDAHO CODE, TO PROVIDE FOR LOCAL GOVERNMENT ADOPTION AND ENFORCEMENT OF BUILDING CODES; REPEALING SECTIONS 39-4116A AND 39-4117, IDAHO CODE; AMENDING SECTION 39-4120, IDAHO CODE, TO CLARIFY PERMISSIBLE GROUNDS FOR APPEALS TO THE BOARD; AMENDING SECTION 39-4121, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE THAT NO MODULAR BUILDING WHICH HAS BEEN APPROVED BY THE DIVISION SHALL BE MODIFIED PRIOR TO ITS INITIAL OCCUPANCY UNLESS APPROVAL OF SUCH MODIFICATION IS FIRST MADE BY THE DIVISION; AMENDING SECTION 39-4122, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE REFERENCE TO THE ADOPTED CODES, LAWS AND RULES PROMULGATED BY THE BOARD; AMENDING SECTION 39-4124, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-4125, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REMOVE REFERENCE TO REGULATIONS; AMENDING SECTION 39-4126, IDAHO CODE, TO PROHIBIT PERSONS FROM WILLFULLY VIOLATING RULES PROMULGATED BY THE ADMINISTRATOR OR THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 39-4127, IDAHO CODE; AMENDING SECTION 39-4128, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; REPEALING SECTIONS 39-4130 AND 39-4131, IDAHO CODE; REPEALING CHAPTER 23, TITLE 44, IDAHO CODE; AMENDING SECTION 44-2101A, IDAHO CODE, TO REVISE A CODE REFERENCE; AMENDING SECTION 56-701A, IDAHO CODE, TO REMOVE A CODE

REFERENCE AND TO FURTHER DEFINE A TERM; AMENDING SECTION 63-2401, IDAHO CODE, TO FURTHER DEFINE A TERM AND TO REVISE A CODE REFERENCE; AND AMENDING SECTION 67-6509A, IDAHO CODE, TO REVISE A CODE REFERENCE.

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

SECTION 1. That Chapter 32, Title 39, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That the Heading for Chapter 41, Title 39, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 41
IDAHO BUILDING CODE ~~ADVISORY~~ ACT

SECTION 3. That Section 39-4101, Idaho Code, be, and the same is hereby amended to read as follows:

39-4101. LEGISLATIVE FINDING AND INTENT. (1) Uniformity of building codes and uniformity in procedures for enforcing building safety codes throughout the ~~nation and~~ state are matters of ~~nationwide and~~ statewide concern and interest, in that uniformity would enhance elimination of obsolete, restricting, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.

~~The legislature also finds that the factory--production--of--housing and--other buildings presents unique problems with respect to uniformity of codes and inspections throughout this state and nation.~~

(2) It is the intent of the legislature to:

(a) Promote the health, safety and welfare of the occupants or users of buildings and structures ~~and the general public~~ subject to this chapter;

(b) Require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire safety, life safety and accessibility for those with disabilities;

(c) ~~Require~~ Establish, for jurisdictions enforcing building codes pursuant to this chapter, minimum standards and requirements in terms of performance, energy efficiency, effect upon construction costs and consistency with nationally accepted standards;

(d) Permit the use of modern technical methods, devices and improvements; and

(e) ~~Provide for a uniform interpretation of the building and safety codes for the state of Idaho~~ Clarify and establish roles of the various jurisdictions subject to this chapter.

SECTION 4. That Section 39-4102, Idaho Code, be, and the same is hereby amended to read as follows:

39-4102. SHORT TITLE. This ~~act~~ chapter shall be known as "The Idaho Building Code ~~Advisory~~ Act." ~~of 1975."~~

SECTION 5. That Section 39-4103, Idaho Code, be, and the same is hereby amended to read as follows:

39-4103. SCOPE -- EXEMPTIONS. ~~(1) The provisions of this chapter shall apply to all buildings and construction within the state of Idaho, except as otherwise provided in~~ This chapter authorizes the state division of building safety and local governments to adopt and enforce building codes pursuant to the provisions of this chapter. All buildings owned by any state government agency or entity, or which are constructed or renovated specifically for use or occupancy by any such state agency or entity, shall conform to the codes adopted in this chapter. The following is exempt from the provisions of this chapter:

~~(2) Structures~~ Equipment used primarily for industrial chemical process purposes and for mineral extraction and mineral processing purposes. ~~shall be exempt from this chapter except for~~ This exemption shall not include the erection and fabrication of new ~~structures,~~ boilers, pressure vessels and other equipment as required to condition the building for personnel comfort and safety. Equipment in this regard shall mean and shall be lim~~ited to~~ facilities or installations for heating, ventilating, air conditioning, refrigerating ~~facilities associated with air conditioning~~ equipment, elevators, dumbwaiters, escalators, and boilers and pressure vessels associated with building heating systems.

~~(3) Temporary facilities, as defined in section 39-4105(16), Idaho Code, shall be exempt from the provisions of this chapter, except for temporary facilities which are classified as a modular building under the provisions of section 39-4121, Idaho Code, and/or a commercial coach under the provisions of section 39-4122, Idaho Code.~~

~~(4) Farms, as defined in section 39-4105(19), Idaho Code, shall be exempt from the provisions of this chapter except for any structure which is classified as a modular building under the provisions of section 39-4121, Idaho Code, and/or a commercial coach under the provisions of section 39-4122, Idaho Code, or a manufactured home under the provisions of chapter 40, title 39, Idaho Code.~~

SECTION 6. That Section 39-4104, Idaho Code, be, and the same is hereby amended to read as follows:

39-4104. ENFORCEMENT OF LAW. The administrator of the division of building safety shall enforce the provisions of this ~~act~~ chapter that apply to the state. Local governments that adopt building codes, in their discretion, shall enforce all or a portion of the provisions of this chapter that govern application by local governments.

SECTION 7. That Section 39-4105, Idaho Code, be, and the same is hereby amended to read as follows:

39-4105. DEFINITIONS. As used in this chapter, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning. Where terms are not defined in this chapter and are defined in the currently adopted International Building Code published by the International Code Council, such terms shall have the meanings ascribed to them in that code:

(1) "Administrator" means the administrator of the division of building safety for the state of Idaho.

(2) "Board" means the Idaho building code ~~advisory~~ board, herein created.

(3) ~~"Person" means a natural person, corporation, partnership, trust, society, club, association, or other organization~~ "Building inspector" means a person who inspects buildings or structures for compliance with the provisions of this chapter.

(4) ~~"Building" means a combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any use or occupancy, and shall include a part or parts thereof and all equipment therein normally a part of the structure~~ "Closed construction" means any manufactured building or building component which may enclose factory installed structural, mechanical, electrical or plumbing systems and is not open for visual inspection at the building site.

(5) "Commercial coach" means a modular building equipped with the necessary service connections and made so as to be readily movable as a unit on its own running gear and originally designated to be used without a permanent foundation.

(6) "Construction" means the erection, fabrication, reconstruction, demolition, alteration, conversion, or repair of a building, ~~(other than in kind),~~ or the installation of equipment therein normally a part of the structure.

(~~6~~7) ~~"Equipment" means facilities or installations including, but not limited to, heating, ventilating, air conditioning, and refrigerating facilities or installations, and elevators, dumbwaiters, escalators, boilers and pressure vessels and ski lifts, but not including telecommunications facilities~~ "Division" means the state of Idaho division of building safety.

(~~7~~8) ~~"Local inspection agency" means the agency or agencies of local government with authority to make inspections of buildings and to enforce the codes, laws and rules of the state of Idaho which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings~~ "International Fire Code" means the International Fire Code as published by the International Code Council.

(~~8~~9) "Local government" means any city or county of this state.

(~~9~~10) "Manufactured home" means a structure, constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. section 5401 et seq.

(11) "Mobile home" means a factory-assembled structure or structures generally constructed prior to June 15, 1976, and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.

(9~~12~~) "Modular building" means any building or building component, other than a manufactured or mobile home, which is constructed according to codes and standards ~~contained in the Uniform Building Code, as adopted or any amendments thereto~~ adopted by the division of building safety, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

~~(10) "Building site" means any lot, tract, parcel, or subdivision of land, either public or private, upon which a building is placed or is to be placed.~~

~~(11) "Closed construction" means any manufactured building or building component which may enclose factory installed structural, mechanical, electrical or plumbing systems and is not open for visual inspection at the building site.~~

~~(12) "Commercial coach" means a modular building equipped with the necessary service connections and made so as to be readily movable as a unit on its own running gear and originally designated to be used without a permanent foundation.~~

~~(13) "Manufactured home" (formerly mobile home) means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401 et seq.~~

~~(14) "Temporary facility" means a structure designed and constructed to service actual construction projects and which is completely removed upon completion of the project. This structure shall not be a place of employment or human habitation, and does not include those temporary structures used for the protection of the public around and in conjunction with construction work.~~

~~(15) "Human habitation," when used in respect to temporary facilities, means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, storage or utility space and similar areas are not considered space for human habitation.~~

(16~~3~~) "Telecommunications facilities" means all wires, cables, equipment, apparatus or other installations necessary to furnish service, by which there is accomplished or may be accomplished, the sending or receiving of information, data, message writing signs, signals, pictures, and sounds of all kinds, by aid of such wires, cables, equipment, apparatus or other installations, but shall not include the habitable structure in which such telecommunications facilities are housed.

~~(17) "Farm" means an agricultural unit of five (5) acres or more.~~

SECTION 8. That Section 39-4106, Idaho Code, be, and the same is hereby amended to read as follows:

39-4106. IDAHO BUILDING CODE ~~ADVISORY~~ BOARD CREATED -- MEMBERSHIP -- APPOINTMENT -- TERMS -- QUORUM -- COMPENSATION -- MEETINGS. (1) The Idaho building code ~~advisory~~ board is established within the ~~department~~ division as an appeals, code adoption and ~~variance, and -- advisory~~ rule-making board, to be appointed by the governor, and shall consist of nine (9) members: one (1) member of the general public; one (1) local fire official; one (1) registered engineer; one (1) licensed architect; two (2) local building officials, one (1) from a county and one (1) from a city; one (1) homebuilder or general contractor; one (1) representative of the modular building industry; and one (1) individual with a disability from an organization that represents people with all types of disabilities. Board members shall be appointed for ~~a~~ terms of four (4) years and until their successor has been appointed. Three (3) consecutive failures by a member to attend meetings of the board without reasonable cause shall constitute cause for removal of the member from the board by the governor. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(2) The members of the board shall, at their first regular meeting following the effective date of this chapter and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. A majority of the currently appointed members of the board shall constitute a quorum.

(3) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(h), Idaho Code, for each day spent in attendance at meetings of the board.

(4) The board shall meet for regular business sessions at the call of the administrator, chairman, or at the request of ~~three~~ four (~~3~~4) members of the board, provided that the board shall meet at least biannually.

SECTION 9. That Section 39-4107, Idaho Code, be, and the same is hereby amended to read as follows:

39-4107. POWERS AND DUTIES. (1) ~~Upon publication of the latest edition of the building code by the International Code Council, the board shall initiate the process of developing legislation to provide for its adoption under section 39-4109, Idaho Code. The board shall also determine that building code's equivalency with the provisions of the Americans With Disabilities Act Accessibility Guidelines and the Fair Housing Act Accessibility Guidelines. Upon finding that the building code under review does not provide an equivalent level of protection for those with disabilities, the board shall promulgate rules to amend the code so as to minimize those deficiencies to the maximum extent possible. The board shall complete the legislation development process, code equivalency analysis and promulgation of rules as needed to amend the code within twenty four (24) months of its publication by the International Code Council~~ The board shall continually study the operation of adopted codes, standards and rules relating to the construction of buildings or facilities under the jurisdiction of the division to ascertain their effect upon the public safety and shall support an ongoing effort to promote the uniform adoption, application and interpretation of safety, accessibility and building codes statewide. The board shall have the authority to adopt and enforce the codes specified in section 39-4109,

Idaho Code, or later editions of such codes, and to promulgate rules in accordance with chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

(2) The board shall function as a board of appeals ~~and--shall--provide--for--reasonable-interpretations-and-suitability-of-alternate-materials-and-methods-of-construction-as-defined-in-the-codes-enumerated--in this--act.~~ for the division as prescribed in the adopted building code. The board shall have no authority to waive any requirements of the codes enumerated in this chapter or in rules promulgated pursuant to this chapter. Provided further:

(3a) The decisions of the board shall~~,-in-respect-to-code-interpretations,~~ be final, and the board shall render all decisions and findings in writing to ~~the--appropriate--enforcement--official--and agency,~~ the appellant~~,~~ and the administrator within ten (10) working days of the conclusion of a hearing~~.~~; and

(4b) For each appeal brought before the board, the chairman shall appoint not less than three (3) members of the board to hear the appeal and render a decision and finding in the name of the board.

~~(5)--The--board--shall--continually--study--the-operation-of-adopted codes,-standards,-rules-and-regulations-relating-to-the-construction--of buildings--to--ascertain-their-effect-upon-the-public-safety-and-support an-ongoing-effort-to--promote--the--uniform--adoption,--application--and interpretation-of-safety,-accessibility-and-building-codes-statewide.~~

~~(6)--The--board--shall-adopt-the-latest-changes-to-the-codes-enumerated-in-this-act,-and-shall-recommend-to-the--director--such--amendments deemed--necessary-for-the-safety-of-the-public.-Such-amendments-shall-be promulgated-only-after-public-hearings-on-the-subject-amendments.~~

~~(7)--The-board-shall-have--the--authority--to--promulgate--rules--in accordance--with-chapter-52,-title-67,-Idaho-Code,-to-implement-the-provisions-of-this-chapter.~~

(8~~3~~) The board shall utilize experts, consultants, and technical advisors for assistance and recommendations relative to codes, standards, and appeals.

SECTION 10. That Section 39-4108, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Chapter 41, 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 39-4108, Idaho Code, and to read as follows:

39-4108. CERTIFICATION. After July 1, 2002, state and local government building inspectors, including state safety advisors, shall hold a valid certification as a building inspector or plans examiner issued by the International Code Council (ICC) or the International Conference of Building Officials (ICBO), except that a building inspector with a valid ICC or ICBO residential building inspector certification may only inspect structures regulated by the International Residential Code (IRC). A building inspector with a valid ICC or ICBO residential building inspector certification working under the supervision of an ICC or ICBO certified building inspector or plans examiner may inspect all occupancy classifications for a period not to exceed three (3) years. Any building inspector or plans examiner possessing state certification as of June 30, 2002, may continue to serve as a building inspector,

without renewal, until July 1, 2005, at which time certification as an ICC or ICBO building inspector or plans examiner shall be necessary to retain inspection authority.

SECTION 12. That section 39-4109, Idaho Code, be, and the same is hereby repealed.

SECTION 13. That Chapter 41, 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 39-4109, Idaho Code, and to read as follows:

39-4109. APPLICATION OF CODES. The following codes are hereby adopted for the state of Idaho division of building safety and shall only be applied by local governments as prescribed by section 39-4116, Idaho Code:

(1) The 2000 International Building Code and appendices thereto pertaining to building accessibility, not including the adoption of the incorporated electrical codes, plumbing codes, fire codes or property maintenance codes other than specifically referenced subjects or sections of the International Fire Code, but including the incorporated International Residential Code; International Mechanical Code; International Fuel Gas Code; International Energy Conservation Code; for the 2000 edition of the International Building Code, the requirements pertaining to accessibility for persons with disabilities published by the International Code Council in the 2001 supplement to the International Codes and rules promulgated by the board to provide equivalency with the provisions of the Americans with disabilities act accessibility guidelines and the fair housing act accessibility guidelines shall be included;

(2) The 2000 International Residential Code as published by the International Code Council, except for parts VII and VIII as they pertain to plumbing and electrical requirements;

(3) The 2000 International Energy Conservation Code as published by the International Code Council;

(4) The latest edition of the Uniform Mechanical Code, published by the International Conference of Building Officials;

(5) The 1997 Uniform Code for Building Conservation as published by the International Conference of Building Officials; and

(6) The Safety Code for Elevators and Escalators (ASME/ANSI A17.1) as published by the American Society of Mechanical Engineers and the American National Standards Institute.

SECTION 14. That Section 39-4110, Idaho Code, be, and the same is hereby repealed.

SECTION 15. That Section 39-4111, Idaho Code, be, and the same is hereby amended to read as follows:

39-4111. PERMITS REQUIRED. (1) It shall be unlawful for any person to do, or cause or permit to be done, whether acting as principal, agent or employee, any construction, improvement, extension or alteration of any building, residence or structure, coming under the purview of ~~this chapter~~ the division, in the state of Idaho without first procuring a

permit from the ~~appropriate agency~~ division authorizing such work to be done.

~~For--the--purposes-of-permit-requirements-for-commercial-coaches-and modular-buildings,-a-single-permit-covering-all-aspects-of--construction shall-be-issued-by-the-director.~~

(2) It shall be unlawful for any person to do, or cause or permit to be done, whether acting as principal, agent or employee, any construction, improvement, extension or alteration of any building, residence or structure in a local government jurisdiction enforcing building codes, without first procuring a permit in accordance with the applicable ordinance or ordinances of the local government.

SECTION 16. That Section 39-4112, Idaho Code, be, and the same is hereby amended to read as follows:

39-4112. MAXIMUM PERMIT FEES TO BE ASSESSED BY THE DIVISION. Building permit fees shall be as established by rules promulgated by the board. Until such rules are effective, b~~B~~uilding permit fees based on total ~~valuation~~ value of the construction shall not exceed those given in table 3-A, Uniform Building Code, 1985.

SECTION 17. That Section 39-4113, Idaho Code, be, and the same is hereby amended to read as follows:

39-4113. PLAN ~~CHECKING~~ REVIEWS -- MAXIMUM FEES AND SCHOOL INSPECTIONS. (1) ~~Notwithstanding--the--provisions-of-section-302(b),-Uniform Building-Code,-1985,-t~~The administrator shall establish a program for ~~total~~ plan ~~checking~~ review and permit ~~issue~~ issuance entirely within the division of building safety. Plan review shall be for the provisions of this chapter and chapter 10, title 54, Idaho Code, chapter 26, title 54, Idaho Code, and chapter 2, title 41, Idaho Code, pertaining to construction, alteration or repair of buildings or structures within the scope of the division's jurisdiction pursuant to this chapter. Plans for schools reviewed by the division shall not include a review for compliance with the provisions of chapter 2, title 41, Idaho Code.

(2) Plan review fees shall be ~~as required~~ established by rules promulgated by the board. Until such rules are effective, plan review fees shall not exceed those specified by section 304(c), Uniform Building Code, 1985 edition.

(3) Each manufacturer of commercial coaches and modular buildings shall submit the building plans for every model of such structure to the administrator for the purpose of review. ~~The-manufacturer--must--certify that--each--such--building--plan--meets-the-appropriate-construction-and safety-standards-in-force-at-that-time-before-the-model-involved-is-produced.~~

(4) Each school district shall submit to the division of building safety ~~a~~ three (3) sets of working drawings and specifications for new school buildings or facilities and additions or alterations to existing buildings ~~which-are-estimated-to-cost~~ or facilities wherein the proposed work is valued in excess of twenty-five thousand dollars ($25,000). The division will review the plans for compliance with the current editions of the codes specified in this chapter or within rules promulgated pursuant to this chapter by the board and by section 39-8006, Idaho Code. These plans must be approved before the school district may advertise

for bids. Once plans are reviewed and approved by the division of building safety pursuant to this section, no material change can be made to such plans without review and approval of such change by the division of building safety. ~~To--assure--that--building--inspections-are-conducted statewide-for-a~~All school construction or remodeling governed by this chapter~~,-building-inspections~~ shall be ~~performed~~ inspected by ~~Idaho-certified~~ building inspectors certified in accordance with section 39-4108, Idaho Code, or by Idaho licensed architects or engineers ~~either-employed by--or--contracted--to--local-jurisdictions~~ to determine compliance with this chapter and the Idaho uniform school building safety act, chapter 80, title 39, Idaho Code. Nothing in this section shall limit the authority of local governments to issue permits, review plans and provide a full range of building code enforcement activities as they relate to school buildings or facilities within their jurisdiction.

SECTION 18. That Section 39-4114, Idaho Code, be, and the same is hereby repealed.

SECTION 19. That Section 39-4115, Idaho Code, be, and the same is hereby amended to read as follows:

39-4115. PERSONNEL. The ~~department~~ division shall employ a bureau chief, who shall in addition to his other duties, function as the executive director of the board, and such other personnel as necessary to effect enforcement of the codes herein enumerated or otherwise prescribed by rules promulgated by the board pursuant to this chapter. All such employees, except the bureau chief, shall be classified as prescribed in chapter 53, title 67, Idaho Code.

SECTION 20. That Section 39-4116, Idaho Code, be, and the same is hereby repealed.

SECTION 21. That Chapter 41, 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 39-4116, Idaho Code, and to read as follows:

39-4116. LOCAL GOVERNMENT ADOPTION AND ENFORCEMENT OF BUILDING CODES. (1) Local governments enforcing building codes shall do so only in compliance with the provisions of this section. Local governments that have not previously instituted and implemented a code enforcement program prior to the effective date of this act may elect to implement a building code enforcement program by passing an ordinance evidencing the intent to do so. Local governments may contract with a public or private entity to administer their building code enforcement program.

(2) By January 1, 2003, local governments that issue building permits and perform building code enforcement activities shall, by ordinance, adopt the following codes as published by the International Code Council and as adopted by the state or by the Idaho building code board:

(a) International Building Code, including all rules promulgated by the board to provide equivalency with the provisions of the americans with disabilities act accessibility guidelines and the federal fair housing act accessibility guidelines;

(b) International Residential Code, parts I-IV and IX; and

(c) International Energy Conservation Code.

Local governments are not required by this chapter to adopt the other referenced codes in the International Building Code.

(3) Local governments may amend by ordinance the adopted codes or provisions of referenced codes to reflect local concerns, provided such amendments establish at least an equivalent level of protection to that of the adopted building code. A local jurisdiction shall not have the authority to amend any accessibility provision pursuant to section 39-4109, Idaho Code. Previously adopted local amendments to a superseded version of a building code shall remain in full force and effect for a period not to exceed one (1) year after the effective date of adoption of a new version of the building code, provided that such amendments do not conflict with provisions of the newly adopted building code.

(4) Local governments shall exempt agricultural buildings from the requirements of the codes enumerated in this chapter and the rules promulgated by the board. A county may issue permits for farm buildings to assure compliance with road setbacks and utility easements, provided that the cost for such permits shall not exceed the actual cost to the county of issuing the permits.

(5) Permits shall be governed by the laws in effect at the time the permit application is received.

(6) The division shall retain jurisdiction for in-plant inspections and installation standards for manufactured or mobile homes and for in-plant inspections and enforcement of construction standards for modular buildings and commercial coaches.

SECTION 22. That Sections 39-4116A and 39-4117, Idaho Code, be, and the same are hereby repealed.

SECTION 23. That Section 39-4120, Idaho Code, be, and the same is hereby amended to read as follows:

39-4120. APPEALS TO BOARD — JUDICIAL REVIEW. The board shall, within twenty (20) days after receipt of notice for an appeal, hear such appeals brought before it by persons affected by any code, rule, regulation or decision ~~pursuant to this act~~ applicable to buildings within the jurisdiction of the division. Such proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Final decisions of the board, other than code interpretations, are subject to judicial review in accordance with the provisions of chapter 52, title 67, Idaho Code.

SECTION 24. That Section 39-4121, Idaho Code, be, and the same is hereby amended to read as follows:

39-4121. MODULAR BUILDINGS — INSIGNIA OF APPROVAL -- INSTALLATION -- MODIFICATION. (1) No modular building shall be installed on a building site in this state on or after July 1, 1975, unless it is approved and bears the insignia of approval of the ~~department~~ division.

(2) Any modular building bearing an insignia of approval of the ~~department~~ division shall be deemed to comply with codes, laws, or ~~regulations~~ rules enacted by the state of Idaho which govern the ~~manufacturing~~ manufacture and construction of such building.

(3) No modular building which has been approved by the ~~department~~ division shall be in any way modified prior to ~~or during installation by a manufacturer or installer~~ its initial occupancy unless approval of

that modification is first made by the ~~department~~ division.

SECTION 25. That Section 39-4122, Idaho Code, be, and the same is hereby amended to read as follows:

39-4122. COMMERCIAL COACHES -- ISSUANCE OF INSIGNIA -- COST. The ~~director~~ administrator shall issue insignia for commercial coaches which meet the requirements of the ~~standards,~~ adopted codes, laws and rules ~~and regulations~~ promulgated by the ~~director~~ board pursuant to this ~~act~~ chapter. The cost of the insignia, if issued, shall be included as a part of the fee schedule.

SECTION 26. That Section 39-4124, Idaho Code, be, and the same is hereby amended to read as follows:

39-4124. "IDAHO BUILDING CODE FUND" ESTABLISHED. All money received by the ~~department~~ division under the terms and provisions of this ~~act~~ chapter shall be paid into the state treasury, and shall be, by the state treasurer, placed to the credit of the general fund in an account to be known as the "Idaho building code fund," and all such moneys, hereafter placed in said fund, are hereby set aside and appropriated to the ~~department~~ division to carry into effect the provisions of this ~~act~~ chapter.

SECTION 27. That Section 39-4125, Idaho Code, be, and the same is hereby amended to read as follows:

39-4125. INJUNCTION -- AFFIDAVIT SETTING OUT NONCONFORMITY. The ~~department~~ division may obtain from a district court having jurisdiction, a temporary injunction enjoining the construction of a building(s) or installation of modular buildings on any building site upon affidavit of the ~~department~~ division that such building does not conform to the requirements of this chapter or to the rules ~~and regulations~~ adopted pursuant to this chapter or any other chapter of ~~the state of~~ Idaho Code relating to ~~the~~ building construction. The affidavit must set forth such violations in detail. The injunction may be made permanent, in the ~~discretion~~ of the court.

SECTION 28. That Section 39-4126, Idaho Code, be, and the same is hereby amended to read as follows:

39-4126. VIOLATIONS MISDEMEANORS. (1) Any person who ~~wilfully~~ willfully violates any provision of this chapter or who ~~wilfully~~ willfully violates any provisions of the codes enumerated in this chapter or rules promulgated by the ~~director~~ administrator or the board pursuant to this chapter, is guilty of a misdemeanor, and upon conviction, shall be ~~fined~~ not more than three hundred dollars ($300), or imprisoned for not more than ninety (90) days or by both fine and imprisonment. Violations of this chapter shall be tried in any court of competent jurisdiction within the state of Idaho.

(2) A separate violation is deemed to have occurred with respect to each building not in compliance with this chapter. Each day such violation continues constitutes a separate offense.

(3) The misdemeanor provisions of subsections (1) and (2) of this

section shall not apply to manufactured homes. Violations of manufactured home construction and safety standards shall be tried in any court of competent jurisdiction.

SECTION 29. That Section 39-4127, Idaho Code, be, and the same is hereby repealed.

SECTION 30. That Section 39-4128, Idaho Code, be, and the same is hereby amended to read as follows:

39-4128. RECIPROCITY OF STANDARDS WITH OTHER STATES. (1) If the ~~director~~ administrator determines that standards for modular buildings and commercial coaches which have been adopted by the statutes or ~~regulations~~ rules of another state are at least equal to the standards adopted by the ~~director~~ administrator, the ~~director~~ administrator may so provide by ~~regulation~~ rule.

(2) If the ~~director~~ administrator determines that standards for modular buildings and commercial coaches have not been adopted by another state, and modular buildings and commercial coaches from that state are transported into this state to be offered for sale, the ~~director~~ administrator may certify personnel to inspect such modular buildings or commercial coaches. If the ~~director~~ administrator shall then determine that said units meet the standards of this state, the product shall be acceptable and the ~~director~~ administrator may issue insignia for said modular building or commercial coach.

SECTION 31. That Sections 39-4130 and 39-4131, Idaho Code, be, and the same are hereby repealed.

SECTION 32. That Chapter 23, Title 44, Idaho Code, be, and the same is hereby repealed.

SECTION 33. That Section 44-2101A, Idaho Code, be, and the same is hereby amended to read as follows:

44-2101A. DEFINITIONS. As used in this chapter:

(1) "Administrator" means the administrator of the division of building safety of the state of Idaho.

(2) "Manufactured home" means a structure as defined in section 39-4105~~(13)~~, Idaho Code.

(3) "Manufactured home broker" means any person engaged in the business of selling or exchanging used units only, or who buys, sells, lists or exchanges three (3) or more used units in any one (1) calendar year, except as otherwise provided in this chapter.

(4) "Manufactured home dealer" means any person engaged in the business of selling or exchanging new and used units, or who buys, sells, lists or exchanges three (3) or more new and used units in any one (1) calendar year, except as otherwise provided in this chapter.

(5) "Manufactured home salesman" means any person employed by a manufactured home dealer or broker for a salary, commission or compensation of any kind to sell, list, purchase or exchange or to negotiate for the sale, listing, purchase or exchange of units, except as otherwise provided in this chapter.

(6) "Manufactured home service company" includes "manufactured home

installer" and means any person other than a manufactured home dealer who provides service, setup, or both, of manufactured or mobile homes.

(7) "Manufacturer" means any person engaged in the business of manufacturing manufactured homes that are offered for sale, lease or exchange in the state of Idaho.

(8) "Mobile home" means a structure similar to a manufactured home, but built to a state mobile home code which existed prior to the Federal Manufactured Housing and Safety Standards Act (HUD Code).

(9) "Person" means a natural person, corporation, partnership, trust, society, club, association, or other organization.

(10) "Principal place of business" means an enclosed structure accessible and open to the public, at which the business is lawfully conducted in accordance with the terms of all applicable building codes, zoning and other land use regulatory ordinances, in which building the public may contact the dealer, broker or salesman, and at which place shall be kept and maintained the books, records and files necessary to conduct the business. There shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic.

(11) "Responsible managing employee" means the person designated by the employer to supervise other employees, either personally or through others.

(12) "Unit" means a mobile or manufactured home.

SECTION 34. 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 hearing 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 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.

(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 commu-

nity 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" or "visually handicapped person" means any person who ~~meets the definition provided in section 39-3202(3), Idaho Code~~ is blind, totally blind, partially blind or otherwise visually handicapped meaning such person has central visual acuity not exceeding 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than twenty (20) degrees.

SECTION 35. That Section 63-2401, Idaho Code, be, and the same is hereby amended to read as follows:

63-2401. DEFINITIONS. In this chapter:

(1) "Aircraft engine fuel" means:

(a) Aviation gasoline, defined as any mixture of volatile hydrocarbons used in aircraft reciprocating engines; and

(b) Jet fuel, defined as any mixture of volatile hydrocarbons used in aircraft turbojet and turboprop engines.

(2) "Bond" means:

(a) A surety bond, in an amount required by this chapter, duly executed by a surety company licensed and authorized to do business in this state conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties and other obligations arising out of the provisions of this chapter; or

(b) A deposit with the commission by any person required to be licensed pursuant to this chapter under terms and conditions as the commission may prescribe, of a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Idaho, or any county of the state; or

(c) An irrevocable letter of credit issued to the commission by a bank doing business in this state payable to the state upon failure of the person on whose behalf it is issued to remit any payment due under the provisions of this chapter.

(3) "Commercial motor boat" means any boat, equipped with a motor, which is wholly or partly used in a profit-making enterprise or in an enterprise conducted with the intent of making a profit.

(4) "Commission" means the state tax commission of the state of Idaho.

(5) "Distributor" means any person who receives gasoline, special fuels, and/or aircraft fuel in this state, and includes a special fuels dealer. Any person who sells or receives gaseous fuels will not be considered a distributor unless the gaseous fuel is delivered into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him.

(6) "Dyed fuel" means diesel fuel that is dyed pursuant to requirements of the internal revenue service, or the environmental protection agency.

(7) "Exported" means delivered by truck or rail across the bound-

aries of this state by or for the seller or purchaser from a place of origin in this state.

(8) "Gasohol" means gasoline containing a mixture of no more than ten percent (10%) blend anhydrous ethanol.

(9) "Gasoline" means any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. "Gasoline" also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels.

(10) "Highways" means every place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel which is maintained by the state of Idaho or an agency or taxing subdivision or unit thereof or the federal government or an agency or instrumentality thereof. Provided, however, if the cost of maintaining a roadway is primarily borne by a special fuels user who operates motor vehicles on that roadway pursuant to a written contract during any period of time that a special fuels tax liability accrues to the user, such a roadway shall not be considered a "highway" for any purpose related to calculating that user's special fuel's tax liability or refund.

(11) "Imported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

(12) "International fuel tax agreement" and "IFTA" mean the international fuel tax agreement required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, including subsequent amendments to that agreement.

(13) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(14) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code.

(15) "Motor fuel" means gasoline, special fuels, aircraft engine fuels or any other fuels suitable for the operation or propulsion of motor vehicles, motor boats or aircraft.

(16) "Motor vehicle" means every self-propelled vehicle designed for operation, or required to be licensed for operation, upon a highway.

(17) "Person" means any individual, firm, fiduciary, copartnership, association, corporation, governmental instrumentality including the state and all of its agencies and political subdivisions, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means the partners or members, and as applied to corporations, the officers.

(18) "Recreational vehicle" means a snowmobile as defined in section 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in section 49-114, Idaho Code; and any ~~vehicular type--unit--either--as--an integral--part--of,--or required for the movement of,--units~~ recreational vehicle as defined in section ~~39-4105(15)~~ 49-119, Idaho Code.

(19) "Retail dealer" means any person engaged in the retail sale of motor ~~fuels to~~ the public or for use in the state.

(20) "Special fuels" means:

(a) All fuel suitable as fuel for diesel engines;

(b) A compressed or liquified gas obtained as a byproduct in petro-

leum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and

(c) Natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles.

(21) "Special fuels dealer" means "distributor" under subsection (5) of this section.

(22) "Special fuels user" means any person who uses or consumes special fuels for the operation or propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(23) "Use" means either:

(a) The receipt, delivery or placing of fuels by a licensed distributor or a special fuels dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or

(b) The consumption of fuels in the operation or propulsion of a motor vehicle on the highways of this state.

SECTION 36. That Section 67-6509A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6509A. SITING OF MANUFACTURED HOMES IN RESIDENTIAL AREAS — PLAN TO BE AMENDED. (1) By resolution or ordinance adopted, amended or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, each governing board shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses, except for lands falling within an area defined as a historic district under section 67-4607, Idaho Code, to allow for siting of manufactured homes as defined in section 39-4105~~(13)~~, Idaho Code.

(2) Manufactured homes on individual lots zoned for single-family residential uses as provided in subsection (1) of this section shall be in addition to manufactured homes on lots within designated mobile home parks or manufactured home subdivisions.

(3) This section shall not be construed as abrogating a recorded restrictive covenant.

(4) A governing board may adopt any or all of the following placement standards, or any less restrictive standards, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than one thousand (1,000) square feet;

(b) The manufactured home shall be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade;

(c) The manufactured home shall have a pitched roof, except that no standards shall require a slope of greater than a nominal three (3) feet in height for each twelve (12) feet in width;

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority;

(e) The manufactured home shall have a garage or carport con-

structed of like materials if zoning ordinances would require a newly constructed nonmanufactured home to have a garage or carport;

(f) In addition to the provisions of paragraphs (a) through (e) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirements to which a conventional single-family residential dwelling on the same lot would be subjected.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Approved March 27, 2002.

CHAPTER 346
(H.B. No. 601)

AN ACT

RELATING TO LIMITATIONS OF LEGAL LIABILITY OF A LANDOWNER; AMENDING SECTION 36-1604, IDAHO CODE, TO FURTHER DEFINE THE TERM "RECREATIONAL PURPOSES" 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 36-1604, Idaho Code, be, and the same is hereby amended to read as follows:

36-1604. LIMITATION OF LIABILITY OF LANDOWNER. (a) Statement of Purpose. The purpose of this section is to encourage owners of land to make land and water areas available to the public without charge for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

(b) Definitions. As used in this section:

1. "Land" means private or public land, roads, trails, water, watercourses, irrigation dams, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty.

2. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

3. "Recreational Purposes" includes, but is not limited to, any of the following or any combination thereof: Hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, <u>bicycling, running, playing on playground equipment, skateboarding, athletic competition,</u> nature study, water skiing, animal riding, motorcycling, snowmobiling, recreational vehicles, winter sports, and viewing or enjoying historical, archeological, scenic, geological or scientific sites, when done without charge of the owner.

(c) Owner Exempt from Warning. An owner of land owes no duty of care to keep the premises safe for entry by others for recreational pur-

poses, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety, shall create liability on the part of an owner of land where there is no other basis for such liability.

(d) Owner Assumes No Liability. An owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose.
2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

(e) Provisions Apply to Leased Public Land. Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

(f) Owner Not Required to Keep Land Safe. Nothing in this section shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.
2. Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of such land and in his activities thereon, or from legal consequences or failure to employ such care.
3. Apply to any person or persons who for compensation permits the land to be used for recreational purposes.

(g) User Liable for Damages. Any person using the land of another for recreational purposes, with or without permission, shall be liable for any damage to property, livestock or crops which he may cause while on said property.

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

Approved March 27, 2002.

CHAPTER 347
(H.B. No. 607, As Amended, As Amended in the Senate)

AN ACT

RELATING TO DEVELOPMENT IMPACT FEES; AMENDING SECTION 67-8203, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-8204, IDAHO CODE, TO GOVERN THE PROCESS FOR INDIVIDUAL ASSESSMENT OF PROPORTIONATE SHARE; AMENDING SECTION 67-8207, IDAHO CODE, TO INCLUDE TAX REVENUES IN DETERMINATION OF PROPORTIONATE SHARE; AMENDING SECTION 67-8208, IDAHO CODE, TO

REQUIRE THE UPDATE OF THE CAPITAL IMPROVEMENTS PLAN AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-8209, IDAHO CODE, TO GOVERN CREDITS TO BE CONSIDERED; AMENDING SECTION 67-8210, IDAHO CODE, TO PROVIDE FOR REPORT OF TAX AND REVENUES INVESTED IN SYSTEM IMPROVEMENTS; AMENDING SECTION 67-8211, IDAHO CODE, TO PROVIDE ADDITIONAL GROUNDS FOR REFUNDS; AMENDING SECTION 67-8213, IDAHO CODE, TO PROVIDE FOR ADJUSTMENTS OF PROPORTIONATE SHARE OF IMPACT FEES; AND PROVIDING AN EFFECTIVE DATE AND PROCEDURE TO GOVERN IMPLEMENTATION.

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

SECTION 1. That Section 67-8203, Idaho Code, be, and the same is hereby amended to read as follows:

67-8203. DEFINITIONS. As used in this chapter:

(1) "Affordable housing" means housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service area or areas within the jurisdiction of the governmental entity.

(2) "Appropriate" means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity.

(3) "Capital improvements" means improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility.

(4) "Capital improvement element" means a component of a comprehensive plan adopted pursuant to chapter 65, title 67, Idaho Code, which component meets the requirements of a capital improvements plan pursuant to this chapter.

(5) "Capital improvements plan" means a plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source.

(6) "Developer" means any person or legal entity undertaking development, including a party that undertakes the subdivision of property pursuant to sections 50-1301 through 50-1334. Idaho Code.

(7) "Development" means any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities or the subdivision of property that would permit any change in the use, character or appearance of land.

(8) "Development approval" means any written authorization from a governmental entity which authorizes the commencement of a development.

(9) "Development impact fee" means a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. This term is also referred to as an impact fee in this chapter. The term does not include the following:

(a) A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;

(b) Connection or hookup charges;

(c) Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or

(d) Amounts collected from a developer in a transaction in which

the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to section 67-8209(3), Idaho Code, for credit or reimbursement.

(10) "Development requirement" means a requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

(11) "Extraordinary costs" means those costs incurred as a result of an extraordinary impact.

(12) "Extraordinary impact" means an impact which is reasonably determined by the governmental entity to: (i) result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by section 67-8214(2), Idaho Code, or (ii) result in the need for system improvements which are not identified in the capital improvements plan.

(13) "Fee payer" means that person who pays or is required to pay a development impact fee.

(14) "Governmental entity" means any unit of local government that is empowered in this enabling legislation to adopt a development impact fee ordinance.

(15) "Impact fee." See development impact fee.

(16) "Land use assumptions" means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period.

(17) "Level of service" means a measure of the relationship between service capacity and service demand for public facilities.

(18) "Manufactured home" means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401, et seq.

(19) "Modular building" means any building or building component, other than a manufactured home, which is constructed according to standards contained in the Uniform Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

(20) "Present value" means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.

(21) "Project" means a particular development on an identified parcel of land.

(22) "Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

(23) "Proportionate share" means that portion of the cost of system improvements determined pursuant to section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project.

(24) "Public facilities" means:

(a) Water supply production, treatment, storage and distribution facilities;

(b) Wastewater collection, treatment and disposal facilities;

(c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;

(d) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(e) Parks, open space and recreation areas, and related capital improvements; and

(f) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

(25) "Recreational vehicle" means a vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

(26) "Service area" means any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area defined, on the basis of sound planning or engineering principles or both.

(27) "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(28) "System improvements," in contrast to project improvements, means capital improvements to public facilities which are designed to provide service to a service area including, without limitation, the type of improvements described in section 50-1703, Idaho Code.

(29) "System improvement costs" means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in section 50-1702(h), Idaho Code, to provide additional public facilities needed to serve new growth and development. For clarification, system improvement costs do not include:

(a) Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan;

(b) Repair, operation or maintenance of existing or new capital improvements;

(c) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter

safety, efficiency, environmental or regulatory standards;

(d) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

(e) Administrative and operating costs of the governmental entity unless such costs are attributable to development of the capital improvement plan, as provided in section 67-8208, Idaho Code; or

(f) Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

SECTION 2. That Section 67-8204, Idaho Code, be, and the same is hereby amended to read as follows:

67-8204. MINIMUM STANDARDS AND REQUIREMENTS FOR DEVELOPMENT IMPACT FEES ORDINANCES. Governmental entities which comply with the requirements of this chapter may impose by ordinance development impact fees as a condition of development approval on all developments.

(1) A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with section 67-8207, Idaho Code. Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(2) A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in the development impact fee ordinance of the governmental entity that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.

(3) A development impact fee ordinance shall specify the point in the development process at which the development impact fee shall be collected. The development impact fee may be collected no earlier than the commencement of construction of the development, or the issuance of a building permit or a manufactured home installation permit, or as may be agreed by the developer and the governmental entity.

(4) A development impact fee ordinance shall be adopted in accordance with the procedural requirements of section 67-8206, Idaho Code.

(5) A development impact fee ordinance shall include a ~~provision permitting~~ process whereby the governmental agency shall allow the developer, upon request by the developer, to provide a written individual assessment~~s~~ of the proportionate share of development impact fees under the guidelines established ~~in the ordinance~~ by this chapter which shall be set forth in the ordinance. The individual assessment process shall permit consideration of studies, data, and any other relevant information submitted by the developer to adjust the amount of the fee. The decision by the governmental agency on an application for an individual assessment shall include an explanation of the calculation of the impact fee, including an explanation of factors considered under section 67-8207, Idaho Code, and shall specify the system improvement(s) for which the impact fee is intended to be used.

(6) A development impact fee ordinance shall provide a process whereby a developer shall receive, upon request, a written certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee ~~for~~

~~a period of one (1) year from the date of the certification~~ so long as there is no material change to the particular project as identified in the individual assessment application, or the impact fee schedule. The certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under section 67-8207, Idaho Code. The certification shall also specify the system improvement(s) for which the impact fee is intended to be used.

(7) A development impact fee ordinance shall include a provision for credits in accordance with the requirements of section 67-8209, Idaho Code.

(8) A development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of section 67-8210, Idaho Code.

(9) A development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs incurred subsequent to adoption of the ordinance to the extent that new growth and development will be served by the system improvements.

(10) A development impact fee ordinance may exempt all or part of a particular development project from development impact fees provided that such project is determined to create affordable housing, provided that the public policy which supports the exemption is contained in the governmental entity's comprehensive plan and provided that the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.

(11) A development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and either within or for the benefit of the service area in which the project is located.

(12) A development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of section 67-8211, Idaho Code.

(13) A development impact fee ordinance shall establish for a procedure for timely processing of applications for determination by the governmental entity regarding development impact fees applicable to a project, individual assessment of development impact fees, credits or reimbursements to be allowed or paid under section 67-8209, Idaho Code, and extraordinary impact.

(14) A development impact fee ordinance shall specify when an application for an individual assessment of development impact fees shall be permitted to be made by a developer or fee payer. An application for an individual assessment of development impact fees shall be permitted sufficiently in advance of the time that the developer or fee payer may seek a building permit or related permits so that the issuance of a building permit or related permits will not be delayed.

(15) A development impact fee ordinance shall provide for appeals regarding development impact fees in accordance with the requirements of section 67-8212, Idaho Code.

(1~~5~~6) A development impact fee ordinance must provide a detailed description of the methodology by which costs per service unit are determined. ~~The following methodologies shall be acceptable: (a)~~ The development impact fee per service unit may not exceed the amount determined by dividing the costs of the capital improvements described in section 67-8208(1)(f), Idaho Code, by the total number of projected service units described in section 67-8208(1)(g), Idaho Code. If the number

of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units described in section 67-8208(1)(g), Idaho Code, by the total projected new service units described in that section.

~~(b) An alternative methodology may be used by a governmental entity provided that the governmental entity can demonstrate that such alternative methodology accurately calculates the proportionate share of the impact of the proposed development on the capacity of system improvements in terms of generally accepted engineering and planning principles.~~

(16~~7~~) A development impact fee ordinance shall include a schedule of development impact fees for various land uses per unit of development. The ordinance shall provide that a developer shall have the right to elect to pay a project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs, except as provided in section 67-8214(3), Idaho Code.

(17~~8~~) After payment of the development impact fees or execution of an agreement for payment of development impact fees, additional development impact fees or increases in fees may not be assessed unless the number of service units increases or the scope or schedule of the development changes. In the event of an increase in the number of service units or schedule of the development changes, the additional development impact fees to be imposed are limited to the amount attributable to the additional service units or change in scope of the development.

(18~~9~~) No system for the calculation of development impact fees shall be adopted which subjects any development to double payment of impact fees.

(~~19~~20) A development impact fee ordinance shall exempt from development impact fees the following activities:

(a) Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;

(b) Remodeling or repairing a structure which does not increase the number of service units;

(c) Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, provided that the number of service units does not increase;

(d) Placing a temporary construction trailer or office on a lot;

(e) Constructing an addition on a residential structure which does not increase the number of service units; and

(f) Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements.

(20~~1~~) A development impact fee will be assessed for installation of a modular building, manufactured home or recreational vehicle unless the

fee payer can demonstrate by documentation such as utility bills and tax records, either:

(a) That a modular building, manufactured home or recreational vehicle was legally in place on the lot or space prior to the effective date of the development impact fee ordinance; or

(b) That a development impact fee has been paid previously for the installation of a modular building, manufactured home or recreational vehicle on that same lot or space.

(2~~1~~2) A development impact fee ordinance shall include a process for dealing with a project which has extraordinary impacts.

(2~~2~~3) A development impact fee ordinance shall provide for the calculation of a development impact fee in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.

(2~~3~~4) A development impact fee ordinance shall include a description of acceptable levels of service for system improvements.

(25) Any provision of a development impact fee ordinance that is inconsistent with the requirements of this chapter shall be null and void and that provision shall have no legal effect. A partial invalidity of a development impact fee ordinance shall not affect the validity of the remaining portions of the ordinance that are consistent with the requirements of this chapter.

SECTION 3. That Section 67-8207, Idaho Code, be, and the same is hereby amended to read as follows:

67-8207. PROPORTIONATE SHARE DETERMINATION. (1) All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in the provision of system improvements to serve the new development. The proportionate share is the cost attributable to the new development after the governmental entity considers the following: (i) any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements; (ii) payments reasonably anticipated to be made by or as a result of a new development in the form of user fees~~,~~ and debt service payments;~~,or taxes which are dedicated for system improvements for which development impact fees would otherwise be imposed; and~~ (iii) that portion of general tax and other revenues allocated by the jurisdiction to system improvements; and (iv) all other available sources of funding such system improvements.

(2) In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the governmental entity imposing the development impact fee and accounted for in the calculation of the impact fee:

(a) The cost of existing system improvements within the service area or areas;

(b) The means by which existing system improvements have been financed;

(c) The extent to which the new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the

cost of system improvements through developer or landowner contributions.

(d) The extent to which the new development is required to contribute to the cost of existing system improvements in the future.

(e) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;

(f) Extraordinary costs, if any, incurred in serving the new development;

(g) The time and price differential inherent in a fair comparison of fees paid at different times; and

(h) The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The governmental entity shall develop a plan for alternative sources of revenue.

SECTION 4. That Section 67-8208, Idaho Code, be, and the same is hereby amended to read as follows:

67-8208. CAPITAL IMPROVEMENTS PLAN. (1) Each governmental entity intending to impose a development impact fee shall prepare a capital improvements plan. That portion of the cost of preparing a capital improvements plan which is attributable to determining the development impact fee may be funded by a one (1) time ad valorem levy which does not exceed two one-hundredths ~~per cent~~ percent (.02%) of market value or by a surcharge imposed by ordinance on the collection of a development impact fee which surcharge does not exceed the development's proportionate share of the cost of preparing the plan. For governmental entities required to undertake comprehensive planning pursuant to chapter 65, title 67, Idaho Code, such capital improvements plan shall be prepared and adopted according to the requirements contained in the local planning act, section 67-6509, Idaho Code, and shall be included as an element of the comprehensive plan. The capital improvements plan shall be prepared by qualified professionals in fields relating to finance, engineering, planning and transportation. The persons preparing the plan shall consult with the development impact fee advisory committee.

The capital improvements plan shall contain all of the following:

(a) A general description of all existing public facilities and their existing deficiencies within the service area or areas of the governmental entity and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding or replacing of such facilities to meet existing needs and usage;

(b) A commitment by the governmental entity to use other available sources of revenue to cure existing system deficiencies where practical;

(c) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing capital improvements, which shall be prepared by a qualified professional planner or by a qualified engineer licensed to perform engineering services in this state;

(d) A description of the land use assumptions by the government entity;

(e) A definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural and industrial;

(f) A description of all system improvements and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, to provide a level of service not to exceed the level of service adopted in the development impact fee ordinance;

(g) The total number of service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(h) The projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty (20) years;

(i) Identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements;

(j) If the proposed system improvements include the improvement of public facilities under the jurisdiction of the state of Idaho or another governmental entity, then an agreement between governmental entities shall specify the reasonable share of funding by each unit, provided the governmental entity authorized to impose development impact fees shall not assume more than its reasonable share of funding joint improvements, nor shall the agreement permit expenditure of development impact fees by a governmental entity which is not authorized to impose development impact fees unless such expenditure is pursuant to a developer agreement under section 67-8214, Idaho Code; and

(k) A schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(2) The governmental entity imposing a development impact fee shall update the capital improvements plan at least once every five (5) years. The five (5) year period shall commence from the date of the original adoption of the capital improvements plan. The updating of the capital improvements plan shall be made in accordance with procedures set forth in section 67-8206, Idaho Code.

(3) The governmental entity must annually adopt a capital budget.

(4) The capital improvements plan shall be updated in conformance with the provisions of subsection (2) of this section each time a governmental entity proposes the amendment, modification or adoption of a development impact fee ordinance.

SECTION 5. That Section 67-8209, Idaho Code, be, and the same is hereby amended to read as follows:

67-8209. CREDITS. (1) In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the

present value of any construction of system improvements or contribution or dedication of land or money required by a governmental entity from a developer for system improvements of the category for which the development impact fee is being collected, including such system improvements paid for pursuant to a local improvement district. Credit or reimbursement shall not be given for project improvements.

(2) In the calculation of development impact fees for a particular project, credit shall be given for the present value of all tax and user fee revenue generated by the developer, within the service area where the impact fee is being assessed and used by the governmental agency for system improvements of the category for which the development impact fee is being collected. If the amount of credit exceeds the proportionate share for the particular project, the developer shall receive a credit on future impact fees for the amount in excess of the proportionate share. The credit may be applied by the developer as an offset against future impact fees only in the service area where the credit was generated.

(~~2~~3) If a developer is required to construct, fund or contribute system improvements in excess of the development project's proportionate share of system improvement costs, including such system improvements paid for pursuant to a local improvement district, the developer shall receive a credit on future impact fees or be reimbursed at the developer's choice for such excess construction, funding or contribution from development impact fees paid by future development which impacts the system improvements constructed, funded or contributed by the developer(s) or fee payer.

(~~3~~4) If credit or reimbursement is due to the developer pursuant to this section, the governmental entity shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.

SECTION 6. That Section 67-8210, Idaho Code, be, and the same is hereby amended to read as follows:

67-8210. EARMARKING AND EXPENDITURE OF COLLECTED DEVELOPMENT IMPACT FEES. (1) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one (1) or more interest-bearing accounts within the capital projects fund. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned, and not funds subject to section 57-127, Idaho Code, and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter.

(2) Expenditures of development impact fees shall be made only for the category of system improvements and within or for the benefit of the service area for which the development impact fee was imposed as shown by the capital improvements plan and as authorized in this chapter. Development impact fees shall not be used for any purpose other than system improvement costs to create additional improvements to serve new growth.

(3) As part of its annual audit process, a governmental entity shall prepare an annual report:

(a) Ddescribing the amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area; and

(b) Describing the percentage of tax and revenues other than impact fees collected, appropriated or spent for system improvements during the preceding year by category of public facility and service area.

(4) Collected development impact fees must be expended within five (5) years from the date they were collected, on a first-in, first-out (FIFO) basis, except that the development impact fees collected for wastewater collection, treatment and disposal and drainage facilities must be expended within twenty (20) years. Any funds not expended within the prescribed times shall be refunded pursuant to section 67-8211, Idaho Code. A governmental entity may hold the fees for longer than five (5) years if it identifies, in writing:

(a) A reasonable cause why the fees should be held longer than five (5) years; and

(b) An anticipated date by which the fees will be expended but in no event greater than eight (8) years from the date they were collected.

SECTION 7. That Section 67-8211, Idaho Code, be, and the same is hereby amended to read as follows:

67-8211. REFUNDS. (1) Any governmental entity which adopts a development impact fee ordinance shall provide for refunds upon the request of an owner of property on which a development impact fee has been paid if:

(a) Service is available but never provided;

(b) A building permit or permit for installation of a manufactured home is denied or abandoned; or

(c) The governmental entity, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to section 67-8210(4), Idaho Code; or

(d) The fee payer pays a fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the governmental entity was entitled to receive.

(2) When the right to a refund exists, the governmental entity is required to send a refund to the owner of record within ninety (90) days after it is determined by the governmental entity that a refund is due.

(3) A refund shall include a refund of interest at one-half (1/2) the legal rate provided for in section 28-22-104, Idaho Code, from the date on which the fee was originally paid.

(4) Any person entitled to a refund shall have standing to sue for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsection (2) of this section.

SECTION 8. That Section 67-8213, Idaho Code, be, and the same is hereby amended to read as follows:

67-8213. COLLECTION. A governmental entity may provide in a development impact fee ordinance the means for collection of development impact fees, including, but not limited to:

(1) Additions to the fee for reasonable interest and penalties for non-payment or late payment;

(2) Withholding of the building permit or other governmental approval until the development impact fee is paid;

(3) Withholding of utility services until the development impact fee is paid; and

(4) Imposing liens for failure to timely pay a development impact fee following procedures contained in chapter 5, title 45, Idaho Code.

A governmental entity that discovers an error in its impact fee formula that results in assessment or payment of more than a proportionate share shall, at the time of assessment on a case by case basis, adjust the fee to collect no more than a proportionate share or discontinue the collection of any impact fees until the error is corrected by ordinance.

SECTION 9. This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of section 67-8204(15)(b), Idaho Code, as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to section 67-8204, Idaho Code, as amended pursuant to this act.

Approved March 27, 2002.

CHAPTER 348
(H.B. No. 657)

AN ACT

RELATING TO ATTENDANCE AT SCHOOLS; AMENDING SECTION 33-205, IDAHO CODE, TO PROVIDE THAT ANY PUPIL OF COMPULSORY ATTENDANCE AGE WHO IS DENIED ATTENDANCE SHALL COME UNDER THE PURVIEW OF THE JUVENILE CORRECTIONS ACT AND TO PROVIDE THAT NOTICE OF PUPIL'S STATUS SHALL BE GIVEN TO THE PROSECUTING ATTORNEY OF THE COUNTY OF THE PUPIL'S RESIDENCE; AMENDING SECTION 33-206, IDAHO CODE, TO PROVIDE THE PROCEDURE FOR THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT WHEN A CHILD IS DETERMINED TO BE IN VIOLATION OF ATTENDANCE REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 20-527, IDAHO CODE, TO GOVERN ACTION AGAINST A TRUANT PURSUANT TO THE JUVENILE CORRECTIONS ACT.

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

SECTION 1. That Section 33-205, Idaho Code, be, and the same is hereby amended to read as follows:

33-205. DENIAL OF SCHOOL ATTENDANCE. The board of trustees may deny enrollment, or may deny attendance at any of its schools by expulsion, to any pupil who is an habitual truant, or who is incorrigible, or whose conduct, in the judgment of the board, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to

the health and safety of other pupils, or who has been expelled from another school district in this state or any other state. Any pupil having been denied enrollment or expelled may be enrolled or readmitted to the school by the board of trustees upon such reasonable conditions as may be prescribed by the board; but such enrollment or readmission shall not prevent the board from again expelling such pupil for cause.

Provided however, the board shall expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who has been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis. Discipline of students with disabilities shall be in accordance with the requirements of federal law part B of the individuals with disabilities education act and section 504 of the rehabilitation act. An authorized representative of the board shall report such student and incident to the appropriate law enforcement agency.

No pupil shall be expelled nor denied enrollment without the board of trustees having first given written notice to the parent or guardian of the pupil, which notice shall state the grounds for the proposed expulsion or denial of enrollment and the time and place where such parent or guardian may appear to contest the action of the board to deny school attendance, and which notice shall also state the rights of the pupil to be represented by counsel, to produce witnesses and submit evidence on ~~its~~ his own behalf, and to cross-examine any adult witnesses who may appear against him. Within a reasonable period of time following such notification, the board of trustees shall grant the pupil and his parents or guardian a full and fair hearing on the proposed expulsion or denial of enrollment. However, the board shall allow a reasonable period of time between such notification and the holding of such hearing to allow the pupil and his parents or guardian to prepare their response to the charge. Any pupil who is within the age of compulsory attendance, who is expelled or denied enrollment as herein provided, shall come under the purview of the ~~youth rehabilitation law~~ juvenile corrections act, and an authorized representative of the board shall, ~~file a petition with the magistrate division of the district court~~ within five (5) days, give written notice of the pupil's expulsion to the prosecuting attorney of the county of the pupil's residence~~, in such form as the court may require under the provisions of section 16-1807, Idaho Code~~.

The superintendent of any district or the principal of any school may temporarily suspend any pupil for disciplinary reasons or for other conduct disruptive of good order or of the instructional effectiveness of the school. A temporary suspension by the principal shall not exceed five (5) school days in length; and the school superintendent may extend the temporary suspension an additional ten (10) school days. Provided, that on a finding by the board of trustees that immediate return to school attendance by the temporarily suspended student would be detrimental to other pupils' health, welfare or safety, the board of trustees may extend the temporary suspension for an additional five (5) school days. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any pupil who has been suspended may be readmitted to the school by the superintendent or principal who suspended him upon such reasonable conditions as said superintendent or principal may prescribe. The board of trustees shall be noti-

fied of any temporary suspensions, the reasons therefor, and the response, if any, thereto.

The board of trustees of each school district shall establish the procedure to be followed by the superintendent and principals under its jurisdiction for the purpose of effecting a temporary suspension, which procedure must conform to the minimal requirements of due process.

SECTION 2. That Section 33-206, Idaho Code, be, and the same is hereby amended to read as follows:

33-206. HABITUAL TRUANT DEFINED. An habitual truant is any public school pupil who, in the judgment of the board of trustees, repeatedly has violated the attendance regulations established by the board; or any ~~child whose~~ parents or guardians, or any of them, have failed or refused to cause such child to be instructed as provided in section 33-202, Idaho Code, and the child shall come under the purview of the juvenile corrections act if he or she is within the age of compulsory attendance.

Whenever it ~~shall come to the attention of~~ is determined by the board of trustees of any school district that any child enrolled in public school repeatedly has violated the attendance regulations established by the board, or whenever it is determined by the board under provisions providing due process of law for the student and his or her parents that the parents or guardians of any child are failing to meet the requirements of section 33-202, Idaho Code, an authorized representative of the board shall notify in writing the prosecuting attorney in the county of the pupil's residence and recommend that a petition shall be filed ~~with the probate court of the county in which the child resides, as provided in section 33-205~~ in the magistrates division of the district court of the county of the pupil's residence, in such form as the court may require under the provisions of section 20-510, Idaho Code.

SECTION 3. That Section 20-527, Idaho Code, be, and the same is hereby amended to read as follows:

20-527. SCHOOL TRUSTEES TO REPORT TRUANTS. When a juvenile of compulsory school age is expelled ~~the board of trustees of the school district or the board's delegated representatives shall~~ or is reported to have repeatedly violated the attendance regulations of the school district in which the juvenile is enrolled, pursuant to section 33-206, Idaho Code, the prosecuting attorney may file a petition under this act. ~~as provided in section 33-205, Idaho Code.~~ The court shall cause an investigation to be made and upon receipt of the written report of the investigation, the court may proceed under this act or the child protective act with respect to the juvenile and may proceed against the juvenile's parent(s), guardian or custodian under this act pursuant to section 33-207, Idaho Code.

Approved March 27, 2002.

CHAPTER 349
(H.B. No. 666)

AN ACT

RELATING TO INTERIM AUTHORITY FOR RENTAL OF STORAGE WATER TO AUGMENT FLOWS DURING THE MIGRATION OF SNAKE RIVER SALMON; AMENDING SECTION 42-1763B, IDAHO CODE, TO REVISE LEGISLATIVE INTENT, TO PROVIDE FOR ANNUAL REPORTS OF THE UNITED STATES BUREAU OF RECLAMATION, TO PROVIDE FOR REPORTS ON THE PLAN FOR RELEASES FOR THE SPRING AND SUMMER CHINOOK BY APRIL 1 AND ON THE PLAN FOR RELEASES FOR THE FALL CHINOOK BY JULY 15 OF EACH YEAR AND TO MOVE THE SUNSET CLAUSE AHEAD THREE YEARS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 42-1763B, Idaho Code, be, and the same is hereby amended to read as follows:

42-1763B. INTERIM AUTHORITY FOR RENTAL OF STORAGE WATER TO AUGMENT FLOWS DURING THE MIGRATION OF SNAKE RIVER SALMON. (1) Legislative findings and intent regarding rental of storage water from U.S. bureau of reclamation projects in the Snake River basin within Idaho to augment lower Snake River flows during the migration of Snake River salmon.

(a) The legislature finds that the U.S. bureau of reclamation desires to release up to four hundred twenty-seven thousand (427,000) acre feet of water to augment salmon flows ~~in 2001~~ during 2002, 2003 and 2004. The state of Idaho is experiencing serious drought conditions ~~in 2001~~ and it is therefore ~~unlikely that~~ uncertain whether four hundred twenty-seven thousand (427,000) acre feet of water will be available for rental for flow augmentation purposes. Nonetheless, the legislature finds that authorization of this legislation will facilitate ongoing negotiations in the Snake River basin adjudication. Therefore, the legislature authorizes the U.S. bureau of reclamation to release water from its projects under the limited conditions of this section in ~~2001~~ 2002, 2003 and 2004.

(b) It is the intent of the legislature to promptly consider the repeal of this section in the event that the provisions of the supplemental biological opinion issued by the national marine fisheries service on January 24, 2002, related to the provision of flows for salmon from the Snake River basin above Brownlee Reservoir are modified or declared arbitrary, capricious or otherwise unlawful or set aside by any federal court.

(2) Rental of storage water from U.S. bureau of reclamation storage.

(a) Notwithstanding the legislative approval required in section 42-108, Idaho Code, any storage water release from U.S. bureau of reclamation reservoirs within the state of Idaho for use to augment river flows during the migration of Snake River salmon pursuant to this section must be rented through the water bank operated by the Idaho water resource board pursuant to sections 42-1761 through 42-1764, Idaho Code, or through local water rental committees, created pursuant to section 42-1765, Idaho Code, under their respective water bank rules.

(b) For any rental of water pursuant to this section, the director shall not be required to determine under section 42-1763, Idaho Code, whether the water supply is sufficient for the purpose for which it is sought, whether the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, whether such use is in the public interest, or whether such use is consistent with the factors enumerated under subsection (3) of section 42-401, Idaho Code.

(3) Conditions on storage water rentals.

(a) Any storage water made available under this section shall be obtained only from willing lessors. Any water rented under this section from reservoirs located within a basin having a local rental pool committee established pursuant to section 42-1765, Idaho Code, shall be rented pursuant to this section only through the local rental pool committee.

(b) Storage water made available under this section shall be limited to four hundred twenty-seven thousand (427,000) acre feet annually. These releases from storage shall be reduced by other water the U.S. bureau of reclamation provides for augmentation of salmon flows from the Snake River and its tributaries.

(c) In no event shall the release of water under this section cause the water surface of Cascade Reservoir to be below the elevation required to maintain a storage volume of three hundred thousand (300,000) acre feet, fifty thousand (50,000) acre feet of which is dead space, which is currently estimated to be at an elevation of four thousand eight hundred nine and two-tenths (4,809.2) feet.

(d) ~~The U.S. bureau of reclamation shall report on the plan for releases for the spring and summer chinook prior to such releases and on the plan for releases for the fall chinook by July 15, 2001.~~ The U.S. bureau of reclamation shall submit a report to the director by January 15~~, 2002,~~ of each year describing the time, volume and purpose of storage water released for salmon purposes during the past year ~~2001~~ and shall report on the plan for releases for the spring and summer chinook by April 1 and on the plan for releases for the fall chinook by July 15 of each year.

(e) All storage water rented from U.S. bureau of reclamation reservoirs under this section must be used for power production purposes within the state of Idaho.

(f) Nothing herein shall entitle the U.S. bureau of reclamation to rent storage water upon termination or expiration of the permission given in this section.

(4) Nothing in this section shall be construed to alter in any way the existing contractual obligations of the U.S. bureau of reclamation or to constitute a finding by the legislature that the rental or use of storage water for augmentation of flows for salmon migration is a beneficial use of water, that it is in the public interest, or whether such use injures existing water rights.

(5) This section shall not become effective until the director certifies to the governor that the U.S. bureau of reclamation's applications to transfer water right numbers 4616, 4617, 4618, 4623, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633 and 4636, and to amend water right permit numbers 25-07004 and 63-3618 will be held in abeyance until July 1, 200~~1~~5.

(6) On and after January 1, 2002~~2~~5, this act shall be null, void and of no force and effect.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2002.

Approved March 27, 2002.

CHAPTER 350
(H.B. No. 676)

AN ACT

APPROPRIATING MONEYS FROM THE IDAHO MILLENNIUM INCOME FUND TO THE STATE TREASURER FOR THE PURPOSES SPECIFIED FOR FISCAL YEAR 2003; APPROPRIATING MONEYS TO VARIOUS PROGRAMS; PROVIDING LEGISLATIVE INTENT TO THE CATASTROPHIC HEALTH CARE COST PROGRAM BOARD REGARDING CERTAIN EXPENDITURES; AND PROVIDING LEGISLATIVE INTENT REGARDING THE ALLOCATION OF AVAILABLE FUNDS.

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

SECTION 1. There is hereby appropriated from the Idaho Millennium Income Fund to the State Treasurer $3,579,200 to be expended for trustee and benefit payments as specified in Section 2 of this act for the period July 1, 2002, through June 30, 2003.

SECTION 2. Of the amount appropriated to the State Treasurer for trustee and benefit payments in Section 1 of this act, there is hereby appropriated from the Idaho Millennium Income Fund to the following programs for the period July 1, 2002, through June 30, 2003:

(a) $515,200 for the Public Health Districts to continue tobacco use cessation programs statewide through the Public Health Districts and other nonprofit entities such as hospitals, primary care clinics and volunteer organizations. The tobacco use cessation programs should be available to any Idaho citizen, with primary emphasis on youth and pregnant women. The program shall include strong evaluation measures including, but not limited to, the number of programs funded, the number of participants and quit rates.

(b) $435,000 for the Catastrophic Health Care Cost Program for tobacco-related disease treatment as determined by a physician, by way of reducing the county deductible payment pursuant to Section 3 of this act.

(c) $500,000 for the Bureau of Health Promotion in the Department of Health and Welfare for targeted tobacco counter-marketing programs, specific to Idaho, with media buy-time to be matched by private industry funds on at least a one-to-one basis.

(d) $120,000 for the Idaho Supreme Court for youth courts and community-based programs in the judicial districts that address tobacco and/or substance abuse.

(e) $150,000 for the Children's Trust Account Board in the Department of Health and Welfare to continue youth asset building activities in Idaho communities.

(f) $150,000 for the Idaho Supreme Court to continue the status offender services program to identify high-risk youth and provide services and monitoring aimed at stopping and deescalating the cycle toward incarceration.

(g) $148,600 for the American Lung Association of Idaho/Nevada to implement the Not on Tobacco (N-O-T) smoking cessation/reduction program and the Teens Against Tobacco Use (T.A.T.U.) tobacco control intervention program in Idaho primary and secondary schools and communities.

(h) $34,000 for the American Cancer Society's Camp Rainbow Gold to pay expenses (including transportation, lodging, meals, activities and medical) necessary for children between the ages of six (6) and sixteen (16) years, who are residents of Idaho and who have been diagnosed with cancer or are cancer survivors, to attend Camp Rainbow Gold. No portion of these funds may be used for personnel costs.

(i) $10,000 for the American Cancer Society for use by the Magic Valley Youth Tobacco Free Coalition to support youth tobacco free coalitions in the following Idaho counties: Gooding, Jerome, Lincoln, Blaine, Cassia and Minidoka; and to implement businesses of excellence in tobacco control in the aforementioned counties. No portion of these funds may be used for personnel costs.

(j) $121,000 for the Center for Health Policy at Boise State University to complete the creation of a central repository of interagency substance abuse data. This will continue to be a collaborative effort among Boise State University, Idaho State University and the University of Idaho, whereby the universities will continue to analyze the data with regard to the effects of substance abuse and treatment outcomes. The Center of Health Policy should collaborate with the Bureau of Health Promotion in the Department of Health and Welfare, and to the extent possible, utilize the baseline data being developed so as to avoid duplication in efforts.

(k) $50,000 for the Bureau of Medical Assistance Services in the Department of Health and Welfare to be used as planning funds to make improvements in a proposed public/private partnership with HealthLink of Idaho to implement a small business health insurance model.

(l) $1,251,400 for the Catastrophic Health Care Cost Program for expenses of caring for indigent persons after the $10,000 deductible is paid by the counties.

(m) $94,000 for Law Enforcement Programs in the Idaho State Patrol for offsetting the cost of youth tobacco investigations.

GRAND TOTAL: $3,579,200

SECTION 3. It is legislative intent that the Catastrophic Health Care Cost Program Board use the funds appropriated in Section 2(b) of this act to temporarily reduce the $10,000 deductible paid by counties for the costs of caring for indigent persons with tobacco-related diseases. The Catastrophic Health Care Cost Program Board shall be vested with the authority to define and determine which cases qualify for the reduced county deductible, subject to the provisions of this section. Notwithstanding the provisions of Chapter 35, Title 31, Idaho Code, the Catastrophic Health Care Cost Program Board is hereby granted the authority to enact these reductions for the period July 1, 2002, through June 30, 2003, provided that the additional fiscal impact of these reductions on the Catastrophic Health Care Cost Program shall not exceed the amount appropriated in Section 2(b) of this act.

SECTION 4. It is legislative intent that if the total amount of moneys appropriated in Section 2 of this act is not available for appropriation, then the State Treasurer shall allocate such funds as are available to the recipients listed in Section 2 of this act, in the proportion that the amount each recipient's appropriation bears to the total amount appropriated.

Approved March 27, 2002.

CHAPTER 351
(H.B. No. 678, As Amended)

AN ACT

RELATING TO DAMAGE TO UNDERGROUND FACILITIES; AMENDING SECTION 55-2203, IDAHO CODE, TO CLARIFY RESPONSIBILITY TO MARK UNDERGROUND FACILITIES; AMENDING SECTION 55-2206, IDAHO CODE, TO CLARIFY NOTIFICATION REQUIREMENTS; AMENDING SECTION 55-2208, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO STRIKE REFERENCE TO AN EMPLOYEE; AND AMENDING SECTION 55-2209, IDAHO CODE, TO REVISE PENALTIES AND PROVIDE FOR A WARNING FOR DAMAGE TO MARKED AND LOCATED UNDERGROUND FACILITIES AND FOR FAILURE TO NOTIFY THE OWNER OF UNDERGROUND FACILITIES PRIOR TO EXCAVATION AND TO AUTHORIZE A PRIVATE CAUSE OF ACTION FOR PENALTIES UNDER CERTAIN CONDITIONS AND TO ALLOW FOR TREBLE DAMAGES IN CERTAIN INSTANCES.

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

SECTION 1. That Section 55-2203, Idaho Code, be, and the same is hereby amended to read as follows:

55-2203. PERMIT COMPLIANCE -- NOTICE OF EXCAVATION -- RESPONSE TO NOTICE -- COMPENSATION FOR FAILURE TO COMPLY -- EXEMPTIONS. (1) Before commencing excavation, the excavator shall:

(a) Comply with other applicable law or permit requirements of any public agency issuing permits;

(b) Pre-mark on-site the path of excavation with white paint or, as the circumstances require, other reasonable means that will set out clearly the path of excavation. An excavator need not pre-mark as required in this subsection if:

(i) The underground facility owner or its agent can determine the location of the proposed excavation by street address or lot and block by referring to a locate ticket; or

(ii) The excavator and underground facility owner have had a meeting prior to the beginning of the proposed excavation at the excavation site for the exchange of information required under this subsection.

(c) Provide notice of the scheduled commencement of excavation to all ~~owners of~~ underground ~~facilities~~ facility owners through a one-number locator service. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to have or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated by the excavator to the one-number locator service or, if no one-number locator service is available, to the owners of underground facilities not less than two (2) business days nor more than ten (10) business days before the scheduled date for commencement of excavation, unless otherwise agreed in writing by the parties.

(2) Upon receipt of the notice provided for in this section, the ~~owner of the~~ underground facility owner or the owner's agent shall ~~provide the excavator with reasonably accurate information as to~~ locate and mark its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities or the owner's agent shall ~~provide the excavator~~ locate and mark the underground facilities in accordance with the best ~~available~~ information ~~as to their locations~~ available to the owner of the underground facilities and with reasonable accuracy as defined in section 55-2202(12), Idaho Code. The owner of the underground facility or the owner's agent providing the information shall respond no later than two (2) business days after the receipt of the notice or before the excavation time set forth in the excavator's notice, at the option of the underground facility owner, unless otherwise agreed in writing by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, or the owner's agent, the excavator is responsible for maintaining the markings. Unless otherwise agreed in writing by the parties, maintained markings shall be valid for purposes of the notified excavation for a period of no longer than three (3) consecutive weeks following the date of notification so long as it is reasonably apparent to the excavator that site conditions have not changed so substantially as to invalidate the markings.

(a) Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this ~~section~~ chapter.

(b) The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation

notices given less than two (2) business days prior to the excavation except for notices given for discovered facilities after the owner has identified facilities.

(3) Emergency excavations are exempt from the time requirements for notification provided in this section.

(4) If the excavator, while performing the excavation, discovers underground facilities (whether active or abandoned) which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service. The ~~state, county, city or highway district public road agency~~ excavator shall have the right to receive compensation from the underground facility owner for standby cost (based on standby rates made publicly available) incurred as a result of waiting for the underground facility owner or the owner's agent to arrive at the work site to identify ~~facilities discovered after the owner has identified all known~~ the unidentified facilities and provided that if the underground facility owner or the owner's agent supplies reasonably accurate locate information within eight (8) hours of the time that the excavator ~~encounters the facility~~ notifies the underground facility owner of facilities not previously located, the excavator's compensation for delay of the excavation project shall be ~~limited to~~ actual costs or ~~eight hundred~~ one thousand dollars ($81,000), whichever is less.

SECTION 2. That Section 55-2206, Idaho Code, be, and the same is hereby amended to read as follows:

55-2206. DAMAGE TO UNDERGROUND FACILITIES -- DUTIES OF EXCAVATOR AND OWNER. (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the ~~utility owning or operating such facility~~ underground facility owner and the one-number locator service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

SECTION 3. That Section 55-2208, Idaho Code, be, and the same is hereby amended to read as follows:

55-2208. EXCAVATIONS EXEMPT FROM NOTICE REQUIREMENT. Unless facts exist which would reasonably cause an excavator to believe that an underground facility exists within the depth of the intended excavation, the following excavations shall not require notice of the excavation pursuant to section 55-2203(1)(~~b~~c), Idaho Code:

(1) An excavation of less than fifteen (15) inches in vertical depth outside the boundaries of an underground facility easement of public record on private property. ~~and if the excavation is being performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed.~~

(2) The tilling of soil to a depth of less than fifteen (15) inches for agricultural practices.

(3) The extraction of minerals within recorded mining claims or excavation within material sites legally located and of record, unless such excavation occurs within the boundaries of an underground facility easement.

(4) Normal maintenance of roads, streets and highways, including cleaning of roadside drainage ditches and clear zones, to a depth of fifteen (15) inches below the grade established during the design of the last construction of which underground facility owners were notified and which excavation will not reduce the authorized depth of cover of an underground facility.

(5) Replacement of highway guardrail posts, sign posts, delineator posts, culverts, and traffic control device supports in the same approximate location and depth of the replaced item within public highway rights-of-way.

(6) Normal maintenance of railroad rights-of-way, except where such rights-of-way intersect or cross public roads, streets, highways, or rights-of-way adjacent thereto, or recorded underground facility easements.

SECTION 4. That Section 55-2209, Idaho Code, be, and the same is hereby amended to read as follows:

55-2209. VIOLATION -- CIVIL PENALTY — TREBLE DAMAGES — OTHER REMEDIES UNIMPAIRED. (1) Any person who violates any provision of this chapter, other than the failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars ($1,000) for each violation. All penalties recovered in such actions shall be deposited in the state general account.

(2) If an underground facility is damaged as a result of an excavator's failure to provide notice pursuant to section 55-2203(1)(c), Idaho Code, unless otherwise exempt, the excavator shall receive a written warning from the underground facility owner and shall be liable for actual costs of repairing the facility if it is the excavator's first failure to provide the notice required pursuant to section 55-2203(1)(c), Idaho Code, during any consecutive period of twelve (12) months.

(a) If the court finds, by a preponderance of the evidence, that the excavator has, on more than one (1) occasion during any consecutive period of twelve (12) months, failed to provide the notice required pursuant to section 55-2203(1)(c), Idaho Code, and that such failure has been a proximate cause of damage to an underground facility, the court may increase the civil penalty in an amount up to five thousand dollars ($5,000).

(b) If the court finds, by a preponderance of the evidence, that the excavator has, on three (3) or more occasions during any consecutive period of twelve (12) months, failed to provide the notice required pursuant to section 55-2203(1)(c), Idaho Code, and that such failure has been a proximate cause of damage to an underground facility, the court may increase the civil penalty in an amount up to ten thousand dollars ($10,000) for the third occurrence taking place during the twelve (12) month period.

(3) (a) An action to recover a civil penalty under this section may be brought by a prosecuting attorney. If the prosecuting attorney does not file an action for such civil penalty within sixty (60) days from the date of a request for such action by the owner of an underground facility, the underground facility owner may file such action. Venue for such an action shall be proper in the judicial district for the county in which the damaged underground facility is located or the county in which the excavator resides or maintains a principal place of business in this state. The prevailing party in such action shall be entitled to recover its costs and reasonable attorney's fees incurred in such action.

(b) The penalties provided in this section are in addition to any other remedy at law or equity available to an excavator or to the owner or operator of a damaged underground facility.

(c) The court shall consider, as a mitigating factor in determining the amount of civil penalty to be imposed, evidence showing by a preponderance of the evidence that the violation occurred solely as a proximate result of the excavator or underground facility owner's reasonable response to an emergency beyond the control of the offending party.

(d) Any civil penalty imposed pursuant to this section shall be deposited in the state general fund. Attorney's fees shall be paid solely to the party successfully bringing the action.

(4) Any excavator who ~~willfully or maliciously~~ damages an ~~field-marked~~ underground facility ~~shall~~ on a third or subsequent violation pursuant to subsection (2) of this section may be liable for treble the costs incurred in repairing or relocating the facility.

(~~3~~5) Unless expressly provided herein, nothing in this chapter eliminates, alters or otherwise impairs common law, statutory or other preexisting rights and duties of persons affected by the provisions of this chapter; nor does anything in this chapter, unless expressly so provided, eliminate, alter or otherwise impair other remedies, state or federal, including those at common law, of an underground facility owner whose facility is damaged; nor do the provisions of this chapter affect any civil remedies for personal injury or property damage except as expressly provided for herein.

Approved March 27, 2002.

CHAPTER 352
(H.B. No. 486, As Amended in the Senate)

AN ACT

RELATING TO THE IDAHO MILLENNIUM INCOME FUND; AMENDING SECTION 67-1802, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO APPROPRIATIONS FOR ADMINISTRATIVE COSTS; AMENDING CHAPTER 18, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1804, IDAHO CODE, TO CREATE THE JOINT MILLENNIUM FUND COMMITTEE AND PROVIDE FOR APPOINTMENT OF MEMBERS; AMENDING CHAPTER 18, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1805, IDAHO CODE, TO SET FORTH THE POWERS AND DUTIES OF THE COMMITTEE; AMENDING CHAPTER 18, TITLE 67, IDAHO CODE, BY THE

ADDITION OF A NEW SECTION 67-1806, IDAHO CODE, TO PROVIDE FOR THE SUPPORT AND STAFF OF THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND APPOINTMENT OF INITIAL MEMBERS.

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

SECTION 1. That Section 67-1802, Idaho Code, be, and the same is hereby amended to read as follows:

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

SECTION 2. That Chapter 18, 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 67-1804, Idaho Code, and to read as follows:

67-1804. JOINT MILLENNIUM FUND COMMITTEE — CREATION AND APPOINTMENT OF MEMBERS. There is hereby created the joint millennium fund committee, hereafter referred to as the committee. The committee shall consist of ten (10) members, each of whom shall be a member of the legislature. The committee members shall be appointed as follows: three (3) members shall be appointed by the president pro tempore of the senate, one (1) of whom shall be cochair of the committee; two (2) members shall be appointed by the minority leader of the senate; three (3) members shall be appointed by the speaker of the house of representatives, one (1) of whom shall be cochair of the committee; and two (2) members shall be appointed by the minority leader of the house of representatives. The term of a member of the committee shall coincide with the term of election to the legislature. A vacancy during the term of a member of the committee shall be filled by the appointing authority of that member, and members may be reappointed to a subsequent term.

SECTION 3. That Chapter 18, 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 67-1805, Idaho Code, and to read as follows:

67-1805. POWERS AND DUTIES OF THE COMMITTEE. The committee shall have the following powers and duties:

(1) To meet not less than two (2) times each year;

(2) To establish rules for governance and operation of committee proceedings;

(3) To request applications for funding from the Idaho millennium income fund;

(4) To meet to hear testimony and to consider applications for funding from the Idaho millennium income fund;

(5) To evaluate the actual and potential success of programs funded with moneys from the Idaho millennium income fund; and

(6) To present recommendations annually to the legislature for the use of the moneys in the Idaho millennium income fund.

SECTION 4. That Chapter 18, 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 67-1806, Idaho Code, and to read as follows:

67-1806. SUPPORT AND STAFF FOR THE COMMITTEE. The legislative services office shall provide for the support and staffing of the committee as the committee may require in the performance of its duties.

SECTION 5. This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act.

Approved March 27, 2002.

CHAPTER 353
(H.B. No. 548, As Amended)

AN ACT

RELATING TO STUDENTS USING OR BEING UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCES; AMENDING SECTION 33-210, IDAHO CODE, TO REVISE THE PROCEDURE GOVERNING THE RESPONSE BY SCHOOL EMPLOYEES WHEN A STUDENT MAKES A VOLUNTARY DISCLOSURE AND WHEN A STUDENT IS REASONABLY SUSPECTED OF USING OR BEING UNDER THE INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE, TO PROVIDE IMMUNITY AND TO DEFINE TERMS.

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

SECTION 1. That Section 33-210, Idaho Code, be, and the same is hereby amended to read as follows:

33-210. STUDENTS USING OR UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCES. (1) It is legislative intent that parental involvement in all aspects of a child's education in the public school system remain a priority. ~~in administrative policy. Drug~~ Substance abuse prevention programs and counseling for students ~~under the custodial and tutelary care of the~~ attending public schools are no exception. Consequently, ~~any student who voluntarily discloses~~ it is the duty of the board of trustees of each school district, including specially chartered school districts, and governing boards of charter schools, to adopt and implement policies specifying how personnel shall respond when a student discloses or is reasonably suspected of using or being under the influence of alcohol or any controlled substance defined by section 37-2732C, Idaho Code. ~~, before he or she is reasonably suspicioned to be in violation of section 37-2732C, Idaho Code, shall be provided~~ Such policies shall include provisions that anonymity ~~to the extent that disclosure is held confidential~~ will be provided to the student on a faculty "need to know" basis, ~~that~~ when a student voluntarily discloses using or being

under the influence of alcohol or any controlled substance while on school property or at a school function, except as deemed reasonably necessary to protect the health and safety of others. Nnotification ~~is~~ of the disclosure and availability of counseling for students shall be provided to parents, the legal guardian or child's custodian. ~~and that available counseling at the school level is offered.~~ However, once a student is reasonably ~~suspicioned to be~~ suspected of using or being under the influence of alcohol or a controlled substance in violation of section 37-2732C, Idaho Code, regardless of any previous voluntary disclosure, the school administrators or designee shall ~~immediately initiate procedures established by the district board of trustees to seek law enforcement evaluation of the student; such evaluation possibly resulting in transfer of school custodial responsibility to that of law enforcement in accordance with section 20-516, Idaho Code~~ contact the student's parent, legal guardian or custodian, and report the incident to law enforcement. The fact that a student has previously disclosed use of alcohol or a controlled substance shall not be deemed a factor in determining reasonable suspicion at a later date.

(2) In addition to policies adopted pursuant to this section, students may, at the discretion of the district board of trustees or governing board of a charter school, be subject to other disciplinary or safety policies, regardless whether the student voluntarily discloses or is reasonably suspected of using or being under the influence of alcohol or a controlled substance in violation of district or charter school policy or section 37-2732C, Idaho Code.

(3) The district board of trustees or the governing board of the charter school shall ensure that procedures are developed for contacting law enforcement and the student's parents, legal guardian or custodian regarding a student reasonably suspected of using or being under the influence of alcohol or a controlled substance. District and charter school policies formulated to meet the provisions of section 37-2732C, Idaho Code, and this section shall be made available to each student, parent, guardian or custodian by August 31, 2002, and thereafter as provided by section 33-512 6., Idaho Code.

(4) Any school district employee or independent contractor of an educational institution who has a reasonable suspicion that a student is using or is under the influence of alcohol or a controlled substance and, acting upon that suspicion, reports that suspicion to a school administrator or initiates procedures adopted by the board of trustees or governing board of the charter school pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by this section. Employees and independent contractors of educational institutions who intentionally harass a student through the misuse of the authority provided in this section shall not be immune from civil liability arising from the wrongful exercise of that authority and shall be guilty of a misdemeanor punishable by a fine not to exceed three hundred dollars ($300).

(5) For the purposes of this section, the following definitions shall apply:

(a) ~~"Intervention trained" means employees and independent contractors of an educational institution who have completed a state~~

~~accredited--course--related-to-illegal-drugs,-their-physical-characteristics,-physiological-effects-and-how-student-behavioral--changes typically--associated-with-the-use-of-such-products-may-be-evidenced in-the-classroom;-or-before-May-31,-1997,-those-employees-and--independent-contractors-of-an-educational-institution-who-have-completed similar--training-and-who-have-a-minimum-of-two-(2)-years-experience as-intervention-team-members.-The-latter-are-exempt-from--additional training--to--meet--"intervention-trained"-standards-in-effect-after May-31,-1997.~~

~~(b)~~ "Reasonable ~~cause/~~suspicion" means an act of judgment by an ~~intervention-trained~~ school employee or independent contractor of an educational institution which leads to a reasonable and prudent belief that a student is in violation of school board or charter school governing board policy regarding alcohol or controlled substance use, or the "use" or "under the influence" provisions of section 37-2732C, Idaho Code. Said judgment shall be based on training in recognizing the signs and symptoms of alcohol and controlled substance use.

~~(3)--By--September--1,--1996,--the-state-department-of-education,-in cooperation-with-the-chief-certification-officer-of-the-state--board--of education,--shall--develop-course-materials-and-standards-appropriate-to establishing-intervention-training-as-an-accredited-option-among--public education--recertification-electives.-Such-training-shall-be-made-available-not-later-than-May-31,-1997.~~

~~(4)--The-process-leading-to-law-enforcement-evaluation-of-a--reasonably--suspected--student--is--a--responsibility-of-the-district-board-of trustees,-the-specifics-of-which-shall-be-based-on-procedures--developed within--each--district--to--insure-that-reasonable-suspicion,-as-defined above,-is-not-confused-with-intentional-harassment-of-a--difficult--student.--District--policy--formulated--to--meet--the-provisions-of-section 37-2732C,-Idaho-Code,-and-this-section,-together--with--the--process--by which--law--enforcement-may-assume-custodial-responsibility-of-a-reasonably-suspected-student,-shall-be-made-available-to-each-student,-parent, guardian-or-custodian-by-August-31,-1997,-and-afterwards-at-the-time--of original-registration-of-the-student-in-a-district-school.-The-procedure for-parental,-legal-guardian-or-custodian-notification-will-be-included.~~

~~(5)--Intervention--trained--employees-and-independent-contractors-of educational-institutions-who-in-good-faith-and-with-appropriate--foundation-exercise-the-authority-granted-in-this-section-shall-be-immune-from civil-liability-arising-from-the-exercise-of-that-authority.~~

~~(6)--Intervention--trained--employees-and-independent-contractors-of educational-institutions-who-intentionally-harass-a-student-through--the misuse--of--the--authority--provided-in-this-section-shall-not-be-immune from-civil-liability-arising-from-the-wrongful-exercise-of-that--authority--and--shall--be--guilty-of-a-misdemeanor-punishable-by-a-fine-not-to exceed-three-hundred-dollars-($300)-only.~~

~~(7)--For-purposes-of-this-section,~~

(b) "~~i~~Intentionally harass" means a knowing and willful course of conduct directed at a specific student which seriously alarms, annoys, threatens or intimidates the student and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

(c) "Course of conduct" means a pattern or series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally and statutorily protected activity is not included within the meaning of "course of conduct."

Approved March 27, 2002.

CHAPTER 354
(H.B. No. 553)

AN ACT

RELATING TO HEALTH CARE IN RURAL, MEDICALLY UNDERSERVED AREAS; AMENDING SECTION 39-5903, IDAHO CODE, TO FURTHER DEFINE TERMS; AND AMENDING SECTION 39-5909, IDAHO CODE, TO REVISE THE GRANT AWARD SCHEDULE.

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

SECTION 1. That Section 39-5903, Idaho Code, be, and the same is hereby amended to read as follows:

39-5903. DEFINITIONS. As used in this chapter:

(1) "Applicant" means an entity submitting documents required by the rural health care access program for the purpose of requesting a grant from the rural health care access fund.

(2) "Application period" means the time period from January 15 to ~~May~~ April 15 prior to the state fiscal year for which funding is requested.

(3) "Approval" means written notification that the application will be awarded funding through the rural health care access fund.

(4) "Board" means the rural health care access program review board.

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

(6) "Director" means the director of the department of health and welfare.

(7) "Grant period" means the time immediately following the application period from July 1 through June 30 (state fiscal year) for which funding is granted.

(8) "Nurse practitioner" means a health care provider licensed pursuant to chapter 14, title 54, Idaho Code.

(9) "Oral health care provider" means a dentist or dental hygienist licensed pursuant to chapter 9, title 54, Idaho Code.

(10) "Physician assistant" means a health care provider licensed pursuant to chapter 18, title 54, Idaho Code.

(~~10~~11) "Primary care" means the provision of professional comprehensive health services, including oral health care services, that includes health education and disease prevention, initial assessment of health problems, treatment of acute care and chronic health problems, and the overall management of an individual's or family's health care services as provided by an Idaho licensed internist, obstetrician, gynecologist, pediatrician, family practitioner, general practitioner, dentist, dental hygienist, nurse practitioner or physician assistant. It provides the initial contact for health services and referral for secondary and tertiary care.

(1~~1~~2) "Primary care health professional shortage area" means a geographic area or population group which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(1~~2~~3) "Medically underserved area" means a geographic area which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(1~~3~~4) "Rural health care access grant" means a grant awarded pursuant to this chapter.

(1~~4~~5) "Rural health care access program" means the program that administers the rural health care access fund.

SECTION 2. That Section 39-5909, Idaho Code, be, and the same is hereby amended to read as follows:

39-5909. GRANT AWARD SCHEDULE. The board shall conduct the grant process in accordance with the following schedule:

(1) The rural health care access director will generate, and make available, a list of areas eligible for potential grant assistance no later than November 15 prior to the application period.

(2) The rural health care access director shall develop an application form and make guidance available no later than January 15 which shall initiate the application period prior to the grant period.

(3) The completed application shall be submitted no later than ~~May~~ April 15 of the application period.

(4) The board shall issue notification to every applicant regarding the disposition of their grant request by June ~~7~~ 15 prior to the grant period.

(5) Funds for approved grants shall be disbursed during July of that grant period or over the course of the current grant year as funds become available.

Approved March 27, 2002.

CHAPTER 355
(H.B. No. 597, As Amended in the Senate)

AN ACT

RELATING TO MOTOR VEHICLE DRIVER'S LICENSES; AMENDING SECTION 49-301, IDAHO CODE, TO REVISE PENALTIES FOR CERTAIN VIOLATIONS OF MOTOR VEHICLE LICENSING REQUIREMENTS; AND AMENDING SECTION 49-304, IDAHO CODE, TO PROVIDE THAT THE FAILURE TO OBTAIN A MOTORCYCLE "M" ENDORSEMENT PRIOR TO OPERATING A MOTORCYCLE UPON A HIGHWAY SHALL CONSTITUTE AN INFRACTION.

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

SECTION 1. That Section 49-301, Idaho Code, be, and the same is hereby amended to read as follows:

49-301. DRIVERS TO BE LICENSED. (1) No person, except those expressly exempted by the provisions of this chapter, shall drive any

motor vehicle upon a highway unless the person has a valid Idaho driver's license. No person shall operate a motorcycle upon a highway unless he has a motorcycle endorsement on his valid driver's license. No person shall operate a commercial motor vehicle as defined in section 49-123, Idaho Code, upon a highway unless he has a seasonal or class A, B or C driver's license with required endorsements. No person shall operate a motor vehicle in violation of any valid restriction identified on or attached to, his valid driver's license. No person shall receive a class D driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction for use within the United States, or any identification cards issued by any other jurisdiction within the United States, or until he executes an affidavit that he does not possess a driver's license or any identification cards. No person shall be permitted to have more than one (1) driver's license issued for use within the United States at any time.

(2) Any holder of a class A, B or C commercial driver's license issued by a jurisdiction other than Idaho shall apply for an Idaho-issued commercial driver's license within thirty (30) days of establishing a domicile in Idaho. In accordance with the federal motor carrier safety regulations, no person shall receive a class A, B or C driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction.

Except as provided in section 49-304, Idaho Code, a~~A~~ violation of this section is a misdemeanor.

SECTION 2. That Section 49-304, Idaho Code, be, and the same is hereby amended to read as follows:

49-304. MOTORCYCLE ENDORSEMENT. The department shall issue a motorcycle "M" endorsement on a driver's license to applicants who complete the requirements to operate a motorcycle.

(1) Any person who holds a valid Idaho driver's license on September 1, 1994, may operate a motorcycle without a motorcycle "M" endorsement until that driver's license expires or September 1, 1998, whichever occurs first.

(2) Any person who applies for a driver's license or renewal of a license after September 1, 1994, may also apply for a motorcycle "M" endorsement. Until September 1, 1998, the requirements for obtaining a motorcycle "M" endorsement are:

(a) The applicant shall be tested by written examination for his knowledge of safe motorcycle operating practices and traffic laws specific to the operation of motorcycles upon payment of the fee specified in section 49-306, Idaho Code.

(b) Upon successful completion of the knowledge test and upon payment of the fee required for an "M" endorsement, the applicant shall obtain a motorcycle "M" endorsement on his driver's license.

(3) No person under the age of twenty-one (21) years may apply for or obtain a motorcycle "M" endorsement on his driver's license unless he has successfully completed a motorcycle rider training course approved under the provisions of chapter 48, title 33, Idaho Code, in addition to satisfying the requirements specified in subsection (2) of this section. The provisions of this subsection shall not be effective unless and

until the motorcycle rider training course is fully implemented by the department of education.

(4) Any person who applies for a motorcycle endorsement on a driver's license after September 1, 1998, in addition to the requirements specified in subsection (2) of this section, may also be required to pass the motorcycle "M" skills test before he can obtain the motorcycle "M" endorsement.

(5) The operation of a motorcycle upon a highway by any person who has failed to obtain a motorcycle "M" endorsement as provided in this section shall constitute an infraction.

Approved March 27, 2002.

CHAPTER 356
(H.B. No. 620, As Amended)

AN ACT

RELATING TO THE PUNISHMENT FOR MANSLAUGHTER; AMENDING SECTION 18-4007, IDAHO CODE, TO PROVIDE FOR A MAXIMUM FINE AND SENTENCE FOR CERTAIN TYPES OF VEHICULAR MANSLAUGHTER, TO INCREASE THE MAXIMUM FINE AND SENTENCE FOR VEHICULAR MANSLAUGHTER INVOLVING THE COMMISSION OF CERTAIN VIOLATIONS INVOLVING ALCOHOL, DRUGS OR OTHER INTOXICANTS AND TO MAKE A TECHNICAL CORRECTION.

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), 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.

(~~a~~b) For a violation of section 18-4006 3. ~~(a) or~~ (b), Idaho Code, by a fine of not more than ~~ten~~ fifteen thousand dollars ($1~~0~~5,000), or by a sentence to the custody of the state board of correction not exceeding ~~ten~~ fifteen (1~~0~~5) years, or by both such fine and imprisonment.

(~~b~~c) 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.

(cd) 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) years. 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.

(de) 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 27, 2002.

CHAPTER 357
(H.B. No. 665)

AN ACT

RELATING TO MOTOR VEHICLE DRIVER'S LICENSES; AMENDING SECTION 49-310, IDAHO CODE, TO CLARIFY THAT PARENTS OR GUARDIANS SHALL NOT BE JOINTLY AND SEVERALLY LIABLE FOR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF PERSONS UNDER EIGHTEEN YEARS OF AGE IF CERTAIN PROOF OF FINANCIAL RESPONSIBILITY IS MAINTAINED AND TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 49-310, Idaho Code, be, and the same is hereby amended to read as follows:

49-310. APPLICATIONS OF PERSONS UNDER THE AGE OF EIGHTEEN YEARS. (1) The application of any person under the age of eighteen (18) years for any class D instruction permit, restricted driver's license or driver's license shall be signed and verified before a person authorized to administer oaths by either the father or mother of the applicant, if both are living and have custody of him; or if either be dead, then by the surviving parent who has custody of him; or by the Idaho resident host of a foreign exchange student, or in the event neither parent is living, or if living and does not have the custody of the applicant, then by the person or guardian having such custody, with verifiable custody or guardianship documents, or by an employer of the applicant. In the event there is no guardian or employer then some other responsible person willing to assume the obligation for the applicant may sign the application. Any person who signs the applicant's application shall attest that the applicant is in compliance with the school attendance provisions of section 49-303A, Idaho Code, and when signing for a class D driver's training permit or a class D supervised instruction permit, shall attest that the minor person has satisfied the requirements and

conditions applicable to the class D supervised instruction permit pursuant to section 49-307, Idaho Code, when the minor person applies for a class D driver's license. The person willing to assume responsibility for the applicant must be at least eighteen (18) years of age.

(2) Any negligence or willful misconduct of a person under the age of eighteen (18) years when operating a motor vehicle upon a highway shall be imputed to the person who signed the application of that person for a permit or driver's license, and that person shall be jointly and severally liable with the permit or driver's license holder for any damage caused by negligence or willful misconduct, except as otherwise provided by law.

(3) In the event a permit or driver's license holder under the age of eighteen (18) years ~~deposits~~ maintains, or there is ~~deposited~~ maintained upon his behalf, proof of financial responsibility ~~in respect to the operation of any motor vehicle, in form and in amounts~~ as required under the motor vehicle financial responsibility laws of this state, or by the director if the form and amount is not fixed by law, then the department may accept the application when signed by one (1) parent or guardian of the applicant, and while that proof is maintained the parent or guardian shall not be subject to ~~the~~ liability for the negligence or willful misconduct of the person under the age of eighteen (18) years, as imposed under subsection (2) of this section.

(4) Any person who has signed the application of a minor for a permit or driver's license shall be liable civilly for the payment of any court penalty imposed because the minor has been found to have committed an infraction violation. The provisions of this section shall not apply or create any civil liability for the person signing the application in connection with any pedestrian or bicycle infraction, and provided this subsection shall not apply to any civil action where the plaintiff is other than the state of Idaho.

Approved March 27, 2002.

CHAPTER 358
(H.B. No. 731, As Amended)

AN ACT

RELATING TO UNFAIR METHODS AND PRACTICES UNDER THE CONSUMER PROTECTION ACT; AMENDING SECTION 48-603, IDAHO CODE, AS AMENDED BY SECTION 2, SENATE BILL NO. 1357, ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-SIXTH IDAHO LEGISLATURE, TO PROVIDE APPLICATION TO SALE OF PHARMACEUTICALS, TO PROVIDE FACTS AND CIRCUMSTANCES A COURT SHALL TAKE INTO CONSIDERATION IN DETERMINING WHETHER A PRICE IS EXORBITANT OR EXCESSIVE AND TO CLARIFY WHEN NO PRIVATE CAUSE OF ACTION EXISTS.

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

SECTION 1. That Section 48-603, Idaho Code, as amended by Section 2, Senate Bill No. 1357, enacted by the Second Regular Session of the Fifty-sixth Idaho Legislature, be, and the same is hereby amended to read as follows:

48-603. UNFAIR METHODS AND PRACTICES. The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

(1) Passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have;

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;

(13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;

(14) Making false or misleading statements of fact concerning the age, extent of use, or mileage of any goods;

(15) Promising or offering to pay, credit or allow to any buyer or lessee, any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;

(16) Representing that services, replacements or repairs are needed if they are not needed, or providing services, replacements or repairs that are not needed;

(17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer;

(18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C, Idaho

Code, provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in subsection (37) of section 28-41-301, Idaho Code;

(19) Taking advantage of a disaster or emergency declared by the governor under chapter 10, title 46, Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. section 5121 et seq., by selling or offering to sell to the ultimate consumer fuel or food, ~~medicine~~ pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency. In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances including, but not limited to:

(a) A comparison between the price paid by the alleged violator for the fuel, food, pharmaceuticals, or water and the price for which the alleged violator sold those same items to the ultimate consumer immediately before and after the period specified by the disaster or emergency declaration;

(b) Additional costs of doing business incurred by the alleged violator because of the disaster or emergency;

(c) The duration of the disaster or emergency declaration.

Notwithstanding anything to the contrary contained elsewhere in the act, no private cause of action exists under this subsection.

Approved March 27, 2002.

CHAPTER 359
(S.B. No. 1324)

AN ACT

RELATING TO THE IDAHO INSURANCE CODE; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1030, IDAHO CODE, TO DEFINE TERMS AND TO PROVIDE THAT RETAIL AND WHOLESALE PRODUCERS MAY CHARGE FEES OR BE COMPENSATED BY A COMBINATION OF FEES AND COMMISSIONS UPON THE DISCLOSURE OF CERTAIN INFORMATION; AND AMENDING SECTION 41-1803, IDAHO CODE, TO PROVIDE THAT CERTAIN PRODUCER FEES SHALL NOT BE CONSIDERED PREMIUMS.

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

SECTION 1. That Chapter 10, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-1030, Idaho Code, and to read as follows:

41-1030. PRODUCER COMPENSATION. (1) For purposes of this section:

(a) "Consumer" means an insured, a prospective insured or an employer group.

(b) "Retail producer" means a producer who solicits, negotiates with or sells an insurance contract directly to a consumer.

(c) "Wholesale producer" means a producer who solicits, negotiates or sells an insurance contract directly with a retail producer, but not with a consumer.

(2) Notwithstanding any other provision of title 41, Idaho Code, and as provided in this subsection, retail producers and wholesale producers may charge a fee or be compensated by a combination of fees and commissions.

(a) Before charging a fee to a consumer, a retail producer shall provide to the consumer a written statement that describes the services the retail producer will perform and the fees the retail producer will receive. Acceptance by the consumer of a fee arrangement shall be evidenced by the consumer signing and dating the fee statement.

(b) Before charging a fee to a retail producer, a wholesale producer shall provide to the retail producer a written statement that describes the services the wholesale producer will perform and the fees the wholesale producer will receive. Information regarding the amount of the fees charged by the wholesale producer shall be disclosed in writing on the face of the policy as a separately itemized charge.

SECTION 2. That Section 41-1803, Idaho Code, be, and the same is hereby amended to read as follows:

41-1803. "PREMIUM" DEFINED. "Premium" is the consideration for insurance by whatever name called. Any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or other charge in consideration for an insurance contract is deemed part of the premium; provided that ~~wholesale~~ producer fees charged pursuant to section 41-105930, Idaho Code, shall not be considered a premium unless the fee relates to a surplus line policy.

Approved March 27, 2002.

CHAPTER 360
(S.B. No. 1354)

AN ACT

RELATING TO SEX CRIMES; AMENDING SECTION 18-6608, IDAHO CODE, TO PROVIDE THAT IT SHALL BE A FELONY FOR A PERSON WHO, FOR THE PURPOSE OF SEXUAL AROUSAL, GRATIFICATION OR ABUSE, CAUSES SEXUAL PENETRATION BY USE OF A FOREIGN OBJECT WHERE THE VICTIM IS INCAPABLE THROUGH UNSOUNDNESS OF MIND OF GIVING LEGAL CONSENT OR WHERE THE VICTIM IS PREVENTED FROM RESISTANCE BY AN INTOXICATING, NARCOTIC OR ANESTHETIC SUBSTANCE.

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

SECTION 1. That Section 18-6608, Idaho Code, be, and the same is hereby amended to read as follows:

18-6608. FORCIBLE SEXUAL PENETRATION BY USE OF FOREIGN OBJECT. Every person who, for the purpose of sexual arousal, gratification or abuse, causes the penetration, however slight, of the genital or anal opening of another person, by any object, instrument or device, against

the victim's will by use of force or violence or by duress, or by threats of immediate and great bodily harm, accompanied by apparent power of execution, ~~for the purpose of sexual arousal, gratification or abuse~~ or where the victim is incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent, or where the victim is prevented from resistance by any intoxicating, narcotic or anesthetic substance, shall be guilty of a felony and shall be punished by imprisonment in the state prison for not more than life.

Approved March 27, 2002.

CHAPTER 361
(S.B. No. 1357)

AN ACT

RELATING TO UNFAIR METHODS AND PRACTICES UNDER THE CONSUMER PROTECTION ACT; PROVIDING LEGISLATIVE INTENT; AND AMENDING SECTION 48-603, IDAHO CODE, TO PROHIBIT A PERSON FROM TAKING ADVANTAGE OF A DECLARED STATE OF EMERGENCY OR DISASTER BY SELLING OR OFFERING TO SELL FUEL, FOOD, MEDICINE OR ANOTHER NECESSITY AT AN EXORBITANT OR EXCESSIVE PRICE FOR THE DURATION OF THE DECLARATION OF EMERGENCY.

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

SECTION 1. LEGISLATIVE INTENT. The Legislature finds that during emergencies or disasters, some persons may take unfair advantage of consumers by greatly increasing prices for essential goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or disaster results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited.

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

48-603. UNFAIR METHODS AND PRACTICES. The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

(1) Passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have;

(6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;

(13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;

(14) Making false or misleading statements of fact concerning the age, extent of use, or mileage of any goods;

(15) Promising or offering to pay, credit or allow to any buyer or lessee, any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;

(16) Representing that services, replacements or repairs are needed if they are not needed, or providing services, replacements or repairs that are not needed;

(17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer;

(18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section 48-603C, Idaho Code, provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in subsection (37) of section 28-41-301, Idaho Code;

(19) Taking advantage of a disaster or emergency declared by the governor under chapter 10, title 46, Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. section 5121 et seq., by selling or offering to sell fuel or food, medicine or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency.

Approved March 27, 2002.

CHAPTER 362
(S.B. No. 1359, As Amended in the House, As Amended in the House)

AN ACT

RELATING TO IDAHO WILDLIFE SPECIAL LICENSE PLATES; AMENDING SECTION 49-417, IDAHO CODE, TO PROVIDE FOR THREE IDAHO WILDLIFE SPECIAL LICENSE PLATES, TO DESIGNATE USE OF A PORTION OF THE FEES IN THE FISH AND GAME SET-ASIDE ACCOUNT AND TO PROVIDE FOR TRANSFER OF A PORTION OF THE FEES IN THE FISH AND GAME SET-ASIDE ACCOUNT TO THE DEPARTMENT OF AGRICULTURE AND TO THE DEPARTMENT OF PARKS AND RECREATION FOR DESIGNATED USES; AMENDING SECTION 49-402C, IDAHO CODE, TO PROVIDE APPLICATION TO PLATE DESIGNS FOR THE IDAHO WILDLIFE SPECIAL LICENSE PLATES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-417, Idaho Code, be, and the same is hereby amended to read as follows:

49-417. IDAHO WILDLIFE SPECIAL PLATES. (1) Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, may apply for any one (1) of ~~two~~ three (~~2~~3) Idaho wildlife special license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of the plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be deposited by the state treasurer in the fish and game set-aside account pursuant to section 36-111, Idaho Code, for use in the nongame wildlife program. This fee shall be treated as a contribution to the nongame wildlife program, and shall not be considered a motor vehicle registration fee as described in section 17, article VII, of the constitution of the state of Idaho.

(a) The fish and game commission shall designate one dollar and twenty-five cents ($1.25) of each initial fee and seventy-five cents (75¢) of each renewal fee from the elk wildlife special plate to the department of fish and game's wildlife disease laboratory program to be used for testing, surveillance and detection of diseases that may affect wildlife including, but not limited to, chronic wasting disease.

(b) The state controller shall annually, by August 1 of each year, transfer an amount equivalent to one dollar and twenty-five cents ($1.25) of each initial elk wildlife special plate and seventy-five cents (75¢) of each renewal elk wildlife special plate sold in the prior fiscal year from the fish and game set-aside account to the department of agriculture's livestock disease control fund to be used for testing, surveillance and detection of wildlife diseases

and domestic livestock diseases that may affect wildlife including, but not limited to. brucellosis and chronic wasting disease.

(c) The state controller shall annually, by August 1 of each year, transfer an amount equivalent to two dollars and fifty cents ($2.50) of each initial cutthroat wildlife special plate and one dollar and twenty-five cents ($1.25) of each renewal cutthroat wildlife plate sold in the prior fiscal year from the fish and game set-aside account to the department of parks and recreation fund established in section 67-4225, Idaho Code, for the construction and maintenance of nonmotorized boating access facilities for anglers.

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

(3) Each Idaho wildlife license plate shall be of a color and design acceptable to the board of directors of the Idaho fish and wildlife foundation and approved by the department, utilizing a numbering system as determined by the department. The Idaho fish and wildlife foundation is authorized to design more than one (1) wildlife plate, but the department may not allow more than ~~two~~ three (~~2~~3) different designs to be in use at any one (1) time. Initial costs of the plate program including costs of plate design shall be paid by the Idaho fish and wildlife foundation.

(4) Sample Idaho wildlife plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account to be used to fund the cost of administration of this special license plate program. Twenty dollars ($20.00) of the purchase fee shall be deposited in the fish and game set-aside account pursuant to section 36-111, Idaho Code, for use in the nongame wildlife program.

SECTION 2. That Section 49-402C, Idaho Code, be, and the same is hereby amended to read as follows:

49-402C. SPECIAL LICENSE PLATE PROGRAMS -- STANDARDIZED PLATE COLOR AND DESIGN. (1) It is the intent of the legislature that special license plates issued by the department be readily recognizable as plates from the state of Idaho without losing the uniqueness for which the special plate was designed and purchased. In addition, the legislature finds that the department can operate in a more efficient, cost-effective manner by conforming special plates to a basic color and design.

(2) No special license plates and no special license plate programs in existence on or before June 30, 1998, shall be affected by the provisions of this section. On and after July 1, 1998, any new special license plate program authorized or any redesign of an existing special license plate, shall use the same red, white and blue background as the standard issue of license plates described in section 49-443, Idaho Code, except that:

(a) The identification of county shall be omitted;

(b) The word "Idaho" shall appear on every plate;

(c) The inscription "Scenic Idaho" may be omitted without legislative consideration and approval; and

(d) No slogan shall be used that infringes upon, dilutes or compro-

mises, or could be perceived to infringe upon, dilute or compromise, the trademarks of the state of Idaho, including, but not limited to, "Idaho Potatoes®," "Grown in Idaho®," "Famous Idaho Potatoes™" or "Famous Potatoes™."

The provisions of this section shall not apply to the ~~second~~ plate designs issued pursuant to the provisions of section 49-417, Idaho Code.

(3) Any redesign required for a special plate to conform with legislative intent and the provisions of this section may be done in a manner similar to that used to produce the original design.

(4) The special plates shall conform in all other respects with the provisions of section 49-443, Idaho Code, relating to visibility requirements, display of registration number, time period for validity of plates, and reservation of plate numbers.

(5) No special license plates shall be issued to motor vehicles with a registered maximum gross weight in excess of twenty-six thousand (26,000) pounds, or any motor vehicle registered under section 49-434(5), Idaho Code, or section 49-435, Idaho Code.

(6) Following an introductory period of two (2) years during which the provisions of this subsection shall not apply, if, for two (2) consecutive years, fewer than one thousand (1,000) plates are issued per year for a special license plate program, the department shall so advise the legislature and assist the legislature in adopting appropriate action to discontinue that special license plate program. The provisions of this subsection shall apply only to special license plate programs created on and after July 1, 1998.

SECTION 3. This act shall be in full force and effect on and after January 1, 2003.

Approved March 27, 2002.

CHAPTER 363
(S.B. No. 1370)

AN ACT

RELATING TO THE IDAHO STATE BAR LAWYER ASSISTANCE PROGRAM; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 49, TITLE 54, IDAHO CODE, TO DEFINE "IDAHO STATE BAR LAWYER ASSISTANCE PROGRAM," TO PROVIDE THAT RECORDS AND PROCEEDINGS OF THE LAWYER'S ASSISTANCE PROGRAM ARE NOT SUBJECT TO SUBPOENA OR DISCOVERY AND ARE NOT ADMISSIBLE AS EVIDENCE, TO PROVIDE THAT CERTAIN PERSONS ASSOCIATED WITH THE LAWYER'S ASSISTANCE PROGRAM MAY NOT BE COMPELLED TO TESTIFY, TO PROVIDE THAT RECORDS REGARDING A PARTICIPANT SHALL BE RELEASED IF A PROPERLY COMPLETED RELEASE FORM SIGNED BY THE PARTICIPANT IS SUBMITTED AND TO PROVIDE FOR PROTECTED ACTION AND COMMUNICATION FOR CERTAIN PERSONS INVOLVED WITH THE LAWYER'S ASSISTANCE PROGRAM; AND AMENDING SECTION 9-340C, IDAHO CODE, TO PROVIDE THAT RECORDS OF THE LAWYER'S ASSISTANCE PROGRAM SHALL BE EXEMPT FROM DISCLOSURE WITH AN EXCEPTION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 49, Title 54, Idaho Code, and to read as follows:

CHAPTER 49
IDAHO STATE BAR LAWYER ASSISTANCE PROGRAM

54-4901. DEFINITIONS -- RECORDS AND PROCEEDINGS OF THE LAWYER ASSISTANCE PROGRAM. (1) As used in this chapter "Idaho State Bar Lawyer Assistance Program" means the lawyer's assistance program created by the commissioners of the Idaho state bar pursuant to section XII of the Idaho bar commission rules.

(2) The records and proceedings of the lawyer's assistance program are not subject to subpoena or discovery and are not admissible as evidence in an administrative proceeding or a criminal or civil action.

(3) Members of the board of commissioners of the Idaho state bar association, members of the lawyer's assistance program committee, employees, contractors and past or present participants in a lawyer's assistance program may not be compelled to testify before any agency, board, commission or court with respect to the lawyer's assistance program records and proceedings, regarding a past or current lawyer's assistance program participant if that information was obtained as a result of performing duties within his or her regular scope of functions for the lawyer's assistance program or as a program participant.

(4) Records regarding a participant shall be released if a properly completed release form signed by the participant is submitted.

54-4902. PROTECTED ACTION AND COMMUNICATION. There shall be no liability on the part of and no action for damages against:

(1) Any Idaho state bar commissioner, member of the lawyer's assistance program committee, member, employee or contractor of a lawyer's assistance program for any action taken or performed by such person within the scope of the functions of such lawyer's assistance program when acting without malice and in the reasonable belief that the action taken by him is warranted; or

(2) Any person providing information to the lawyer's assistance program without malice in the reasonable belief that such information is accurate.

SECTION 2. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

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

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the

public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

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

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

(4) Records of a personal nature as follows:

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

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

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

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

(e) Vital statistics records.

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

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

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

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height,

weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

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

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

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

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

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

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

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

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

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

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

(19) Records and information contained in the registry of

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

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

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

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

(c) Mortgage portfolio loan documents;

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

(20~~1~~) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

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

Approved March 27, 2002.

CHAPTER 364
(S.B. No. 1378)

AN ACT

RELATING TO INVESTMENTS BY INSURERS; AMENDING SECTION 41-722, IDAHO CODE, TO DISTINGUISH BETWEEN MORTGAGE LOAN LIMITATION FOR COMMERCIAL PROPERTY AND RESIDENTIAL PROPERTY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 41-728, IDAHO CODE, TO PROVIDE INCLUSION OF REAL ESTATE SUBJECT TO A PLAN OF DEVELOPMENT AS A POTENTIAL ASSET AND GOVERN THE QUALIFYING CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-722, Idaho Code, be, and the same is hereby amended to read as follows:

41-722. MORTGAGE LOAN LIMITED BY PROPERTY VALUE. (1) No commercial mortgage loan or investment therein upon any one (1) parcel of real property shall exceed in amount, at the time of acquisition, seventy-five ~~per cent~~ percent (75%) of the fair value of the property and the loan is required to be amortized within not more than thirty (30) years by payment of installments of principal and interest thereon at regular intervals not less frequent than every year.

(2) No residential mortgage loan or investment therein upon any one (1) parcel of real property shall exceed in amount, at the time of acquisition, eighty percent (80%) of the fair value of the property and the loan is required to be amortized within not more than thirty (30) years by payment of installments of principal and interest thereon at regular intervals not less frequent than every year.

(3) The extent to which a mortgage loan made under ~~subdivision~~ subsection (4) or (5) of section 41-721, Idaho Code, is guaranteed by the administrator of veterans' affairs may be deducted before application of the limitations contained in subsection (1) ~~above~~ of this section.

SECTION 2. That Section 41-728, Idaho Code, be, and the same is hereby amended to read as follows:

41-728. REAL ESTATE. (1) An insurer may acquire, invest in, own, maintain, alter, furnish, improve, manage, lease and convey the following real estate only:

(a) Land and buildings used for home office purposes, together with such other real estate as is required for its accommodation in the convenient transaction of its business.

(b) Real estate acquired in satisfaction in full or in part of or through foreclosure of or judgment obtained upon, loans, mortgages, liens or other evidences of indebtedness previously owing to the insurer in the regular course of its business.

(c) Real estate acquired in part payment of the consideration in the sale of other real estate owned by the insurer.

(d) Real estate acquired by gift or devise.

(e) Real estate acquired through a lawful merger or consolidation of another insurer and not required for its accommodation as provided in paragraph (a) of this subsection.

(f) Real estate for the production of income, under lease, or being constructed under a definite agreement providing for lease, to solvent institutions for commercial or industrial purposes, other than primarily for agricultural, horticultural, ranch, mining, mineral, oil, recreational, amusement, club, motel, or hotel purposes.

(g) Real estate subject to a plan of development other than primarily for agricultural, horticultural, ranch, mining, mineral, oil, recreational, amusement, club, motel, or hotel purposes as limited by subsection (2)(c) of this section.

(2) The aggregate amount so invested by the insurer shall not exceed:

(a) If for home office and its other purposes pursuant to ~~paragraph~~

subsection (1)(a) of this ~~subsection~~, ten percent (10%) of the insurer's assets, subject to the right of the director to approve an ~~additional~~ amount after hearing and for good cause shown.

(b) If for income purposes pursuant to ~~paragraph~~ subsection (1)(f) of this ~~subsection~~, ~~five~~ ten percent (~~5~~10%) of the insurer's admitted assets.

(c) If for properties subject to a plan of development pursuant to subsection (1)(g) of this section, not more than five percent (5%) of its admitted assets of which not more than two percent (2%) of its admitted assets may be in any one (1) parcel or group of contiguous parcels. The director may disapprove the property as an admitted asset if the plan of development is not being pursued in good faith. Factors for review may include, but are not limited to, progress with regard to zoning, roads, utilities, plats and completed development by the insurer of properties.

(d) In all categories and for all purposes, not to exceed twenty percent (20%) of the insurer's assets.

(~~d~~e) Notwithstanding the provisions of paragraphs (a) through (~~c~~d) of this subsection, the aggregate amount invested by a domestic reciprocal insurer which is comprised of and exclusively insures members who are political subdivisions of the state, as defined in section 6-902 2., Idaho Code, shall not exceed:

(i) Twenty-five percent (25%) from July 1, 2001, to June 30, 2003;

(ii) Twenty percent (20%) from July 1, 2003, to June 30, 2004; and

(iii) Fifteen percent (15%) on July 1, 2004, and each year thereafter.

(3) An insurer may lease to others part of real property otherwise occupied by it for home office and other purposes under subsection (1)(a) of this section, but the value of the entire property must be included for the purposes of the limitation upon aggregate real estate investments provided in subsection (2)(a) of this section.

Approved March 27, 2002.

CHAPTER 365
(S.B. No. 1379, As Amended in the House)

AN ACT

RELATING TO CARBON SEQUESTRATION; AMENDING TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 51, TITLE 22, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE FOR THE CREATION OF THE CARBON SEQUESTRATION ADVISORY COMMITTEE, TO PROVIDE FOR MEMBERSHIP AND COMPENSATION OF THE COMMITTEE AND TO PROVIDE THAT THE SOIL CONSERVATION COMMISSION SHALL PROVIDE ADMINISTRATIVE ASSISTANCE, TO PROVIDE FOR POWERS AND DUTIES OF THE CARBON SEQUESTRATION ADVISORY COMMITTEE, TO PROVIDE THAT THE CHAIRMAN OF THE SOIL CONSERVATION COMMISSION SHALL PREPARE REPORTS, TO PROVIDE FOR POWERS AND DUTIES OF THE CHAIRMAN OF THE SOIL CONSERVATION COMMISSION AND TO CREATE THE CARBON SEQUESTRATION ASSESSMENT FUND.

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

SECTION 1. That Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 51, Title 22, Idaho Code, and to read as follows:

CHAPTER 51
CARBON SEQUESTRATION ADVISORY COMMITTEE

22-5101. LEGISLATIVE INTENT. Increasing levels of carbon dioxide and other greenhouse gases in the atmosphere have led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. Such measures may potentially include the establishment of systems of trading in credits for adoption of practices, technologies or other measures which decrease net emissions of carbon dioxide. Improved agricultural and timber production methods, soil and forest conservation practices and other methods of stewardship of soil and other land resources have great potential to increase carbon sequestration on agricultural and private forest lands and help offset carbon dioxide emissions from other sectors of the economy. It is in the interest of agricultural producers, nonindustrial private forest landowners and the public in general that the soil conservation commission document and quantify carbon sequestration and greenhouse emissions reductions associated with agricultural and forestry practices, management systems and land uses occurring on cropland, forest land and rangeland in Idaho. It is the intent of the legislature that efforts to quantify and verify carbon sequestration on agricultural and forest lands will enhance the ability of the state's agricultural and nonindustrial private forest landowners to participate in any system of carbon sequestration marketing or trading.

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

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

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

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

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

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

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

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

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

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

(j) One (1) member representing soil conservation districts, as defined in section 22-2717, Idaho Code;
(k) One (1) member representing the biofuels industry;
(l) One (1) member representing the transportation industry;
(m) One (1) member representing an environmental protection or conservation organization; and
(n) One (1) member representing nonindustrial private forest landowners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22-5105. POWERS AND DUTIES OF THE CHAIRMAN. (1) In consultation with the carbon sequestration advisory committee, the chairman of the soil conservation commission shall assess agricultural and private forest lands in Idaho for past carbon sequestration and future carbon sequestration potential. The assessment shall seek to quantify carbon sequestration associated with various agricultural and forestry practices, management systems and land uses occurring on agricultural and forest lands in this state. On or before March 1, 2003, the chairman shall publish a report of the findings. From time to time, the chairman may update the findings as advancements in understanding of the processes of carbon sequestration and new data become available.

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

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

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

Approved March 27, 2002.

CHAPTER 366
(S.B. No. 1396)

AN ACT

RELATING TO ABANDONED MOTOR VEHICLES; AMENDING CHAPTER 32, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-3201F, IDAHO CODE, TO ESTABLISH AN ABANDONED VEHICLE FEE; AMENDING SECTION 49-526, IDAHO CODE, TO PROVIDE THAT FILING A RELEASE OF LIABILITY STATEMENT RELEASES THE FORMER OWNER OF A VEHICLE FROM LIABILITY FOR ANY MOTOR VEHICLE INFRACTIONS THAT OCCUR SUBSEQUENT TO DELIVERY OF THE VEHICLE TO A DEALER, PURCHASER OR OTHER TRANSFEREE; AMENDING SECTION 49-1802, IDAHO CODE, TO REVISE THE CONDITIONS WHICH CONSTITUTE PRESUMPTION REGARDING ABANDONMENT OF A VEHICLE, TO PROVIDE PRESUMPTION OF LIABILITY OF THE LAST REGISTERED OWNER FOR A VEHICLE REMOVED UNDER EXTRAORDINARY CIRCUMSTANCES AND TO PROVIDE AN EXCEPTION;

AMENDING SECTION 49-1812, IDAHO CODE, TO PROVIDE FOR THE CLAIMING OF A VEHICLE BY AN OWNER OR A LIENHOLDER OF A VEHICLE REMOVED UNDER EXTRAORDINARY CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 49-1818, IDAHO CODE, TO PROVIDE FOR DEPOSIT OF THE ABANDONED VEHICLE FEE TO THE ABANDONED VEHICLE TRUST ACCOUNT, TO PROVIDE FOR CLAIMING A PORTION OF THE EXCESS PROCEEDS FROM THE SALE OF AN ABANDONED VEHICLE, AND TO PROVIDE FOR DISTRIBUTION OF THE ABANDONED VEHICLE FEE FROM THE ABANDONED VEHICLE TRUST ACCOUNT TO LAW ENFORCEMENT, TOW COMPANIES AND THE DEPARTMENT.

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

SECTION 1. That Chapter 32, 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 31-3201F, Idaho Code, and to read as follows:

31-3201F. ABANDONED VEHICLE FEE. The court shall charge a fee of one hundred fifty dollars ($150) for reimbursement of expenses incurred in the disposition of an abandoned vehicle to be paid by each person found to have committed a traffic infraction according to the provisions of section 49-1802, Idaho Code. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the county treasurer who shall, within fifteen (15) days after the end of the month, pay such fees to the state treasurer for deposit to the abandoned vehicle trust account. Each fee shall be accompanied by a record of the conviction.

SECTION 2. That Section 49-526, Idaho Code, be, and the same is hereby amended to read as follows:

49-526. RELEASE OF LIABILITY UPON SALE OF VEHICLE. (1) The department shall require that a separate release of liability statement be completed by the owner of a motor vehicle upon sale or transfer of the motor vehicle to another party. The statement shall be forwarded to the department by the former owner, together with the proper fee as provided in section 49-202, Idaho Code, within five (5) days of delivery of the motor vehicle to a dealer, or purchaser or other transferee. The statement shall include the motor vehicle identification number, vehicle description, name of seller, name of buyer, date of sale, odometer reading, and sales price. Provided that:

(a) A lienholder may complete the release of liability on behalf of the registered owner when the title is released by the lienholder directly to a dealer or new purchaser.

(b) Motor vehicle dealers licensed under chapter 16, title 49, Idaho Code, are not required to report dealer-to-dealer transfers to the department. However, dealers are required to maintain a record of the transfer for audit and tracking purposes.

(2) Any former owner who files a release of liability statement with the department pursuant to this section shall not be liable under section 49-2417, Idaho Code, nor shall the former owner be liable for any motor vehicle infractions that may occur subsequent to delivery of the vehicle to a dealer, purchaser or other transferee.

SECTION 3. That Section 49-1802, Idaho Code, be, and the same is hereby amended to read as follows:

49-1802. PRESUMPTION. (1) The abandonment of any vehicle shall create a prima facie presumption that the last registered owner of record is responsible for the abandonment and is thereby liable for the costs ~~of~~ incurred in the removal, storage and disposition of the vehicle, less any amount received from the disposition of the vehicle.

(2) The owner of any vehicle removed under extraordinary circumstances is presumed responsible for the vehicle and is thereby liable for the costs incurred in the removal, storage and disposition of the vehicle, less any amounts received from the disposition of the vehicle.

(3) If a vehicle is found abandoned or under extraordinary circumstances and is removed at the direction of any authorized officer, and is not redeemed by the owner or lienholder within seven (7) days of the tow, the last registered owner of record is guilty of a traffic infraction, unless the owner has filed a release of liability with the department according to section 49-526, Idaho Code, in which case the transferee shown on the release of liability shall be guilty of a traffic infraction.

SECTION 4. That Section 49-1812, Idaho Code, be, and the same is hereby amended to read as follows:

49-1812. CLAIMING OF ABANDONED VEHICLES. (1) The owner of an abandoned vehicle or any vehicle removed under extraordinary circumstances may take possession of the abandoned vehicle at any time prior to sale by proving ownership and paying the costs relative to towing and storing the vehicle and costs of advertising except as otherwise provided in section 49-1805, Idaho Code.

(2) A ~~lien-holder~~ lienholder of an abandoned vehicle or any vehicle removed under extraordinary circumstances may take possession of the abandoned vehicle at any time prior to the sale by proving the presence of the lien and by paying the costs relative to towing and storing the vehicle and costs of advertising. The ~~lien-holder~~ lienholder may also take possession of the abandoned vehicle by purchasing the vehicle at the sale. Nothing in this chapter shall be construed to abate any cause of action that a ~~lien--holder~~ lienholder has against the owner of an abandoned vehicle.

SECTION 5. That Section 49-1818, Idaho Code, be, and the same is hereby amended to read as follows:

49-1818. ABANDONED VEHICLE TRUST ACCOUNT -- APPROPRIATION AND USE. (1) An account is established, to be known and designated as the abandoned vehicle trust account. There shall be set aside, paid into and credited to the account, moneys remaining from any sale of an abandoned vehicle or any vehicle removed under extraordinary circumstances after satisfaction of all possessory liens and costs of conducting the sale, and the fee authorized under section 31-3201F, Idaho Code, collected by the district courts.

(2) ~~Moneys~~ Excess proceeds from abandoned vehicle sales deposited in the abandoned vehicle trust account are hereby continuously appropriated to the department for the purposes of satisfying allowable claims

and reimbursing the costs of administering the provisions of this chapter.

(3) Any person claiming an interest in the vehicle may file a claim with the department for any portion of the excess proceeds from an abandoned vehicle sale which were forwarded to the department. Upon determination of the department that the claimant is entitled to some amount, the department shall pay an amount which in no case shall exceed the amount forwarded to the department in connection with the sale of the vehicle. The department shall not honor any claim filed more than two (2) years after the sale.

(4) Each fee collected by the district courts pursuant to section 31-3201F, Idaho Code, shall be distributed as follows to the:

(a) Law enforcement agency that directed the tow of the vehicle involved in the infraction.....$50.00

(b) Tow company that towed the vehicle involved in the infraction $50.00

(c) Department.....$50.00

Fees shall be distributed to law enforcement agencies and tow companies on a monthly basis. All fees distributed to the department shall be deposited in the state highway account.

Approved March 27, 2002.

CHAPTER 367
(S.B. No. 1417)

AN ACT

RELATING TO PRESCRIPTION BLANKS; AMENDING SECTION 37-2725, IDAHO CODE, TO SPECIFY REQUIREMENTS FOR THE FORM AND CONTENT OF PRESCRIPTION BLANKS, TO REQUIRE RULEMAKING AND TO PRESCRIBE VIOLATIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 37-2725, Idaho Code, be, and the same is hereby amended to read as follows:

37-2725. PRESCRIPTION REQUIRED -- PRESCRIPTION BLANKS -- POSSESSION -- TRANSFERENCE -- CONTENTS. (1) A prescription shall be required for all scheduled drugs. Except as provided in subsection (~~5~~7) of this section, written prescriptions shall ~~be on prescription forms--approved--by the--board~~ comply with federal law and shall utilize ~~nonalterable~~ noncopyable paper that contains security provisions against copying that results in some indication on the copy that it is a copy and therefore rendering it null and void. ~~and shall incorporate such other security measures as deemed necessary by the--board.~~ Board rules, policies or requirements promulgated or issued to implement the provisions of house bill no. 331 of the first regular session of the fifty-sixth Idaho legislature that amended this section 37-2725, Idaho Code, shall be null and void and without effect after June 30, 2002. The board shall adopt rules using negotiated rulemaking procedures to implement the provisions of this section that are consistent with, but no more stringent than the

requirements of this section and the federal requirements for prescription blanks.

(2) Prescription blanks shall not be transferable. Any person possessing any such blank otherwise than is herein provided is guilty of a misdemeanor.

(3) The prescription blank shall contain the name and address of the ~~prescriber~~ practitioner. Prescription blanks may contain the printed names of multiple practitioners who are affiliated; provided however, such prescription blanks shall contain a means (in addition to the signature of the practitioner), such as a box or a check, for clear identification of the printed name and address of the practitioner issuing the prescription.

(4) Prescriptions written by a practitioner in a hospital, nursing home, ambulatory surgery center or other health care facility in which a practitioner may attend a patient, other than his or her regular place of business, may be written on prescription blanks kept or provided by that facility that contains the name and address of that facility (but not necessarily of the practitioner) provided the practitioner's name must be stamped, written or printed on the completed prescription in a manner that is legible to a pharmacist.

(5) Failure of a practitioner to clearly mark the practitioner's printed name and address on the prescription as required in subsection (3) of this section, or to stamp, write or print the practitioner's name legibly as required in subsection (4) of this section shall subject the practitioner to appropriate discipline by the board. The disciplinary measures shall be established by the board in a rule developed through negotiated rulemaking.

(6) Except as provided in section 37-2722, Idaho Code, if a prescription is for a schedule II substance, the ~~prescriber~~ practitioner shall indicate the desired quantity of the scheduled drug on the prescription ~~form~~ blank by both writing out the quantity and by indicating or writing the quantity in numerical form.

(5~~7~~) Prescription blanks issued or approved by the board prior to ~~January 1, 2002,~~ the effective date of this act shall remain valid and may be used by ~~prescribers until July 1, 2002. After July 1, 2002, only prescription blanks approved by the board pursuant to subsection (1) of this section shall be valid~~ practitioners after the effective date of this act.

(6~~8~~) Prescription blanks or drugs lost or stolen must be immediately reported to the board.

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

Approved March 27, 2002.

CHAPTER 368
(S.B. No. 1444)

AN ACT

RELATING TO CASUALTY INSURANCE CONTRACTS AND DISCOUNT FOR CERTAIN AGE GROUPS; AMENDING SECTION 41-2515, IDAHO CODE, TO REMOVE THE RESTRIC-

TION THAT THERE SHALL BE NO REDUCTION IN PREMIUMS FOR COMPLETION OF A SELF-INSTRUCTED MOTOR VEHICLE ACCIDENT PREVENTION COURSE OR ANY SUCH COURSE WHICH DOES NOT PROVIDE FOR ACTUAL CLASSROOM OR FIELD DRIVING INSTRUCTION, TO PROVIDE PROPER TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 41-2515, Idaho Code, be, and the same is hereby amended to read as follows:

41-2515. DISCOUNT FOR CERTAIN AGE GROUPS. (1) Any insurer offering for sale an automobile insurance policy, as policy is defined in subsection (a) of section 41-2506, Idaho Code, in which there is insured a principal operator who is sixty-five (65) years of age or older, shall provide for an appropriate reduction in premium charges for liability, medical payments and collision coverages if the principal operator sixty-five (65) years of age or older has successfully completed a motor vehicle accident prevention course which meets criteria established by ~~the motor vehicle bureau--of~~ the transportation department. ~~However, there--shall--be--no--reduction--in--premiums--for-completion-of-a-self-instructed-course-or-a-course-which-does-not-provide-for--actual--class-room-or-field-driving-instruction.~~ Any discount used by an insurer shall be presumed appropriate unless credible evidence data demonstrates otherwise.

(2) Upon successful completion of an approved motor vehicle accident prevention course, each participant shall be issued, by the course's sponsoring entity, a certificate of completion which shall be the basis of the qualification for the discount on the automobile insurance.

(3) The premium reduction required in this section shall be effective for an insured for a three (3) year period after successful completion of the approved course, except that the insurer may require, as a condition of providing and maintaining the discount, that the insured for a three (3) year period after course completion, not be involved in an accident for which the insured is at fault or be found guilty of a moving traffic violation.

(4) The provisions of this section shall not apply in the event the approved course is specified by a court or other governmental entity resulting from a moving traffic violation.

(5) Each participant shall take an approved course every three (3) years to continue to be eligible for the reduction in premiums.

(6) Nothing in the provisions of this section shall be deemed to prohibit an insurer from canceling or not renewing an automobile insurance policy for grounds enumerated in section 41-2507, Idaho Code, or in chapter 25, title 41, Idaho Code.

(7) The provisions of this section shall not apply in the event that such an insurer offers a premium reduction which is substantially comparable to the premium reduction required in this section and in no event shall such insurer be required to provide both comparable premium reductions on a cumulative basis.

Approved March 27, 2002.

CHAPTER 369
(S.B. No. 1472, As Amended, As Amended)

AN ACT

RELATING TO MEDICAL ASSISTANCE; AMENDING SECTION 56-209b, IDAHO CODE, TO REQUIRE DISCLOSURE OF A CLAIM AGAINST A THIRD PARTY OR ENTITY AND TO PROVIDE THE DEPARTMENT OF HEALTH AND WELFARE'S ENTITLEMENT TO SUCH REIMBURSEMENT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 56-227, IDAHO CODE, TO PROVIDE REFERENCE TO MATERIAL OMISSIONS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 56-209b, Idaho Code, be, and the same is hereby amended to read as follows:

56-209b. MEDICAL ASSISTANCE -- MEDICAL ASSISTANCE ACCOUNT. (1) Medical assistance shall be awarded to persons as mandated by federal law; and medical assistance may be awarded to such other persons not required to be awarded medical assistance as mandated by federal law when such award is to the fiscal advantage of the state of Idaho.

(2) There is hereby created in the dedicated fund the medical assistance account. The medical assistance account shall be an entity primarily designed to receive moneys from the families and relatives of patients receiving medical assistance under the state plan for medicaid, and to provide a source of moneys to pay for the state's share of medical assistance expenses. Moneys in the medical assistance account may not be commingled with moneys in the cooperative welfare account. Moneys in the medical assistance account must be appropriated in order to be expended to pay for the state's share of medical assistance expenses.

(3) In all cases where the department of health and welfare through the medical assistance program has or will be required to pay medical expenses for a recipient and that recipient is entitled to recover any or all such medical expenses from any third party or entity, the department of health and welfare will be subrogated to the rights of the recipient to the extent of the amount of medical assistance benefits paid by the department as the result of the occurrence giving rise to the claim against the third party or entity.

(4) If a recipient of medical assistance pursues a claim against a third party or entity through litigation or a settlement, the recipient will so notify the department. If a recipient fails to notify the department of such claim, the department may recover the amount of any public assistance obtained by the recipient while the recipient pursued such claim. In addition, ~~if~~ the recipient recovers funds, either by settlement or judgment, from such a third party or entity, the recipient shall reimburse the department to the extent of the funds received in settlement minus attorney's fees and costs, the amount of the medical assistance benefits paid by the department on his behalf as a result of the occurrence giving rise to the need for medical assistance. The department shall be entitled to all the legal rights and powers of a creditor against a debtor in enforcing the recipient's reimbursement obligation.

(5) The department shall have priority to any amount received from

a third party or entity which can reasonably be construed to compensate the recipient for the occurrence giving rise to the need for medical assistance, whether the settlement or judgment is obtained through the subrogation right of the department or through recovery by the recipient, and whether or not the recipient is made whole by the amount recovered. The department will be entitled to reimbursement of medical assistance benefits paid on behalf of the recipient arising from the incident or occurrence prior to any amount being distributed to the recipient. The department may notify such third party or entity of the department's entitlement to receive the reimbursement prior to any amount being distributed to the recipient. Furthermore, the department may instruct the third party or entity to make such payment directly to the department prior to any amount being distributed to the recipient. Any third party or entity who distributed funds in violation of such a notice shall be liable to the department for the amount of the reimbursement.

(6) In the event a recipient of assistance through the medical assistance program incurs the obligation to pay attorney's fees and costs for the purpose of enforcing a monetary claim to which the department has a right under this section, the amount which the department is entitled to recover, or any lesser amount which the department may agree to accept in compromise of its claim, shall be reduced by an amount which bears the same relation to the total amount of attorney's fees and costs actually paid by the recipient as the amount actually recovered for medical expenses paid by the department, exclusive of the reduction for attorney's fees and costs, bears to the total amount paid by the third party or entity to the recipient. If a settlement or judgment is received by the recipient without delineating what portion of the settlement or judgment is in payment of medical expenses, it will be presumed that the settlement or judgment applies first to the medical expenses incurred by the recipient in an amount equal to the expenditure for medical assistance benefits paid by the department as a result of the occurrence giving rise to the payment or payments to the recipient.

SECTION 2. That Section 56-227, Idaho Code, be, and the same is hereby amended to read as follows:

56-227. FRAUDULENT ACTS -- PENALTY. (a) Whoever knowingly obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a ~~wilfully~~ willfully false statement or representation, material omission, or ~~other~~ fraudulent devices, public assistance, relief or federal-aid assistance to which he is not entitled, or in an amount greater than that to which he is justly entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance so obtained or attempted to be so obtained.

(b) Whoever sells, conveys, mortgages or otherwise disposes of his property, real or personal, or conceals his income or resources, for the purpose of rendering him eligible for any form of assistance, theretofore or thereafter applied for, to which he would not otherwise be entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the assistance so obtained or so attempted to be obtained.

(c) Every person who knowingly aids or abets any person in selling,

conveying, mortgaging or otherwise disposing of his property, real or personal, or in concealing his income or resources for the purpose of rendering him eligible for any form of public assistance or relief, theretofore or thereafter applied for and received, to which he would not otherwise be entitled, shall be punished in the same manner and to the same extent as for larceny or theft of the money or value of the public assistance or relief so obtained or attempted to be obtained.

(d) For the purpose of this section federal-aid assistance shall include the specific categories of assistance for which provision is made in any federal law existing or hereafter enacted by the congress of the United States by which payments are made from the federal government to the state in aid or in respect to payment by the state for welfare purposes to any category of needy person and any other program of assistance for which provision for federal funds for aid may from time to time be made.

(e) The state department of health and welfare shall establish and operate a fraud control program as permitted by section 416 of the social security act as now or hereafter amended.

Approved March 27, 2002.

CHAPTER 370
(S.B. No. 1511)

AN ACT

APPROPRIATING MONEYS FOR THE HEALTH EDUCATION PROGRAMS FOR FISCAL YEAR 2003; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND RE-APPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR THE SEVERAL DESIGNATED PROGRAMS.

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 expense classes from the listed funds for the period July 1, 2002, through June 30, 2003:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. WOI VETERINARY EDUCATION:				
FROM:				
General Fund	$ 471,100	$1,030,400		$1,501,500
II. WWAMI MEDICAL EDUCATION:				
FROM:				
General Fund	$ 655,700	$ 62,500	$2,293,700	$3,011,900
Unrestricted Current Fund	22,600	40,800	102,800	166,200
TOTAL	$ 678,300	$ 103,300	$2,396,500	$3,178,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
III. IDEP DENTAL EDUCATION:				
FROM:				
General Fund	$ 199,000	$ 13,600	$ 562,700	$ 775,300
Unrestricted Current Fund	94,000			94,000
TOTAL	$ 293,000	$ 13,600	$ 562,700	$ 869,300
IV. WICHE AND UNIVERSITY OF UTAH MEDICAL EDUCATION:				
FROM:				
General Fund			$ 921,800	$ 921,800
V. FAMILY PRACTICE RESIDENCIES:				
FROM:				
General Fund	$ 406,300	$ 103,900	$ 502,700	$1,012,900
GRAND TOTAL	$1,848,700	$1,251,200	$4,383,700	$7,483,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the agency is authorized no more than twenty and thirty-nine hundredths (20.39) full-time equivalent positions at any point during the period July 1, 2002, through June 30, 2003, 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, WWAMI Medical Education Program, IDEP Dental Education Program, WICHE and University of Utah Medical Education Program, and Family Practice Residencies Program the unexpended and unencumbered balance of any Non-General Fund appropriation made to each respective program under Section 1, Chapter 237, Laws of 2001, for each respective program to be used for nonrecurring expenditures for the period July 1, 2002, through June 30, 2003.

Approved March 27, 2002.

CHAPTER 371
(H.B. No. 634, As Amended)

AN ACT

RELATING TO AIRCRAFT IMPROVEMENT LIENS; AMENDING TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 11, TITLE 45, IDAHO CODE, TO PROVIDE FOR SPECIAL LIENS DEPENDENT ON POSSESSION, TO PROVIDE FOR STATUTORY LIENS FOLLOWING SURRENDER OF POSSESSION, TO PROVIDE FOR

NOTICES OF LIEN, TO PROVIDE FOR RECORDING OF LIEN NOTICES, TO DEFINE OWNERS OR AUTHORIZED AGENTS OF OWNERS, TO PROVIDE FOR THE PRIORITY OF LIENS, TO PROVIDE FOR THE ENFORCEMENT OF LIENS AND TO PROVIDE FOR THE RELEASE AND DISCHARGE OF LIENS.

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

SECTION 1. That Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 11, Title 45, Idaho Code, and to read as follows:

CHAPTER 11
AIRCRAFT IMPROVEMENT LIENS

45-1101. AIRCRAFT IMPROVEMENT LIEN -- SPECIAL LIEN DEPENDENT UPON POSSESSION. (1) Any person, firm, or corporation who expends labor, skill, or materials upon an aircraft, aircraft engines, propellers, appliances, spare parts, or related equipment, at the request of its owner, reputed owner, authorized agent of the owner, or lawful possessor of the aircraft, has a special lien, dependent upon possession, on the aircraft for the just and reasonable charges for the labor performed and material furnished up to the amount of the written estimate or subsequent oral or written modifications thereto.

(2) Provided however, a person, firm, or corporation expending labor, skill or materials pursuant to the provisions of subsection (1) of this section shall not have a special lien on the aircraft unless the person, firm, or corporation delivers a written estimate regarding the nature and cost of repair work to the owner, reputed owner, authorized agent of the owner or lawful possessor of the aircraft prior to expending labor, skill or materials on the aircraft.

(3) If not paid within two (2) months after the work is done, the person, firm or corporation may proceed to sell the property at public auction after first providing written notice of the impending sale to the owner, reputed owner, authorized agent of the owner, or lawful possessor of the aircraft, as well as any known secured parties or lienholders, by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail. The person, firm or corporation shall give ten (10) days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting notices of the sale in three (3) public places in the town where the work was done, for ten (10) days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the other secured parties or lienholders, if any, and the owner. Provided however, that the person, firm or corporation who is about to make, alter or repair the aircraft or related equipment, in order to derive the benefits of this section, must, before commencing such making, altering or repairing, give notice of the intention to so make, alter or repair the aircraft or related equipment, by registered mail, to any holder of a security interest which is of record at the FAA, at least three (3) days before commencing the making, altering or repairing, and if notice in writing within the three (3) days is not given by the holder of a secu-

rity interest notifying such person, firm or corporation not to perform such services, then the making, altering or repairing may proceed and the prior lien provided for herein attaches to the aircraft or related equipment.

45-1102. SURRENDER OF POSSESSION -- STATUTORY LIEN. (1) Any person, firm, or corporation who expends labor, skill, or materials upon an aircraft, aircraft engines, propellers, appliances, or spare parts, at the request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor of the aircraft, has a lien upon the aircraft, or related equipment, for the contract price of the expenditure, or in the absence of a contract price, for the reasonable value of the expenditure.

(2) The statutory lien created pursuant to this section:

(a) Is applicable to any civil aircraft engine, aircraft propeller, or aircraft appliance which is capable of having the ownership, or an interest in the ownership, affected by a conveyance, recorded at the federal aviation administration (FAA) aircraft registry;

(b) Is not dependent upon possession by the repairperson of the property which is subject to the lien;

(c) Is dependent upon the recordation of the lien at the FAA aircraft registry in accordance with section 45-1103, Idaho Code;

(d) Must be created by written contract between the parties, and any subsequent oral or written modifications thereto. The written contract must be signed by the customer, and predate the commencement of work for which the lien is applicable.

45-1103. NOTICE OF LIEN -- RECORDATION. The statutory lien created pursuant to section 45-1102, Idaho Code:

(1) Is not valid unless and until it is recorded with the FAA aircraft registry in the manner and in the form generally required for the "Recording of Aircraft Titles and Security Documents" pursuant to 14 CFR 49.

(2) Is valid upon recordation by the FAA aircraft registry of a written document entitled "NOTICE OF AIRCRAFT LIEN." This document shall:

(a) Be signed by the repairperson or by a duly authorized agent or attorney of the repairperson; and

(b) Be verified by the person signing the notice of lien upon that person's personal knowledge of the matters stated in the notice of lien, and which shall affirmatively state: "I declare under penalty of perjury, in accordance with the laws of the state of Idaho and of the laws of the United States of America, that the matters stated herein are true and correct upon my information and belief."

(c) Contain the date and place of signing of the notice of lien.

(3) The notice of lien referred to in subsection (2) of this section shall contain the following information:

(a) The United States registration number, make, model and serial number of the aircraft subject to the lien;

(b) The name of the manufacturer, the model, and the serial number of all applicable engines, propellers or appliances subject to the lien, to the extent they are not otherwise identifiable merely by reference to the aircraft registration number;

(c) The name, address and business telephone number of the repairperson asserting the lien;
(d) The name, address and business telephone number of the registered owner of the civil aircraft or other property subject to the lien;
(e) The name, address and business telephone number of the person consenting to the performance of the work giving rise to the lien;
(f) The amount of the lien, exclusive of prospective storage costs;
(g) A narrative statement describing the nature of the work accomplished;
(h) The affirmative statement that a copy of the notice of lien is concurrently being sent by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail, to both the registered owner and to the person consenting to the work;
(i) The date of last services or materials provided.

(4) No notice of lien pursuant to subsection (2) of this section is valid unless it is presented for recording at the FAA registry within one hundred eighty (180) days of the completion of the work giving rise to the lien.

45-1104. PERSONS CONSIDERED OWNER OF AIRCRAFT OR RELATED EQUIPMENT, OR AUTHORIZED AGENT OF OWNER. The following persons are considered the owner of an aircraft or related equipment, or the authorized agent of the owner, for the purposes of this chapter:

(1) A person in possession of the aircraft or related equipment under an agreement to purchase it, whether title to the aircraft or related equipment is in the possession of the person or the vendor;

(2) A person in lawful possession of the aircraft or related equipment.

45-1105. PRIORITY. A lien under section 45-1102, Idaho Code, when recorded in accordance with section 45-1103, Idaho Code, is superior to and preferred to:

(1) A lien, mortgage or encumbrance that attaches to the aircraft, or related equipment, after recording of the notice of lien under section 45-1103, Idaho Code.

(2) A prior lien, mortgage or other encumbrance, when the person furnishing the materials or performing the services did not have actual or constructive notice of the prior lien, mortgage or encumbrance, or the prior lien, mortgage or encumbrance was not recorded or filed in the manner provided by law.

(3) A lien that attaches to the aircraft or equipment on the basis of a security interest, if, prior to the expenditure of labor, skill or materials upon the aircraft or equipment, the person planning to make the expenditure gives notice of that intention by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail, to any holder of a security interest of record at the FAA prior to commencing such expenditure by sending such notice to the address of the holder of the security interest listed in the FAA record of lien, and the holder of the security interest does not respond within three (3) days of receipt of notice noting its opposition to the making of such an expenditure of labor, skill or materials.

45-1106. ENFORCEMENT OF LIEN. (1) A suit to enforce a lien described in section 45-1102, Idaho Code, must be brought within twelve (12) months after the lien is recorded.

(2) The practice and procedure to enforce a lien shall be governed by the law applicable to the foreclosure of mechanics' and materialmen's liens provided however, that notice requirements shall also extend to secured parties or lienholders of record with the federal aviation administration.

(3) Any judgment entered by the court shall be deemed to be a "conveyance" within the meaning of subsection (a)(19) of 49 U.S.C. section 40102, and shall be recordable at the FAA aircraft registry pursuant to 14 CFR 49.17.

45-1107. RELEASE OR DISCHARGE OF LIEN. A lien under this chapter shall be released and discharged by the lien claimant or the agent of the lien claimant in accordance with the regulations of the federal aviation administration.

Approved March 27, 2002.

SENATE JOINT MEMORIALS

(S.J.M. No. 110)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, in the year 1890, Idaho was admitted to the Union and Congress created the District of Idaho and soon thereafter appointed Idaho's first United States District Judge for the District of Idaho. A second judgeship was created in the year 1954. Since that time, Congress has not approved any new district judicial positions for the District of Idaho; and

WHEREAS, in the year 1954, the resident population of the state of Idaho was roughly 600,000. Based on the year 2000 census, the current population of the state of Idaho has climbed to 1,293,953 residents; and

WHEREAS, Idaho's United States District Judges are required to travel throughout the state of Idaho to conduct hearings and trials in both civil and criminal cases. The two judges hear cases in the four distant authorized locations including Coeur d'Alene and Moscow situated in northern Idaho and Pocatello and Boise located in southern Idaho; and

WHEREAS, the number of civil and criminal cases has increased significantly since 1954, placing a burden on our judges and court system. In the year 2001, a total of 852 cases were filed in Idaho's United States District Court; and

WHEREAS, given the population growth in the state of Idaho, the concurrent increase in cases filed in our United States District Court, and the logistical difficulty posed by our judges conducting proceedings in the far reaching areas of our state, the addition of a third United States District Judge for the state of Idaho is imperative.

NOW, THEREFORE, BE IT RESOLVED that the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, hereby respectfully urge the Congress of the United States to authorize an additional United States District Court Judge and commensurate staff for the District of Idaho to assist in handling current and anticipated caseloads in the District of Idaho; and

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, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate January 30, 2002
Adopted by the House February 21, 2002

(S.J.M. No. 112)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the damage and loss of life resulting from the terrorist events of September 11th were and are a tremendous burden on the financial viability of the American insurance industry; and

WHEREAS, both domestic and offshore reinsurance markets have adopted restrictive language concerning coverage of future damages resulting from terrorist activities; and

WHEREAS, financiers are reluctant to lend money without adequate insurance coverage on their collateral and businesses are reluctant to invest for the same reason; and

WHEREAS, businesses and public entities have experienced rate increases of one thousand percent or more for terrorism insurance from the few insurance carriers still offering the coverage; and

WHEREAS, the state of Idaho contains several facilities which have been damaged in the past or would be choice targets for terrorist activity in the future.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Legislature calls for United States congressional action in establishing a backstop to insure stability in the insurance marketplace and affordable availability of insurance covering terrorist activities. Such support needs to exist until such time as private insurance companies can again be a significant market source of terrorism insurance.

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, and the congressional delegation representing the State of Idaho in the Congress of the United States.

Adopted by the Senate February 18, 2002
Adopted by the House March 8, 2002

(S.J.M. No. 114)

A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, THE SECRETARY OF STATE OF THE UNITED STATES, THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES, THE PRESIDENT OF THE BASQUE AUTONOMOUS GOVERNMENT, THE FRENCH PRIME MINISTER, THE SPANISH PRIME MINISTER AND THE KING OF SPAIN.

We, your Memorialists, the Senate and the House of Representatives of the State of Idaho assembled in the Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, during the early part of the twentieth century, a wave of Basque immigrants left a stretch of coastline along the Bay of Biscay destined for the state of Idaho where many initially found work as sheepherders in the ranges and pastureland of Idaho; and

WHEREAS, the state of Idaho has long since been known as the North American center of the Basque population and many citizens of the state have kept close ties to the homeland of their forefathers; and

WHEREAS, in the year 1972, the Senate and House of Representatives of the State of Idaho assembled in the Second Regular Session of the Forty-first Idaho Legislature passed Senate Joint Memorial No. 115 condemning the totalitarian dictatorship of Franco and insisting on total general amnesty for all Basques and Spaniards imprisoned or exiled for their political and social activities; and

WHEREAS, the Basque people are the oldest indigenous people in western Europe and have a long history of personal accomplishment and a devotion to the preservation of their national heritage; and

WHEREAS, the Basque homeland was claimed in the mid-seventeenth century by the emerging nation states of Spain and France and is now divided into seven provinces, four of which are located in Spain and three of which are located in France; and

WHEREAS, notwithstanding this division, the Basque people have sought to maintain their autonomous culture, their ancient language and their self-government; and

WHEREAS, despite conflicts associated with the configuration of the Basque Country and its relationship with the Spanish and French states, all but a marginalized fraction of Basques oppose all incidents of violence; and

WHEREAS, it is the intent of the Legislature of the State of Idaho in adopting this Joint Memorial to:

(1) Express strong support for an immediate end to violence in the Basque homeland located in Spain and France and the establishment of peace through all lawful means available to the governments of Spain, France and the Basque Autonomous Region; and

(2) Condemn all acts of terrorism and violence committed by any and all organizations and individuals within the Basque homeland and throughout the world, including those organizations, such as ETA, who are defined by the government of the United States as terrorist organizations pursuant to the applicable laws of the United States; and

(3) Reiterate its unqualified support of and participation with the government of the United States and those of all other nations in the war on terrorism.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the state of Idaho calls for an immediate cessation of all violence occurring in and near the Basque homeland, and that a peace process be immediately undertaken between the governments of Spain and France, the Basque Autonomous Government, and other groups committed to peace. The state of Idaho further supports the right of the Basques to self determination.

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 Secretary of State of the United States, 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, the President of the Basque Autonomous Government, the French Prime Minister, the Spanish Prime Minister and the King of Spain.

Adopted by the Senate March 12, 2002
Adopted by the House March 13, 2002

HOUSE JOINT MEMORIALS

(H.J.M. No. 11)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, under tax relief legislation passed in 2001, the death tax was temporarily phased out, not permanently eliminated; and

WHEREAS, women and minorities are very often owners of small and medium-sized businesses, and the death tax prevents their children from reaping the rewards of a lifetime spent trying to make a better life; and

WHEREAS, farmers will face losing their farms if the federal government resumes the heavy taxation of the estates of people who invested most of their earnings back into their farms; and

WHEREAS, if the estate tax had been repealed in 1996, over the next nine years the United States economy would have averaged as much as $11 billion per year in extra output, and an average of 145,000 additional new jobs would have been created; and

WHEREAS, the persistent uncertainty created by the sunset provision prevents families and small businesses from taking advantage of the repeal; and

WHEREAS, having passed both the United States House of Representatives and the United States Senate, the elimination of the death tax has proven to hold wide bipartisan support.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urge the members of the Congress of the United States representing the state of Idaho to support, work to pass and vote for the permanent repeal of the death tax.

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 January 22, 2002
Adopted by the Senate January 25, 2002

(H.J.M. No. 12)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, President George W. Bush has proposed a bipartisan economic security package to protect jobs; and

WHEREAS, President Bush's plan promotes new job creation; and

WHEREAS, President Bush's plan provides $3 billion in special National Emergency Grants to help displaced workers maintain health coverage, supplement their income and receive job training; and

WHEREAS, President Bush's plan makes $11 billion available to states to help low income workers obtain health insurance; and

WHEREAS, President Bush's plan encourages affected workers to take advantage of more than $6 billion in existing federal job search, training and placement programs; and

WHEREAS, President Bush's plan encourages businesses to invest in new equipment and resources, allowing them to make purchases they might not otherwise have been able to afford; and

WHEREAS, President Bush's plan gives consumers more to spend and invest, and gives businesses and entrepreneurs more resources to help them retain or create more jobs; and

WHEREAS, President Bush's plan reduces taxes for low and moderate income households beyond relief already approved by Congress, ensuring that the most vulnerable workers will have more money in their pockets; and

WHEREAS, the economic security package has passed the United States House of Representatives twice and has bipartisan majority support in the United States Senate.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urge the members of Congress representing the state of Idaho to support President George W. Bush's economic security package and specifically to urge Senate Majority Leader Senator Tom Daschle to allow the economic security package to receive a vote.

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 January 22, 2002
Adopted by the Senate January 28, 2002

(H.J.M. No. 13)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the 1972 Antiballistic Missile (ABM) Treaty was signed with a nation that no longer exists; and

WHEREAS, an increasing number of nations, including China, North Korea, Iran and Iraq, either currently possess the capability to launch missile attacks against the United States or its allies, or are working to obtain that capability; and

WHEREAS, due in part to advances in technology, the possibility that a missile bearing a weapon of mass destruction will be used against United States forces or interests is higher today than it was during most of the Cold War; and

WHEREAS, terrorist groups, not just states, have the means to buy ballistic missiles; and

WHEREAS, while systems are in place to thwart terrorism, the nation still has no defense against missile attack; and

WHEREAS, the Cold War policy of "mutual assured destruction" embodied in arms control treaties is not sufficient to deter terrorist missile attacks; and

WHEREAS, defending against a missile attack is the government's moral obligation.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we request our elected representatives in the Congress of the United States to support and vote for the implementation of a national missile defense system.

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 January 29, 2002
Adopted by the Senate February 6, 2002

(H.J.M. No. 15)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, Congress has enacted various laws throughout the years containing provisions designed to assist dislocated workers in our country; and

WHEREAS, among those laws is the Trade Act of 1974, which provides for assistance to workers whose employment is adversely affected by increased imports and the North American Free Trade Agreement of 1993 which, in part, establishes a specialized trade adjustment assistance program known as the NAFTA-TAA program. The NAFTA-TAA program is a transitional program that helps workers whose companies have been impacted or are threatened to be impacted as a direct result of increased imports from Canada or Mexico; and

WHEREAS, when certified as eligible to apply for TAA and/or NAFTA-TAA adjustment assistance, workers may qualify to receive benefits which may include trade readjustment allowances, re-employment services such as counseling, testing, job development and placement, job search allowances, reimbursement for approved job search expenses, relocation allowances, reimbursement for approved costs of relocating to a new job and job training which is expected to lead to employment. Each benefit has its own eligibility requirements; and

WHEREAS, to obtain relief provided by the programs, the laws require official certification by the United States Department of Labor authorizing a specified group of workers to apply for adjustment assistance. To obtain certification, individuals designated by statute, including workers, union representatives or company officials, are required to file a TAA and/or NAFTA-TAA petition; and

WHEREAS, TAA petitions are to be filed directly with the United States Department of Labor. The Department is charged with conducting a fact-finding investigation following receipt of a petition, and an official notice of eligibility determination is to be finalized no later than sixty days after a petition is instituted; and

WHEREAS, NAFTA-TAA petitions are to be filed with the Governor's designated state agency and that agency shares the responsibility for completing a fact-finding investigation with the Department of Labor which is to be completed no later than forty days after a petition is instituted; and

WHEREAS, various companies throughout the state of Idaho have been adversely affected by increased imports, making workers in these companies eligible for federal adjustment assistance. However, despite the stated time requirements for completion of investigations by the various government agencies, determinations regarding affected workers in the state of Idaho have not always been made within the required period of time, subjecting workers to unreasonable delays in receipt of determinations; and

WHEREAS, in the case of company closures or layoffs, workers are often forced to hurriedly relocate before determinations are received in order to provide their families with a means of support. As a result, affected workers do not benefit from the federal adjustment programs and communities suffer losses in population, which in turn results in significant social and economic impact to the communities; and

WHEREAS, the Worker Adjustment and Retraining Notification Act

(WARN) was enacted on August 4, 1988, and offers protection to workers, their families and communities by requiring employers to give sixty days' advance notice of covered plant closings and covered mass layoffs to workers, their representatives and the state dislocated worker unit and appropriate unit of local government; and

WHEREAS, workers faced with impending layoffs, and the communities in which they reside, would benefit if all TAA and NAFTA-TAA petition determinations were actually made within the sixty day notification period required by the Worker Adjustment and Retraining Notification Act.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, hereby respectfully urge the Congress of the United States to require all agencies to strictly comply with all TAA and NAFTA-TAA petition investigation and determination time requirements to ensure that determinations are made within the sixty day notification period required by the Worker Adjustment and Retraining Notification Act.

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 February 15, 2002
Adopted by the Senate March 6, 2002

(H.J.M. No. 16)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, in 1975 our country took a major step forward in promoting the inclusion and equality of one of our most disenfranchised groups of citizens; and

WHEREAS, passage of the Education for All Handicapped Children Act, now known as the Individuals with Disabilities Education Act (IDEA), reaffirmed the American principle that all children deserve a free and appropriate public education; and

WHEREAS, the federal government made a commitment to pay forty percent of the cost for children with special educational needs; and

WHEREAS, over the years the federal appropriations have ranged from seven to fifteen percent of the total cost; and

WHEREAS, the federal contribution has always fallen far short of the congressional commitment to fully fund IDEA; and

WHEREAS, local and state budgets have been forced to absorb the shortfall; and

WHEREAS, after twenty-five years, the magnitude of that shortfall demands a new approach; and

WHEREAS, funding for IDEA should be moved out of the discretionary budget and into mandatory spending for the federal contribution; and

WHEREAS, when IDEA funding nears the forty percent commitment, schools will be able to free up resources for other educational programs and services.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urgently and respectfully request that the Congress of the United States make special education funding mandatory and fulfill its commitment on a long overdue promise to provide funding at the forty percent level.

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 February 25, 2002
Adopted by the Senate March 5, 2002

(H.J.M. No. 17)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, our country was founded on the precepts of freedom, liberty, diversity and the right of the people to acknowledge God according to the dictates of conscience; and

WHEREAS, from the very beginning of our nation to the founding of our first national government in 1774, and from the Continental Congress to the Constitutional Convention and the years after the establishment of our Constitution, voluntary prayer has been a unifying and consoling force; and

WHEREAS, statements of belief in a Supreme Power and the virtue of seeking guidance, strength and protection from that Power are prevalent throughout our national history and appear in our national documents as well as in virtually every state constitution; and

WHEREAS, the framers of the Constitution, recognizing free exercise of religion as an inalienable right, secured its protection with the First Amendment of the Constitution of the United States; and

WHEREAS, every session of Congress, as well as those of many other

legislative and public bodies across the nation, begins with the comfort and encouragement of voluntary prayer; and

WHEREAS, our government has a constitutional obligation to protect religious freedom; and

WHEREAS, one of the purposes of education is to prepare students to be good citizens; and

WHEREAS, instilling an appreciation and respect not only for the beliefs and traditions of others but also for the longstanding beliefs and traditions of the nation, forms a part of good citizenship; and

WHEREAS, voluntary student prayer formed a part of American public schools from their origination in 1642 for over three hundred years afterward, until the U.S. Supreme Court, in a 1962 ruling, which the court said was "without precedent," struck down what it described as "voluntary, nondenominational school prayer"; and

WHEREAS, in 1985 the U.S. Supreme Court also struck down voluntary, silent student prayers; and

WHEREAS, an increasing number of recent religion hostile court decisions now prohibit the overwhelming majority of Americans from participating in the very same religious expressions their parents, grandparents and generations before them enjoyed; and

WHEREAS, an increasing and ever-widening hostility against voluntary prayer and public religious speech has produced a public atmosphere of fear, intimidation and confusion about school prayer and religious speech; and

WHEREAS, an overwhelming majority of Americans now favor giving specific protections to these traditional religious expressions, as for example, recent polls show that 78% favor a constitutional amendment restoring voluntary school prayer and 74% favor protecting displays of the Ten Commandments.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we urge the U.S. Congress to pass a "School Prayer Amendment" to the Constitution of the United States reinstating protection for voluntary school prayer and other public religious speech.

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 February 25, 2002
Adopted by the Senate March 6, 2002

(H.J.M. No. 18)

A JOINT MEMORIAL

TO THE PRESIDENT OF THE UNITED STATES, TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES, TO THE ADMINISTRATOR OF THE UNITED

STATES ENVIRONMENTAL PROTECTION AGENCY, THE REGION TEN OFFICES OF THE ENVIRONMENTAL PROTECTION AGENCY, THE NATIONAL MARINE FISHERIES SERVICE, THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR AND THE SECRETARY OF THE UNITED STATES DEPARTMENT OF COMMERCE.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, on October, 2001, Region 10 of the U.S. Environmental Protection Agency (EPA) issued a Draft Temperature Guidance Document (Draft Guidance) for public comment and the Draft Guidance resulted from a two year process that involved the EPA, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, state environmental quality departments and tribal representatives; and

WHEREAS, the goal of the Draft Guidance was to provide states and tribes in Region 10 with guidance when developing or revising their own temperature standards and if the states or tribes adopted standards consistent with the Draft Guidance, EPA Region 10 was expected to expedite Clean Water Act approval and Endangered Species Act consultation; and

WHEREAS, the EPA Draft Guidance process reflects federal views and fails to reflect state agency and private sector views and the EPA Draft Guidance process excluded nonfederal land management entities and private sector stakeholders; and

WHEREAS, the Environmental Protection Agency provides only ninety days for the public to review a document under development for over two years and the Draft Guidance contains several arbitrary policies and legal defects; and

WHEREAS, the Draft Guidance is not consistent with Sections 303 and 304 of the Clean Water Act and Sections 6, 7 and 9 of the Endangered Species Act; and

WHEREAS, the Draft Guidance treats Endangered Species Act Section 7 consultation as a basis of additional EPA authority over state water quality standards; and

WHEREAS, the Draft Guidance identifies state water temperature standards so low that they are impossible to meet even in streams currently running through federal wilderness areas; and

WHEREAS, the Draft Guidance states that areas of "cold water refuges" should be designated as Outstanding Resource Waters; and

WHEREAS, the Draft Guidance would substantially increase the number of state streams and water bodies on the 303(d) list thus subject to Total Maximum Daily Load (TMDL) development; and

WHEREAS, the Draft Guidance would unlawfully short-circuit the TMDL process and immediately require point sources to obtain thermal offsets or meet temperature water quality standards without a mixing zone; and

WHEREAS, implementation of the Draft Guidance would result in substantially increased costs to both the state of Idaho and the private sector.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we respectfully request that the Environmental Protection Agency do the following:

(a) Suspend the current Draft Guidance;

(b) Create a more open and inclusive process including both private

and state sector land management entities, counties, cities, utilities, business, industry and other affected stakeholders; and

(c) Recast the Draft Guidance to create an alternative outcome consistent with federal and state law and current national guidance under the Clean Water Act and the Endangered Species Act and be consistent with the best available scientific and technological information; and

(d) Include an economic impact analysis of any future draft guidance; and

(e) Include an analysis of the costs to states and the private sector of implementation of any standards created in any future Draft Guidance.

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, 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, to the Administrator of the United States Environmental Protection Agency, the Region 10 offices of the Environmental Protection Agency, the National Marine Fisheries Service, the Secretary of the United States Department of the Interior and the Secretary of the United States Department of Commerce.

Adopted by the House February 27, 2002
Adopted by the Senate March 8, 2002

(H.J.M. No. 21)

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 Second Regular Session of the Fifty-sixth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, federal highway program annual funding levels for the states are tied to estimates of the Highway Trust Fund (HTF) receipts made at the time of enactment of the Transportation Equity Act for the 21st Century (TEA-21) in 1998, and the funding levels are adjusted each year to reflect the actual receipts into the HTF in previous years and projected revenues in future years; and

WHEREAS, the annual calculation of the adjustment to funding levels is known as Revenue Aligned Budget Authority (RABA); and

WHEREAS, during the three-year period of fiscal year 2000 through fiscal year 2002, the states received an additional $9.0 billion in highway funding through RABA, creating the expectation among the public and in the transportation industry that these higher levels of funding and highway project construction would be maintained; and

WHEREAS, for fiscal year 2003 the RABA calculation will reduce the highway program funding levels by $8.6 billion below the fiscal year

2002 levels, and reduce Idaho's federal highway program funds by over $50 million from fiscal year 2002 levels, a reduction of nearly thirty percent from the previous year; and

WHEREAS, a reduction in highway funding of this magnitude in fiscal year 2003 will have a large impact on the economy of the nation and on each of the states, resulting in an estimated loss of 361,000 jobs nationwide, and of over 2,100 jobs in Idaho; and

WHEREAS, there is currently a $20 billion surplus in the HTF which can be used to make up for this loss in highway funding in fiscal year 2003.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we hereby respectfully urge the Congress of the United States to enact legislation setting the level of obligations for federal-aid highway and highway safety construction programs for fiscal year 2003 at not less than $8.6 billion above the level set in the proposed fiscal year 2003 federal budget in order to continue the full benefit of transportation investments at fiscal year 2002 levels and avoid job losses.

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 5, 2002
Adopted by the Senate March 14, 2002

SENATE CONCURRENT RESOLUTIONS

(S.C.R. No. 120)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE DEPARTMENT OF HEALTH AND WELFARE RELATING TO CONSTRUCTION AND OPERATION OF PUBLIC SWIMMING POOLS.

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

WHEREAS, the Legislature is vested with authority to reject 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 Department of Health and Welfare relating to construction and operation of public swimming pools are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 16.02.14, Sections 004, 006, 007, and 010, the entire docket, rules of the Department of Health and Welfare relating to construction and operation of public swimming pools, adopted as pending rules under Docket number 16-0214-0101, be, and the same are hereby rejected and declared null, void and of no force and effect.

Adopted by the Senate February 6, 2002
Adopted by the House March 8, 2002

(S.C.R. No. 121)

A CONCURRENT RESOLUTION

STATING FINDINGS AND REVIEWING PREVIOUS COMMITMENTS OF THE LEGISLATURE CONCERNING THE NECESSITY OF DEVELOPING A VETERANS CEMETERY IN IDAHO AND URGING THAT THE NECESSARY STEPS BE TAKEN TO MAKE THE CEMETERY A REALITY.

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

WHEREAS, Idaho is the only state in the nation without a state or federally supported cemetery for its veterans; and

WHEREAS, thirty-seven states and two U.S. territories have, or are planning the construction of a state veterans cemetery; and

WHEREAS, Idaho veterans are dying at an alarming rate and deserve to be laid to rest in a field of honor befitting their sacrifices; and

WHEREAS, the federal government shares their belief, and the Department of Veterans Affairs' (VA's) State Cemetery Grants Service pays 100% of planning, construction and equipment costs for the development of a state veterans cemetery; and

WHEREAS, the state is obligated to provide the land and pay for ongoing cemetery maintenance and operation of a state veterans cemetery; and

WHEREAS, Governor Dirk Kempthorne expressed support for the construction of a state veterans cemetery in his State of the State Address before the Second Regular Session of the Fifty-fifth Idaho Legislature; and

WHEREAS, the Second Regular Session of the Fifty-fifth Idaho Legislature adopted House Concurrent Resolution No. 46 expressing support for the establishment and perpetual maintenance and operation of an Idaho state veterans cemetery; and

WHEREAS, the Second Regular Session of the Fifty-fifth Idaho Legislature appropriated $200,000, to be reimbursed by the VA, for cemetery design; and

WHEREAS, the Second Regular Session of the Fifty-fifth Idaho Legislature amended Chapter 1, Title 65, Idaho Code, by adding a new Section 65-107, Idaho Code, to create a Veterans Cemetery Maintenance Fund and to provide for purposes and administration of moneys in the fund; and

WHEREAS, the Second Regular Session of the Fifty-fifth Idaho Legislature amended Section 49-418, Idaho Code, to provide that a portion of the special program fees for veterans motor vehicle license plates shall be deposited in the Veterans Cemetery Maintenance Fund; and

WHEREAS, a land donor has stepped forward with a proposed donation of over forty acres of property in an effort to meet the state's obligation to provide the land; and

WHEREAS, additional land, with less slope, is necessary as an adjunct to the donated property; and

WHEREAS, the Dry Creek Cemetery Board of Commissioners has expressed its willingness to make additional land available at cost for a state veterans cemetery; and

WHEREAS, Idaho Code does not authorize cemetery maintenance districts to make government to government transfers of property.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we once again endorse the need for a Veterans Cemetery in Idaho. Legislation should be adopted to facilitate the exchange of property and to authorize the Division of Veterans Services to accept gifts, grants, contributions and bequests, and to purchase and hold title to property on behalf of the state of Idaho. The Legislature should act expeditiously so that no more time passes before Idaho's veterans are given the respect they are so worthy of receiving.

Adopted by the Senate February 6, 2002
Adopted by the House March 6, 2002

(S.C.R. No. 123)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND RECOGNIZING THE SERVICE AND ACCOMPLISHMENTS OF MERIWETHER LEWIS AND WILLIAM CLARK.

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

WHEREAS, President Thomas Jefferson received the approval of Congress on February 28, 1803, to fund an expedition into the West with orders to explore the Missouri River and such tributaries as might lead to the Pacific Ocean on the most direct and practicable water route for purposes of commerce, in addition to which, the expedition was to gather scientific and geographical information, and to encourage peace among any Indian Nations encountered; and

WHEREAS, Meriwether Lewis, Captain of the First Regiment of Infantry, and former Secretary to President Jefferson, was appointed to lead the expedition, and he selected, with the approval of the President, William Clark to serve equally as a Captain in a leadership role; and

WHEREAS, the Corps of Discovery party spent the winter of 1803-1804 at Camp Dubois and the winter of 1804-1805 at Camp Mandan preparing for the journey into previously uncharted western lands, at the latter camp hiring Toussaint Charbonneau as an interpreter traveling with his wife, Sacajawea, a Lemhi Shoshone and their newborn son, Jean Baptiste; and

WHEREAS, on April 7, 1805, the Corps of Discovery, consisting of thirty-one men, one woman and her child, and Seaman, the faithful Newfoundland dog of Captain Lewis, set out from Camp Mandan for the Pacific Ocean; and

WHEREAS, on August 12, 1805, Captain Lewis stood on Lemhi Pass and, looking westward, discovered immense mountains partially covered with snow and realized that a water passage to the Pacific Ocean was impossible; the following day, Lewis made a peaceful contact with the Lemhi Shoshone and hired them to transport the baggage of his party over the mountains to the camp of the Lemhi Shoshone, the Homeland of Sacajawea; and while at their encampment on the eastern side of the Continental Divide, Sacajawea was reunited with her brother, Chief Cameahwait, and her people from whom she was stolen by the Minnetares a few years earlier; and

WHEREAS, the Lemhi Shoshone provided the Corps of Discovery with food and horses and a guide, Old Toby, for their land trip westward to the Clearwater River; and

WHEREAS, the expedition left Idaho at Lost Trail Pass and entered present-day Montana on September 4, 1805, reentering Idaho at Lolo Pass on September 13, 1805, and beginning an arduous trip across the Bitterroots by way of the Lolo Trail; and

WHEREAS, Captain William Clark, in advance of the main party, encountered a Nez Perce camp on the Weippe Prairie on September 20, 1805, and the Nez Perce graciously provided the nearly starving party with food and directions, and helped them construct canoes for the last part of their trip to the Pacific Ocean, and in addition agreed to take charge of their horses until the expedition returned for them the following year; and

WHEREAS, on their return trip, the Corps of Discovery reentered

Idaho near Lewiston on May 5, 1806, and on May 13 established Camp Chopunnish or Long Camp near Kamiah, where the party waited and interacted with the Nez Perce until weather permitted the opening of the Lolo Trail, and on June 29, 1806, the Corps of Discovery, with the aid of Nez Perce guides passed back through Lolo Pass on their way homeward.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we recognize and honor the contributions of Meriwether Lewis and William Clark for their leadership of the first exploration of what is now known as Idaho commissioned by the United States of America, and the hospitality and contributions of the Lemhi Shoshone and Nez Perce, and we further recognize the upcoming Bicentennial Anniversary of their expedition into Idaho and the Pacific Northwest.

Adopted by the Senate February 11, 2002
Adopted by the House March 6, 2002

(S.C.R. No. 124)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE CONCERNING THE DEDICATED CORPS OF STATE EMPLOYEES AND DESIGNATING MAY 7 THROUGH 11 AS IDAHO PUBLIC EMPLOYEE RECOGNITION WEEK.

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

WHEREAS, in the name of service to the state of Idaho and its citizens, public employees have, with their commitment to excellence and diversity of skills, made great contributions to this society in areas such as: keeping our highways open in the winter and in tip-top shape throughout the year; providing the highest caliber of statewide police protection; maintaining our parks and forests; helping us cope with emergencies; helping us guard against contagious disease; protecting our air and land against pollution; furnishing guidance to the youthful and the elderly; providing essential training to the deaf, the blind and the handicapped; advancing our education through our state schools and colleges; giving vital assistance to public libraries all over the state; keeping farmers informed on the latest agricultural developments and assisting them in marketing problems; working with us to develop new products to preserve and boost the state's economy; bringing educational programs into our homes through television, radio and online programs; and

WHEREAS, the effectiveness and efficiency of government depends in large measure on public employees, whose task it is to provide a broad range of services of the quality and quantity required and expected by the public on a daily basis; and

WHEREAS, the importance of public service rendered by public employees and the exemplary manner of their performance are too often forgotten, ignored or underestimated; and

WHEREAS, the state of Idaho recognizes the dedication, talents and

contributions made to the state by public employees in all levels of government and the Idaho Legislature finds it fitting to set aside a special time to honor and thank these dedicated individuals who perform such a vital role in all our lives.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we proclaim the week of May 7 through 11, 2002, as "IDAHO PUBLIC EMPLOYEE RECOGNITION WEEK" in Idaho, asking the Governor, along with governors of other states across the nation to sign a proclamation on Wednesday, May 9, 2002, asking department heads of state entities to give special recognition of their employees during that week and urging the citizens to give the proper recognition, support, commendation and thanks to these dedicated public servants who go the extra mile to help us attain a good quality of life.

Adopted by the Senate February 12, 2002
Adopted by the House March 6, 2002

(S.C.R. No. 125)

A CONCURRENT RESOLUTION
STATING LEGISLATIVE FINDINGS AND APPROVING AND EXTENDING TEMPORARY RULES OF THE IDAHO DEPARTMENT OF AGRICULTURE, 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 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 Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 02.06.16, rules of the Idaho Department of Agriculture relating to crop residue disposal, adopted as temporary rules under Docket Number 02-0616-0101, pursuant to the Administrative Procedure Act and submitted to the Legislature at the Legislature's request through the Office of Rules Coordinator for review during the 2002 legislative session, be, and the same are approved, with the exception of the following enumerated temporary rules sections:

IDAPA 02.06.16, Section 100.03, concerning deadlines for registration; IDAPA 02.06.16, Section 300, Subsections 01 and 02, concerning crop residue burning time frames; and IDAPA 02.06.16, Section 500, Subsections 04 and 05, concerning setbacks from structures and adequate fire suppression equipment.

BE IT FURTHER RESOLVED that the portions of the temporary rule approved by this concurrent resolution shall remain in effect until they

expire by their own terms or by operation of law or until they are replaced by a final rule, but in no event shall the rules remain in effect beyond the conclusion of the First Regular Session of the Fifty-seventh Idaho Legislature unless further extended by adoption of a concurrent resolution by both houses of the Legislature.

Adopted by the Senate February 12, 2002
Adopted by the House February 25, 2002

(S.C.R. No. 126)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE IDAHO DEPARTMENT OF AGRICULTURE RELATING TO GOVERNING ANIMAL INDUSTRY.

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

WHEREAS, the Legislature is vested with authority to reject 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 Idaho Department of Agriculture relating to governing animal industry are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 02.04.03, Section 388, subsection 04.b, concerning duration of quarantine and IDAPA 02.04.03, Section 405, subsection 01, concerning penalty for violations, rules of the Idaho Department of Agriculture relating to governing animal industry, adopted as pending rules under Docket Number 02-0403-0001, be, and the same are hereby rejected and declared null, void and of no force and effect.

Adopted by the Senate February 12, 2002
Adopted by the House February 25, 2002

(S.C.R. No. 130)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND APPROVING AND EXTENDING TEMPORARY RULES REVIEWED BY THE LEGISLATURE, WITH AN EXCEPTION.

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 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 Second Regular Session of the Fifty-sixth 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 for review during the 2002 legislative session, 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 rules section:

IDAPA 02.06.16, the entire rulemaking docket, concerning crop residue disposal, rules of the Idaho Department of Agriculture, adopted as temporary rules under Docket Number 02-0616-0101.

BE IT FURTHER RESOLVED that 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 First Regular Session of the Fifty-seventh Idaho Legislature unless it is further extended 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 during the 2002 legislative session shall expire by operation of statute upon adjournment of the Second Regular Session of the Fifty-sixth Idaho Legislature, unless approved by adoption of a separate concurrent resolution by both houses of the Legislature.

Adopted by the Senate February 28, 2002
Adopted by the House March 8, 2002

(S.C.R. No. 131)

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND APPROVING ADMINISTRATIVE RULES THAT IMPOSE A FEE OR CHARGE, WITH AN EXCEPTION, AND REJECTING CERTAIN AGENCY RULES THAT ARE NOT APPROVED.

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

WHEREAS, the Legislature pursuant to Section 67-5224, Idaho Code, must approve certain administrative rules that impose a fee or charge by adoption of a concurrent resolution before the rules become effective; and

WHEREAS, the Legislature is vested with authority to reject 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 State Board of Morticians relating to reinstatement and annual renewal fees is not consistent with legislative intent; 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 Second Regular Session of the Fifty-sixth 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 to the Legislature for review during the 2002 legislative session, which impose a fee or charge, be, and the same are approved, with the exception of the following enumerated pending fee rule:

IDAPA 24.08.01, Section 500, Subsection 07, Rules of the State Board of Morticians relating to reinstatement and annual renewal fees for back years, adopted as a pending fee rule under Docket Number 24-0801-0101; and

BE IT FURTHER RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 24.08.01, Section 500, Subsection 07, Rules of the State Board of Morticians relating to reinstatement and annual renewal fees, adopted as a pending fee rule under Docket Number 24-0801-0101 be, and the same is hereby rejected and not approved and thereby pursuant to Sections 67-5291 and 67-5224, Idaho Code, is declared null, void and of no force and effect.

BE IT FURTHER RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that 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 and approved in this concurrent resolution shall be null, void and of no force and effect unless approved by adoption of a separate concurrent resolution by both houses of the Legislature as provided in Section 67-5224, Idaho Code.

Adopted by the Senate February 28, 2002
Adopted by the House March 11, 2002

(S.C.R. No. 132)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE REGARDING THE STATE OF IDAHO'S INTERESTS IN THE CLEANUP PLAN FOR THE COEUR D'ALENE BASIN AND SUPPORTING EFFORTS OF THE EXECUTIVE BRANCH TO SECURE AND IMPLEMENT A FINAL PLAN THAT BUILDS THE LOCAL ECONOMY AND PROTECTS HUMAN HEALTH AND THE ENVIRONMENT.

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

WHEREAS, the Legislature has reviewed the efforts of the Governor and the Idaho Department of Environmental Quality to provide input to the Environmental Protection Agency's proposed plan to address heavy

metal contamination in the Coeur d'Alene Basin; and

WHEREAS, the Environmental Protection Agency is taking comments on the proposed plan in advance of issuing a record of decision adopting a final plan; and

WHEREAS, it is in the interest of the state of Idaho to have an affordable and common sense plan that protects public health, restores environmental quality and invigorates a depressed economy in the Silver Valley; and

WHEREAS, it is in the interest of the state of Idaho to have a plan that brings certainty about the extent and duration of cleanup activity and is focused on initiating and concluding cost-effective work that demonstrably benefits human health and the environment; and

WHEREAS, the First Regular Session of the Fifty-sixth Idaho Legislature passed into law House Bill No. 256, As Amended, also know as the Basin Environmental Improvement Act, which provided for creation of the Coeur d'Alene Basin Environmental Improvement Commission to implement environmental remediation, natural resource restoration and related measures to address heavy metal contamination in the Coeur d'Alene Basin.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we support the efforts and comments by the Governor and the Idaho Department of Environmental Quality to ensure that the Environmental Protection Agency's record of decision will provide certainty to the citizenry of the Coeur d'Alene Basin, will clearly identify both the areas and actual remediation work that is necessary and will be implemented through the Coeur d'Alene Basin Environmental Improvement Commission in a manner that builds the local economy and protects human health and the environment.

Adopted by the Senate March 4, 2002
Adopted by the House March 8, 2002

(S.C.R. No. 134)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND APPROVING, CONDITIONED UPON AMENDMENT, THE IDAHO WOLF CONSERVATION AND MANAGEMENT PLAN.

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

WHEREAS, pursuant to Section 36-715, Idaho Code, the Idaho Department of Fish and Game, in conjunction with the Wolf Oversight Committee, has completed an Idaho Wolf Conservation and Management Plan, identified as "Draft 17" and dated January 2002, and submitted the plan to the Legislature for review; and

WHEREAS, pursuant to Section 36-2405, Idaho Code, management plans are subject to legislative approval, amendment or rejection by concurrent resolution; and

WHEREAS, based upon review of the plan, the Legislature of the State of Idaho, herein amends the plan as follows:

Draft 17 - Page 4 of 32. The first full paragraph of the page shall be amended as follows:

"The goal of this conservation and management plan is to ensure the

long-term survival of wolves in Idaho while minimizing wolf-human conflicts that result when wolves and people live in the same vicinity. Conservation of wolves requires management. Management for wolves means ensuring adequate numbers for long-term persistence of the species as well as ensuring that landowners, land managers, other citizens, and their property are protected. Section 1, Article I of the Constitution of the State of Idaho reads "All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety." The Governor's Office of Species Conservation shall begin immediate discussions with the United States Fish and Wildlife Service to define how the rights guaranteed by Section 1, Article I, of the Constitution of the State of Idaho will be preserved and recognized. Without management, conservation is overcome by conflict. The State of Idaho is ~~committed to the conservation of wolves~~ on the record asking the federal government to remove wolves from the state by the adoption in 2001 of House Joint Memorial No. 5. The position reflected in House Joint Memorial No. 5 continues to be the official position of the State of Idaho. However, in order to use every available option to mitigate the severe impacts on the residents of the State of Idaho, the state will seek delisting and manage wolves at recovery levels that will ensure viable, self-sustaining populations."

Draft 17 - Page 4 of 32. Subsection 2) shall be amended as follows:

"Classification or Status of the Wolf - In order to protect wolf populations by enforcing regulations and issuing citations for illegal take and by limiting and regulating legal take, wolves will be classified as either a big game animal, ~~or~~ furbearer, or special classification of predator that provides for controlled take after delisting, at the discretion of the Idaho Fish and Game Commission (I.C. section 36-201).

Draft 17 - Page 4 of 32. Subsection 3) shall be amended as follows:

"Population Objectives - Wolf population estimates are, at best, approximations, and establishment of specific population sizes to be maintained is not realistic. In most instances, wolves can be managed similarly to how (note 4, p. 31) other large native mammalian predators (black bears and mountain lions) are traditionally managed. IDFG will manage wolves within the state according to the chart on page 5 (Table 1). ~~IDFG's guiding principle, however, will be to allow wolves to naturally expand their range provided that wolf-related problems remain under control.~~ If it can be shown that wolves can expand their range without causing unacceptable conflict, they will be allowed to do so. However, population growth is unlikely to be controlled by sport hunting. In general, regardless of their location, wolf packs that are not creating conflict will be allowed to persist. ~~No hunting of wolves should be authorized for a period of 5 years following transfer of management (note 1, p. 31).~~"

Draft 17 - Page 4 of 32. Subsection 8) shall be amended as follows:

"Education - Establish a strong public education program that emphasizes wolf biology, management, ~~and~~ conservation, and presents a balanced view of the societal impacts and costs of wolf reintroduction. Input from economic sectors will be included in the presentation of the overall wolf educational component to be presented at any educational presentation."

Draft 17 - Page 7 of 32. The last paragraph shall be amended as follows:

"IDFG is charged by statute with the management of Idaho's wildlife (Idaho Code section 36-103(a): "All wildlife, including all wild animals, wild birds, and fish, within the state of Idaho, is hereby declared to be the property of the state of Idaho. It shall be preserved, protected, perpetuated, and managed. It shall be only captured or taken at such times or places, under such conditions, or by such means, or in such manner, as will preserve, protect and perpetuate such wildlife, and provide for the citizens of this state and, as by law permitted to others, continued supplies of such wildlife for hunting, fishing and trapping."). This plan will enable the transition of the management of the gray wolf back to the IDFG as either a big game animal, ~~or~~ furbearer, or special classification of predator that provides for controlled take after delisting. This c~~C~~lassification ~~as a big game animal or furbearer~~ will enable IDFG to provide protection for wolves~~, but does not necessarily mean that IDFG will implement a harvest season~~ as well as consider the impacts of wolves on other big game species, those sectors of the economy dependent upon sport hunting, livestock, domestic animals, and humans."

Draft 17 - Page 17 of 32. The last paragraph shall be amended as follows:

"Through a Memorandum of Understanding with the Idaho State Animal Damage Control Board, USDA APHIS Wildlife Services is responsible for dealing with a wide variety of wildlife damage problems including predation on livestock. After delisting, including during the first five years, the Wildlife Services Agency of the U.S. Department of Agriculture, in cooperation with the Idaho Department of Fish and Game, will be responsible for depredation management necessary for the protection of private property."

Draft 17 - Page 18 of 32. Subsection 1. shall be amended as follows:

"1. Manage wolves according to the chart on page 5 (Table 1) to ensure that wolves will not become re-listed under the Endangered Species Act. ~~If the population continues to increase, wolves will be allowed to naturally expand their range where packs can persist without creating conflict.~~ The wolf population will be managed at recovery levels that will ensure viable, self-sustaining populations until it can be established that wolves in increasing numbers will not adversely affect big game populations, the economic viability of IDFG, outfitters and guides, and others who depend on a viable population of big game animals. If the population falls below 15 packs, institute remedial management measures (note 1, p. 31)."

Draft 17 - Page 18 of 32. Subsection 5. shall be amended as follows:

"5. Establish a strong public education program that emphasizes wolf biology, management, and conservation and presents a balanced view of the societal impacts and costs of wolf reintroduction. Outreach should be professionally based and should address all issues concerning conservation and management and present a balanced view of the impact of wolves on big game species, those sectors of the economy dependent upon sport hunting, livestock, domestic animals, and humans. It is expected that Idaho Fish & Game will solicit cooperation and advice from all vested interests in developing educational materials. ~~Currently, the USFWS is sponsoring a program in Idaho called Living with Carnivores. Any program, including this one, that maintains balance and legitimacy,~~

~~will be considered acceptable in light of this plan (note 6, p. 32).~~ The cost of wolf reintroduction will be presented as a part of any public education program including direct and indirect costs."

Draft 17 - Page 18 of 32. The second paragraph under "Wolf Population Objectives" shall be amended as follows:

"Wolf management programs will influence the size and distribution of the population, although it will fluctuate with the availability and vulnerability of native prey. Where wolves are causing depredations, their distribution and numbers will have to be altered. When circumstances cause declines in the natural prey that are demonstrated as being attributable to wolf predation, management may be needed to temporarily reduce populations. In most instances, wolves can be managed similarly to how other large native mammalian predators are traditionally managed ~~(note 4, p. 31). Population objectives are not needed to effect these management activities~~. However, sport hunting has not proven effective in the past to effectively manage wolf populations. The IDFG is authorized to evaluate and use sport hunting or any other means necessary to maintain wolf populations at recovery levels that will ensure a viable, self-sustaining population until such time as all impacts are known."

Draft 17 - Page 18 of 32. The last paragraph under "Wolf Population Objectives" begins on page 18 of 32 and ends on page 19 of 32, and shall be amended as follows:

"~~The best protection for wolves will be an effective education program such as Living with Carnivores, or a similar program that increases public understanding of the management and conservation of this species.~~ In the unlikely event the population falls below 10 packs, depredations will be addressed with nonlethal control unless unusual circumstances absolutely necessitate the use of lethal control to end the depredation problem. Except for the lethal control measures, wolf management will revert to the same provisions that were in effect to recover the wolf population prior to delisting (50 CFR Part 17, page 80270)."

Draft 17 - Page 19 of 32. The first paragraph under "Incidental Take" shall be amended as follows:

"Human-related accidental deaths of wolves (capture myopathy, automobile accidents, etc.) Are expected to occur occasionally, and inadvertent take of wolves by hunters and trappers during the course of otherwise legal actions is not expected to adversely affect wolf population objectives. In an effort to minimize such accidental take of wolves, IDFG will include a section on wolf identification, and ~~natural history~~ a brief history of the reintroduction and conflict created thereby, as part of all required hunter education classes and provide similar information to all trapping license buyers."

Draft 17 - Page 20 of 32. The first paragraph under "Wolf Management" shall be amended as follows:

"Wolves, when delisted, will become a component of the native resident wildlife in Idaho. The designation of the wolf as a big game species, ~~or as a~~ furbearer, or special classification of predator that provides for controlled take provides legal authorization for Idaho Department of Fish and Game to manage the species. Management includes inventory; predator-prey research; harvest monitoring; cooperation with agencies, individuals, tribes, other states, and Canada; control to reduce depredations; and dissemination to the public of current, accurate

information. In Idaho, hunting and trapping may be considered in the future when populations are at levels that justify public taking. If this is proposed by IDFG, there will be opportunity for full public comment and decisions will be based on sound biological data. ~~No--h~~Hunting of wolves ~~should~~ may be authorized ~~after Idaho receives management authority for a period of 5 years following transfer of management (note 1, p. 31)~~ when necessary to meet big game harvest objectives and eliminate conflicts, while at the same time maintaining wolves at recovery levels that will ensure viable, self-sustaining populations."

Draft 17 - Page 22 of 32. The first paragraph under "Compensation for Livestock Depredation" shall be amended as follows:

"Following delisting, c~~C~~laims for compensation for domestic animals killed by wolves ~~will~~ should continue to be ~~handled under the same process specified for losses caused by mountain lions or black bears--(Idaho Code--section 36-115) except that a separate depredation account will be established specifically for wolf caused losses. This--wolf--depredation account--will--be--established--and maintained exclusively with federal, private, or other non-state funds~~ paid by Defenders of Wildlife."

Draft 17 - Page 22 of 32. The second paragraph under "Compensation for Livestock Depredation" shall be amended as follows:

"~~Claims for compensation may be based on confirmed losses; suspected or--probable--losses--as--compared--to--historical--losses--before--wolf predation;--decrease--in--weaning or pregnancy rates based on historical data; or labor or other expenses required to resolve disruption of ranch activities. While much of this information may be difficult to verify or quantify, decisions should be based on the best scientific or commercial evidence available.~~ Other wolf related losses are probably occurring. Decrease in weaning weights, pregnancy rates, and disruption of ranch activities are examples of possible losses."

Draft 17 - Page 23 of 32. The first full paragraph shall be amended as follows:

"Monitoring of prey populations, especially the deer species and elk, will need to be continued. Similar to the predator, annual census of selected, important prey populations should be conducted by IDFG and compared with data collected prior to wolf reintroduction. It is extremely important that annual census of these populations is conducted in order to detect trend and eventually to aid in developing predictions of population size. Factors that affect prey numbers, including weather, habitat conditions, predation, and hunter harvest, need to be fully assessed for these selected populations. Population size estimates plus sex and age ratio data are minimum information to be obtained from prey monitoring. More specific information on age structure, both of the hunter harvest and wolf take, is desirable and should be obtained when concerns about the level of wolf predation are raised. Wolves may currently be adversely affecting ungulate populations. The Idaho Fish and Game Commission, with assistance from the Governor's Office of Species Conservation, shall begin immediate discussions with the U.S. Fish and Wildlife Service to define unacceptable levels of effect on ungulate populations by wolf predation; specifically, they will define how these effects would be measured, and will identify possible solutions."

Draft 17 - Page 23 of 32. The second full paragraph shall be amended as follows:

"IDFG and the state legislature will seek the assistance of the Idaho congressional delegation to obtain federal funding sources to pay

for the cost of wolf management (e.g., in FY2001, Interior appropriations budget contained $188,000 for prey base monitoring). If the Idaho Congressional delegation is unsuccessful at providing ongoing adequate funding to cover the cost of wolf management, the State of Idaho is under no obligation to manage wolves. Provided, however, the State of Idaho is not precluded from using state resources to eliminate or control wolf related conflict. IDFG will additionally seek funding from outside entities, including wolf advocacy groups, to aid in all wolf management efforts. The Governor's OSC is currently working with IDFG, the Idaho Outfitters and Guides Association, and others to begin closer monitoring of prey populations now, so that better data will be available to managers over time after delisting (note 1, p. 31)."

Draft 17 - Page 24 of 32. The final paragraph shall be amended as follows:

"This plan must be flexible enough to be compatible with the dynamics of society and wildlife management. The plan must satisfy the ~~USFWS, wolf--advocacy--groups,--livestock--industry,-outfitting-industry,-Idaho sportsmen,-and-a-diverse-public.-IDFG-will-update-this-plan-periodically~~ needs of the State of Idaho in its effort to minimize the impact of wolves on the Idaho outfitting industry, Idaho sportsmen, a diverse public and all others affected by wolf introduction. IDFG will update this plan periodically and submit any changes to the Idaho Legislature as if it were a new plan submitted for approval, amendment or rejection under Section 36-2405, Idaho Code."

Draft 17 - Page 31 of 32. Subsection 1. The second paragraph shall be amended as follows:

"The concern about the population exceeding the minimum came from reviewers who are expert with full-fledged wolf populations, which inclines us to favor that concern (Mech 2001). At the same time, we recognize the need to clarify our numbers. In short, if the population falls below 15 packs, we will begin instituting remedial measures, and if it falls below 10 packs, we will revert to the control plan currently specified in federal rules (50 CFR 17). ~~If-the-population-rises,-we-will not--take-specific-action-to-lower-it,-but-will-follow-the-guiding-principle-of-limiting-the-population-only-to-the-extent-necessary--for--controlling-wolf-related-problems.~~"

Draft 17 - Page 31 of 32. Subsection 1. The third paragraph shall be amended as follows:

"~~Regarding--federal-decisions-about-de-listing-and-re-listing-wolves and-the-related-issue-of-hunting-and-trapping,-we--clarify--as--follows. First,--regarding--hunting,--if-the-suggestion-is-borne-out-that-hunting will-become-necessary-in-less-than-5-years-after--delisting,--then--IDFG may-need-to-consider-opening-a-season-on-wolves-as-part-of-the-wolf-management-program.-The-committee-recommends-that-this-option-be-considered as--a-last-resort-during-the-first-5-years-after-de-listing,-and-be-considered-with-customary-professionalism-thereafter.-Second,-i~~If the wolf population shrinks and remains low, the committee does not presume whether wolves would be re-listed under the ESA. To consider re-listing, the USFWS will follow whatever procedures are current under Section 4 of ESA. Third, to remain clear of any possible confusion about the number of wolves necessary to de-list the currently listed populations, the committee does not presume how wolves will be de-listed, noting that the Governor's OSC is currently working with the USFWS and a 3-state partnership to determine that."

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Idaho Wolf Conservation and Management Plan shall be approved only upon amendment of the plan as set forth herein.

Adopted by the Senate March 6, 2002
Adopted by the House March 14, 2002

HOUSE CONCURRENT RESOLUTIONS

(H.C.R. No. 37)

A CONCURRENT RESOLUTION
PROVIDING FOR A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE SECOND REGULAR SESSION OF THE FIFTY-SIXTH 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 Second Regular Session of the Fifty-sixth Idaho Legislature in the Chamber of the House of Representatives at 8 p.m. on Monday, January 7, 2002.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth 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 7, 2002, at 8 p.m. for the purpose of hearing the message from the Governor.

Adopted by the House January 7, 2002
Adopted by the Senate January 7, 2002

(H.C.R. No. 38)

A CONCURRENT RESOLUTION
PROVIDING FOR A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE SECOND REGULAR SESSION OF THE FIFTY-SIXTH 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 Second Regular Session of the Fifty-sixth Idaho Legislature in the Chamber of the House of Representatives at 11 a.m. on Wednesday, January 9, 2002.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth 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 9, 2002, at 11 a.m. for the purpose of hearing the message from the Governor.

Adopted by the House January 9, 2002
Adopted by the Senate January 9, 2002

(H.C.R. No. 40)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND COMMENDING THE EFFORTS OF PRESIDENT GEORGE W. BUSH, THE PRESIDENT'S CABINET, AND THE MEN AND WOMEN OF THE UNITED STATES ARMED FORCES IN THE WAR ON TERRORISM.

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

WHEREAS, since the terrorist attacks of September 11, 2001, President George W. Bush has shown leadership at home, using his office to rally the nation and wisely counseling the American people to be patient and determined in the fight against terrorism, has shown leadership internationally, building a broad coalition of nations to support the fight against terrorism; and

WHEREAS, Secretary of State Colin Powell has led a successful effort to build a worldwide coalition to fight terrorism; and

WHEREAS, Secretary of Defense Donald Rumsfeld has led a successful military effort against sponsors of terrorism abroad; and

WHEREAS, Director of Homeland Security Tom Ridge is leading the effort to build an effective defense against the terrorist threat; and

WHEREAS, the men and women of the United States Army, Navy, Air Force, Marine Corps and Coast Guard have shown great courage and sacrifice, protecting the American people from the threat of international terrorism.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we express our gratitude to President George W. Bush, the President's cabinet, and the men and women of the United States armed forces for their leadership and sacrifice, and declare our support for this long and difficult war on terrorism.

Adopted by the House January 24, 2002
Adopted by the Senate February 6, 2002

(H.C.R. No. 41)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE OF THE IDAHO STATE TAX COMMISSION RELATING TO PRIZES WON IN CONTESTS, DRAWINGS AND RAFFLES.

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

WHEREAS, the Legislature is vested with authority to reject 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 State Tax Commission relating to prizes won in contests, drawings and raffles is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 35.01.02, Section 131 and its subsections, a rule of the Idaho State Tax Commission relating to prizes won in contests, drawings and raffles, adopted as a pending rule under Docket Number 35-0102-0102, be, and the same is hereby rejected and declared null, void and of no force and effect.

Adopted by the House January 31, 2002
Adopted by the Senate February 13, 2002

(H.C.R. No. 44)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN PROCLAMATION OF RULEMAKING OF THE STATE BOARD OF CORRECTION RELATING TO RECORDS EXEMPT FROM DISCLOSURE.

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

WHEREAS, all rules of the State Board of Correction are subject to review of the Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code; and

WHEREAS, the Legislature is vested with authority to reject 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 proclamation of rulemaking of the State Board of Correction relating to records exempt from disclosure is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 06.01.01, Section

108, subsection 04.b.vii, a rulemaking of the State Board of Correction relating to records exempt from disclosure, adopted by proclamation and published under Docket Number 06-0101-0103, be, and the same is hereby rejected and declared null, void and of no force and effect.

Adopted by the House February 4, 2002
Adopted by the Senate February 26, 2002

(H.C.R. No. 46)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND RECOGNIZING FEBRUARY 6 AS "RONALD REAGAN DAY."

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

WHEREAS, President Ronald Wilson Reagan, a man of humble background, worked throughout his life serving freedom and advancing the public good, having been employed as an entertainer, union leader, corporate spokesman, Governor of California and President of the United States; and

WHEREAS, Ronald Reagan served with honor for two terms as the 40th President of the United States of America; for his second term, he earned the confidence of three-fifths of the electorate and was victorious in 49 of the 50 states in the 1984 general election--a record unsurpassed in the history of American presidential elections; and

WHEREAS, in Idaho, Ronald Reagan won sixty-six percent of the popular vote for President in 1980 and seventy-two percent of the popular vote for President in 1984, which in both instances was the second highest percentage of the vote for President Reagan during those elections; and

WHEREAS, in 1981, when Ronald Reagan was inaugurated President, he inherited a disillusioned nation shackled by rampant inflation and high unemployment; and

WHEREAS, during his presidency Mr. Reagan worked in a bipartisan manner to enact his bold agenda of restoring accountability and common sense to government which led to an unprecedented economic expansion and opportunity for millions of Americans; and

WHEREAS, Mr. Reagan's commitment to an active social policy agenda for the nation's children helped lower crime and drug use in our neighborhoods; and

WHEREAS, President Reagan's commitment to our armed forces contributed to the restoration of pride in America, her values and those cherished by the free world, and prepared America's armed forces to win the Gulf War; and

WHEREAS, President Reagan's vision of "peace through strength" led to the end of the Cold War and the ultimate demise of the Soviet Union, guaranteeing basic human rights for millions of people; and

WHEREAS, on February 6, 2002, Ronald Reagan will have reached the age of ninety-one years thus becoming the oldest living former President.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we hereby recognize February 6, 2002, and subsequent yearly anniversaries thereafter, as "Ronald Reagan Day."

Adopted by the House February 6, 2002
Adopted by the Senate February 21, 2002

(H.C.R. No. 47)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND RECOGNIZING AND URGING PARTICIPATION IN NATIONAL ADOPTION DAY.

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

WHEREAS, adoption is the realization of a dream, bringing a child together with a family which will change the course of his or her life; and

WHEREAS, statistics show that the rates of high school dropouts for children in foster care is more than fifty percent, and nearly one-third of children who grow up in foster care will spend time in jail; and

WHEREAS, too many children remain in foster care while there are adopting families also waiting; and

WHEREAS, a particularly large number of children with special needs remain in foster care, including sibling groups, children with emotional or physical impairments, minorities and older children; and

WHEREAS, about 600,000 children are in foster care nationwide, with about 127,000 eligible for adoption; and

WHEREAS, National Adoption Day takes place on the Saturday preceding Thanksgiving each year, and participating jurisdictions place special emphasis upon completing adoptions on that day including waiver of attorney's fees and court filing fees; and

WHEREAS, Idaho strongly concurs in the goals that every child deserves a safe, permanent family and that a child's health and safety should be of paramount consideration.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein that, on behalf of the people of Idaho and particularly those children in foster care still awaiting their opportunity to join a permanent family and the families which will become complete when their adopted child joins with them, we recognize the principles represented by National Adoption Day and we urge that Idaho courts, attorneys and social service organizations join in the promotion of adoption and, particularly on National Adoption Day, seek to complete the adoption process.

Adopted by the House February 20, 2002
Adopted by the Senate March 1, 2002

(H.C.R. No. 48)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND REJECTING A CERTAIN RULE OF THE IDAHO BOARD OF COSMETOLOGY RELATING TO INSTRUCTOR REEXAMINATION.

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

WHEREAS, the Legislature is vested with authority to reject 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 Board of Cosmetology relating to instructor reexamination is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 24.04.01, Section 600, subsection 05.b, a rule of the Idaho Board of Cosmetology relating to instructor reexamination, adopted as a pending rule under Docket number 24-0401-0101, be, and the same is hereby rejected and declared null, void and of no force and effect.

Adopted by the House February 13, 2002
Adopted by the Senate March 6, 2002

(H.C.R. No. 53)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND MAKING RECOMMENDATIONS ENCOURAGING INDIVIDUALS AND LOCAL UNITS OF GOVERNMENT TO RECOMMEND CHANGES OF NAMES OF PLACES AND GEOGRAPHIC AREAS THAT ARE DEEMED OFFENSIVE TO THE STATE HISTORICAL SOCIETY TO BE CONSIDERED AND FORWARDED TO THE UNITED STATES BOARD ON GEOGRAPHIC NAMES.

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

WHEREAS, Section 19, Article III, of the Constitution of the State of Idaho prohibits the Legislature from passing local or special laws changing the names of persons or places; and

WHEREAS, the state of Idaho encourages tolerance and understanding between all of its citizens; and

WHEREAS, there are certain names of places and geographic areas in Idaho that may be offensive to all or some segments of Idaho's population; and

WHEREAS, it is appropriate for the State Legislature to encourage the eventual renaming of offensive geographic place names in the state of Idaho by encouraging individuals and local units of government to identify and achieve consensus as to geographical place names in the state of Idaho with offensive names.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we encourage individuals

and local units of government to recommend those geographical place names in the state that are deemed offensive to the State Historical Society, who will adopt procedures to consider these recommendations for changes of names of places and geographic areas that individuals or local units of government deem offensive, taking into consideration such concerns as fiscal impact and whether there is consensus with other individuals or local units of government, and forward the names of places deemed offensive to the United States Board on Geographic Names.

Adopted by the House February 28, 2002
Adopted by the Senate March 8, 2002

(H.C.R. No. 54)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND RECOGNIZING THE BICENTENNIAL OF THE UNITED STATES MILITARY ACADEMY AND THE PROUD HISTORY AND PROSPECTS FOR A BRILLIANT FUTURE OF THE ACADEMY.

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

WHEREAS, the United States Military Academy, known popularly as West Point, was established in 1802; and

WHEREAS, West Point is the oldest continuously occupied military post in America having been first fortified on January 20, 1778; and

WHEREAS, the role of West Point in the military history of the United States began with the graduates who have led forces in every war of this nation beginning with the War of 1812 and have continued through every military engagement involving American troops since; and

WHEREAS, West Point has also made significant contributions in many civilian fields of endeavor including the early explorers of the American territory, engineers of the infrastructure of this great land, and visionaries of the future in space; and

WHEREAS, the list of American greats who graduated from or attended the United States Military Academy is too long to note here, but includes many familiar and noteworthy individuals of stalwart character, presidents, generals, Rhodes scholars, Olympic athletes, astronauts, inventors, artists and poets; and

WHEREAS, March 16, 2002, will be the Bicentennial Celebration of West Point; and

WHEREAS, it is appropriate that recognition of the history, accomplishments and great destiny of the United States Military Academy be given on this occasion.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we join together with citizens throughout Idaho in extending recognition of the Bicentennial of the United States Military Academy, recognizing the proud history and prospects for a brilliant future of the Academy.

Adopted by the House February 20, 2002
Adopted by the Senate March 4, 2002

(H.C.R. No. 56)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND URGING STATE AGENCIES TO TAKE CERTAIN ACTION TO ENSURE THAT THE BLIND AND VISUALLY IMPAIRED HAVE NONVISUAL INFORMATION TECHNOLOGY ACCESS.

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

WHEREAS, technology has become an essential part of our daily life, creating a need for all members of our society to become technologically literate; and

WHEREAS, blind and visually impaired individuals, as members of society, must have information technology access; and

WHEREAS, on the federal level, Section 508 of the Rehabilitation Act, as amended in 1998, requires federal agencies and departments to ensure that their electronic and information technology is accessible to individuals with disabilities, including blind and visually impaired persons; and

WHEREAS, a number of states have enacted similar laws focusing on nonvisual access for blind and visually impaired persons; and

WHEREAS, the state of Idaho, through its various agencies, should also move forward with the consideration and implementation of nonvisual access to information in purchasing and deploying information technology; and

WHEREAS, the essential restriction of information technology to a visual format is a barrier to equal opportunity and participation in society and imposes limitations on educational and employment opportunities for blind and visually impaired individuals.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that all state agencies, under the leadership of the Department of Administration, are urged:

(1) To develop standards to ensure that blind and visually impaired individuals have nonvisual access to information that is equivalent to that provided and afforded to sighted persons;

(2) To provide all information in formats for both visual and nonvisual use;

(3) To purchase technology for the creation, storage, retrieval, or dissemination of information, intended for use by employees, program participants, and members of the general public, that is accessible for use by the blind and visually impaired; and

(4) To purchase technology under contracts which include technology access clauses, requiring compliance with established nonvisual access standards.

Adopted by the House March 4, 2002
Adopted by the Senate March 12, 2002

(H.C.R. No. 57)

A CONCURRENT RESOLUTION
PROMOTING MORAL DEVELOPMENT THROUGH SEX EDUCATION.

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

WHEREAS, Idaho's Constitution charges the Legislature to "further all wise and well-directed efforts for the promotion of temperance and morality"; and

WHEREAS, the primary responsibility for moral education rests in the home, but under Section 33-1608, Idaho Code, schools have the responsibility to "complement and supplement" the standards established in the home; and

WHEREAS, the specifics in this Resolution, relative to the year 2002, complement and supplement the general guidelines in teaching human sexuality, enacted in the year 1970, under Sections 33-1608 through 33-1611, Idaho Code.

WHEREAS, the twin epidemics of sexually transmitted diseases (STDs), and nonmarital pregnancy cause enormous physical and emotional suffering, and cost many billions of dollars each year, as evidenced by the following:

(a) About 840,000 teens in America become pregnant each year. One-third end in abortion. Over three out of four teen births are out of wedlock;

(b) Seven out of ten adolescent mothers drop out of high school;

(c) Children in single family homes are twice as likely to drop out of high school, and 2.5 times more likely to become unwed parents;

(d) Over 80% of single mothers under 18 rely on welfare assistance;

(e) Each day an estimated 8,000 U.S. teens contract an STD infection;

(f) Of all Americans over 12, about 20% are infected with genital herpes;

(g) Today, there are over 20 significantly prevalent STDs. In the 1960s syphilis and gonorrhea, both easily treated with penicillin, were the only important STDs;

(h) If a college student is sexually active, there is a 25% likelihood each year, of that person contracting an STD; and

WHEREAS, on July 20, 2001, the National Institute of Health reported that the Human Papillomavirus (HPV) causes over 95% of cervical cancer and kills about 5,000 women every year in the U.S. (more than does AIDS), and that there does not appear to be any risk reduction for HPV with the use of condoms; and

WHEREAS, "A sex education course in which issues of right and wrong do not occupy center stage is an evasion and irresponsibility."-William Bennett; and

WHEREAS, teens will take up the abstinence message if given a rallying point relative to the greatest overall threat to their well-being.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that sex education in tax-supported public schools, universities and colleges in Idaho shall promote moral development.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to facilitate distribution of this Resolution, and its Statement of Purpose, to all entities concerned with tax-supported public schools, universities and colleges in Idaho.

Adopted by the House March 4, 2002
Adopted by the Senate March 12, 2002

(H.C.R. No. 58)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE REGARDING THE CURRENT AND FUTURE SHORTAGE OF NURSES AND URGING A STUDY BY THE STATE BOARD OF EDUCATION IN CONSULTATION WITH THE IDAHO COMMISSION ON NURSING AND NURSING EDUCATION.

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

WHEREAS, it is widely acknowledged that there is a nationwide shortage of nurses and that the shortage will worsen in the future; and

WHEREAS, the state of Idaho is already facing a critical shortage and is currently experiencing a staffing vacancy rate of over 20% in nursing homes; and

WHEREAS, while the number of persons entering nursing is growing at a rate of only 2.5%, the population of persons over 85 years of age is the fastest growing age group, and over 75% of the population will require long-term care in the next 40 years; and

WHEREAS, over 70% of the nurses currently licensed in Idaho are over the age of 40, with the result that they will be retiring from the practice of nursing just as the need for more nurses increases; and

WHEREAS, it is important not only to recognize the need for more nurses, but to begin to make plans and adopt programs which will effectively address the shortage in Idaho.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the State Board of Education, in consultation with the Idaho Commission on Nursing and Nursing Education, should undertake a strategic planning process to design a plan of action for addressing the nursing shortage. The plan should address specific strategies for expanding nurse education particularly into rural Idaho, enhancing recruitment and retention efforts, carrying out ongoing health profession data collection, analysis, and projections, providing incentives for attracting nurses into the higher education system and encouraging nurses to get advanced degrees.

Adopted by the House March 4, 2002
Adopted by the Senate March 14, 2002

(H.C.R. No. 60)

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE STATE DEPARTMENT OF WATER RESOURCES, THE UNIVERSITY OF IDAHO, AND IDAHO STATE UNIVERSITY TO ENTER INTO AGREEMENTS WITH THE IDAHO STATE BUILDING AUTHORITY TO FINANCE THE CONSTRUCTION OF THE IDAHO WATER CENTER AND IDAHO PLACE PROJECTS.

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

WHEREAS, the State Board of Education has directed Idaho's institutions of higher education to "collaborate in hosting programs and cooperate to meet the educational needs of all Idahoans, including those who are at a distance from campus" (Statement of Outreach and Cooperation); and

WHEREAS, in furtherance of the State Board of Education's Statement of Outreach and Cooperation, the University of Idaho and Idaho State University desire to create a collaborative, multidisciplinary office, research and education facility, to be known as the "Idaho Place," to provide the residents, businesses and public agencies of the Treasure Valley access to University of Idaho and Idaho State University programs and provide a unique opportunity for collaboration between government, business and higher education; and

WHEREAS, the University of Idaho also has significant research and related activities focused on water and water quality that can be enhanced through partnership and collaboration with other public agencies and private entities that focus on water and natural resources; and

WHEREAS, the Idaho Department of Water Resources (IDWR) manages and protects Idaho's surface and ground water resources, stream channels, and watersheds to ensure that water and energy are conserved and available for sustaining Idaho's economy and ecosystems, and IDWR's activities can be enhanced through partnership and collaboration with the University of Idaho; and

WHEREAS, the University of Idaho and IDWR desire to create, as a component of Idaho Place, a collaborative, multidisciplinary office, research and education facility to be known as the "Idaho Water Center," that will provide a unique opportunity for collaboration between government, business and higher education entities that focus on water and natural resources; and

WHEREAS, Section 67-5708A, Idaho Code, requires state agencies, prior to leasing any new facilities, to perform a comprehensive analysis to determine whether a suitable facility for the long-term needs and objectives of that agency could be provided at the lowest responsible cost to the taxpayer through other means, including leasing-to-own facilities through the Idaho State Building Authority; and

WHEREAS, the University of Idaho, Idaho State University and IDWR have determined that their long-term needs and objectives would be best served at the lowest responsible cost to the taxpayers if they leased-to-own their facilities at the Idaho Place and the Idaho Water Center through the Idaho State Building Authority; and

WHEREAS, the Idaho Department of Administration conducted an evaluation of proposals for leases for facilities for use by IDWR pursuant to

Section 67-5708A, Idaho Code, and also determined that it is in the best interest of the IDWR to locate in the Idaho Water Center; and

WHEREAS, it is in the best interest of the state for the Idaho State Building Authority to provide the facilities to be known as the "Idaho Place" and the "Idaho Water Center" for use by the University of Idaho, Idaho State University, IDWR, other public agencies, and private companies, to promote their educational, service and business needs.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislature hereby authorizes and provides approval for the University of Idaho, Idaho State University and IDWR, to enter into an agreement or agreements, either separately or together, with the Idaho State Building Authority, under such terms and conditions as may be reasonable and necessary, to provide for the financing and development of office, research and educational facilities, and related facilities, at Idaho Place and the Idaho Water Center in Boise, Idaho, for their uses and the uses of other public and/or private entities which may have affiliated, related or collaborative purposes.

BE IT FURTHER RESOLVED that this resolution shall constitute the approval under Section 33-3805A, Idaho Code, for the University of Idaho and Idaho State University to use General Account appropriated funds for construction, operation, and maintenance of the facilities being authorized hereby.

BE IT FURTHER RESOLVED that this resolution constitutes authorization required by the provisions of Section 67-6410, Idaho Code.

Adopted by the House March 7, 2002
Adopted by the Senate March 13, 2002

(H.C.R. No. 62)

A CONCURRENT RESOLUTION
STATING FINDINGS OF THE LEGISLATURE AND APPROVING THE YELLOWSTONE GRIZZLY BEAR MANAGEMENT PLAN.

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

WHEREAS, pursuant to Section 36-2402, Idaho Code, the director of the Department of Fish and Game, in cooperation and consultation with the Governor's Office of Species Conservation, was authorized to establish the Yellowstone Grizzly Bear Delisting Advisory Team; and

WHEREAS, the primary goal of the Advisory Team was to develop recommendations for management of grizzly bears in Eastern Idaho that consider all the varied landscapes, people, current land uses, culture, grizzly bear ecology, and legal requirements once the grizzly bear population was removed from protection under the Endangered Species Act; and

WHEREAS, the Advisory Team was formed and met during the year 2001, and developed and drafted a plan for the management and conservation of Yellowstone grizzly bear in the state; and

WHEREAS, pursuant to Section 36-2405, Idaho Code, the plan was submitted to the director of the Department of Fish and Game for review and recommendation to the Fish and Game Commission; and

WHEREAS, pursuant to Section 36-2405, Idaho Code, the Fish and Game Commission was directed to forward the state management plan to the Governor's Office of Species Conservation and the Legislature, conditioned upon its approval of the plan and its finding that the management plan provides for the management and conservation of the species when it is delisted and that reasonable safeguards are included in the plan to protect the health, safety, private property and economic well-being of the citizens of the state of Idaho; and

WHEREAS, the Fish and Game Commission, having forwarded the plan to the Legislature, the Legislature is authorized, pursuant to Section 36-2405, Idaho Code, to approve, amend or reject the management plan by concurrent resolution; and

WHEREAS, modifications to the Yellowstone Grizzly Bear Management Plan have been made pursuant to approved motion by the House Resources and Conservation Committee; and

WHEREAS, the Idaho Department of Fish and Game ("department") shall prepare and submit an annual report to the Senate Resources and Environment Committee and the House Resources and Conservation Committee on the implementation and progress of the Yellowstone Grizzly Bear Management Plan; and

WHEREAS, such report shall document Yellowstone grizzly bear effects upon wildlife, depredation on domestic livestock, conflicts with humans and any grizzly bear related human fatalities, coordination with the Conservation Strategy, and any other subject matter as deemed appropriate and requested in writing by the chairman of the Senate Resources and Environment Committee or the chairman of the House Resources and Conservation Committee. Thereafter, the Senate Resources and Environment Committee and the House Resources and Conservation Committee shall hold a special public hearing, during each regularly scheduled legislative session, wherein the department presents said report and the public has the opportunity to comment; and

WHEREAS, because the U.S. Fish and Wildlife Service will closely monitor the Yellowstone grizzly bear population for a minimum of five years following the delisting of the Yellowstone grizzly bear population, the department shall coordinate management strategies and any related rulemaking with the Governor's Office of Species Conservation. Any written comment prepared or submitted by the department concerning the Yellowstone grizzly bear including, but not limited to, comment on proposed or ongoing land management, use or development, shall be coordinated with the Governor's Office of Species Conservation; and

WHEREAS, it is the expectation of the Legislature that the Conservation Strategy for the Yellowstone grizzly bear be updated regularly, as required in the Conservation Strategy, to reflect recovery success of the grizzly bear within and around the Primary Conservation Area. Forest Plans, in the case of the United States Forest Service, and Resource Management Plans, in the case of the Bureau of Land Management, must be appropriately revised to reflect the delisted status of the Yellowstone grizzly bear. Current land use restrictions and any land use restrictions contained in or implemented pursuant to the Conservation Strategy shall be relaxed as recovery progresses to better accommodate the public. Because Idaho has developed its own plan for managing grizzly bears upon delisting, and because wildlife management is the domain of the state, the federal government shall coordinate with the state to ensure consistency in resource management practices.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, provided the department's compliance with criteria set forth above, that the Legislature of the State of Idaho hereby approves the Yellowstone Grizzly Bear Management Plan, modified pursuant to approved motion by the House Resources and Conservation Committee, which shall be identified as the final approved Yellowstone Grizzly Bear Management Plan and maintained at the Office of the Director of the Idaho Department of Fish and Game. The Legislature finds that the management plan will provide the management and conservation of the species once it is delisted, and contains sufficient safeguards to protect the health, safety, private property and economic well-being of the citizens of the state of Idaho. The U.S. Fish and Wildlife Service should proceed with the delisting process, removing the Yellowstone Grizzly Bear from protection under the Endangered Species Act, and allowing the state of Idaho to assume responsibility for Yellowstone Grizzly Bear management, effective upon the availability of adequate and continuous federal funding for management and conservation purposes.

Adopted by the House March 13, 2002
Adopted by the Senate March 15, 2002

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-sixth Legislature of the State of Idaho, Second Regular Session thereof, which convened January 7, 2002, and which adjourned on March 15, 2002, 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 nineteenth day of April, 2002.

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.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 2001-08

STATE OF IDAHO COMPREHENSIVE POLICY ON SPACE AND FACILITIES

WHEREAS, in performing their duties and servicing the residents of the State of Idaho, the executive agencies of the State of Idaho own or lease and occupy a significant amount of real property;

WHEREAS, previous and recent legislative enactments reflect Idaho's goal that state-owned and leased facilities and space be accurately and centrally inventoried and managed efficiently and cost effectively;

WHEREAS, Idaho Code, including but not limited to Sections 58-330, 67-5706, 67-5708B and 67-5709A, Idaho Code, reflect these goals and reflect the State's preference for some measure of centralization and centralized control over areas of facilities management; and

WHEREAS, the Legislature, through its enactments, has clearly shown that the Department of Administration is to play a central role in such facilities and space management.

NOW, THEREFORE, I, DIRK KEMPTHORNE, 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. That prior to taking any action related to the following, each executive department director or other appointing authority shall directly coordinate with the Department of Administration:
   a. any acquisition, lease, or other occupancy of facilities or space;
   b. the expansion of any existing facilities or space;
   c. the relocation to or from any existing facilities or space; or
   d. any pre-planning related to such acquisition, lease, occupancy, expansion or relocation in accordance with standards and criteria established by the Department of Administration.
2. That this obligation shall not limit any other statutory or regulatory requirements applicable, or any statutory powers or obligations already existing, including, without limitation, those contained in Sections 67-5706, 67-5708A, 67-5709B, Idaho Code.
3. That each executive department director or other appointing authority shall be responsible for ensuring that his or her agency is complying with the above directive.

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 Second day of August in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-09

AUTHORIZING THE TRANSFER OF FUNDS TO THE DISASTER EMERGENCY ACCOUNT

WHEREAS, on the twenty-seventh day of June 2001, and the twenty-eighth day of June 2001, due to an imminent threat of life, property and the environment, including listed species under the federal Endangered Species Act, and as a result of a public gathering of an estimated 20,000 people in a remote area, Bear Valley, Idaho; by virtue of the authority in me, as Governor, by Idaho Code Sections 46-601 and 46-1008, I issued proclamations declaring that states of extreme and disaster emergencies existed for Boise and Valley Counties; and

WHEREAS, tremendous financial obligations and expenses have been and will be incurred by various departments and agencies, and Boise and Valley Counties in responding to and assisting in efforts to deal with the extreme peril to public safety, health, property and the environment; and

WHEREAS, all funds in the Disaster Emergency Account created by Idaho Code Section 46-1005A have or soon will be expended; and

WHEREAS, funds in the Budget Stabilization Fund are available to transfer to the Disaster Emergency Account under the requirements set forth in Idaho Code Section 46-1005A(2)(b); and

WHEREAS, it is my judgment, as Governor of the state of Idaho, that any moneys transferred from the Budget Stabilization Fund up to the limits provided below would not be required to support the current year's appropriation of these funds.

NOW, THEREFORE, I, DIRK KEMPTHORNE, 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 state controller is directed to transfer moneys in the Budget Stabilization 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 one two hundred thousand (200,000) dollars be transferred from the Budget Stabilization 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 the Capitol in Boise on this eighth day of August in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-10

REDUCTION OF GENERAL FUND SPENDING AUTHORITY

WHEREAS, article 7, section 11, of the Idaho Constitution provides that except in extraordinary or emergency circumstances, expenditures of state government 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 to meet those authorized expenditures for the current fiscal year.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state, and 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 percent (2%) of their Fiscal Year 2002 General Fund Appropriation with the exception of the offices of the elected State Constitutional officers, the judicial and legislative departments, and public school support.
2. That each department, office and institution shall notify the Office of the State Controller and the Division of Financial Management of the Executive Office of the Governor of budget changes by September 24, 2001.
3. That elected State Constitutional officials are requested to reduce General Fund expenditures for Fiscal Year 2002 to reflect the realities of the projected revenue shortfall without impairing the discharge of their constitutional duties.
4. That officers of the legislative and judicial branches are requested to assess and evaluate a reduction in General Fund expenditures for Fiscal Year 2002 to reflect similar revenue shortfalls in the executive branches of state government.
5. The public school support General Fund Appropriation is reduced by one and a half percent (1.5%) of their Fiscal Year 2002 General Fund Appropriation.

This order shall take effect immediately upon its execution and shall continue in effect until January 31, 2002, 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 twenty-ninth day of August in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-11

ESTABLISHING THE IDAHO INVASIVE SPECIES COUNCIL

WHEREAS, the land, water, and other resources of Idaho are being severely impacted by the invasion of an increasing number of harmful, nonnative plant and animal species; and

WHEREAS, these impacts are resulting in damage to Idaho's environment and causing economic hardships to public, private, and tribal owners; and

WHEREAS, the multitude of public and private organizations with an interest in controlling and preventing the spread of harmful invasive species in Idaho need a mechanism for cooperation, collaboration, and for planning a statewide plan of action to meet this threat.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me by law, do hereby order:

1. There is created the Idaho Invasive Species Council.
2. The purpose of the Idaho Invasive Species Council is to provide policy level direction and planning for combating harmful invasive species infestations throughout the state and for preventing the introduction of others that may be potentially harmful.

The Invasive Species Council's responsibilities will be:

1. To minimize the effects of harmful nonnative species on Idaho citizens and to ensure the economic and environmental well-being of the State of Idaho;
2. To serve as a nonpartisan forum for identifying and understanding invasive species issues from all perspectives;
3. To take measures that will encourage control and prevention of harmful nonnative species;
4. To organize and streamline the process for identifying and controlling invasive species;

5. To consider ways to halt the spread of invasive species as well as finding possible ways to bring current problems under control;

The Idaho Invasive Species 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 that support local initiative for the prevention and control of invasive species, not to usurp the individual missions of any of its member organizations or duplicate effort.

Membership shall include a representative from the executive office of the Governor and the directors of the following state entities:

1. State Department of Agriculture
2. Department of Environmental Quality
3. Department of Parks and Recreation
4. Department of Fish and Game
5. Department of Lands
6. Department of Water Resources
7. Department of Commerce
8. Department of Health and Welfare
9. Idaho Transportation Department
10. University of Idaho

Representatives and members of the following federal entities shall be invited to join the council and participate:

1. USDA Forest Service
2. USDA Animal and Plant Health Inspection Service
3. USDA Natural Resource Conservation Service
4. Bureau of Land Management
5. Bureau of Reclamation
6. Idaho's United States Senators (2)
7. Idaho's United States Congressmen (2)

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

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

Representatives from private and not-for-profit organizations with an interest in the well-being of Idaho pertaining to invasive species shall be invited to participate.

Additional members may be added by consensus of the Council.

The Idaho Invasive Species Council will meet no less than twice annually. The chairman of the council shall be the director of the Idaho Department of Agriculture or his/her representative. The council shall submit a report of its activities to the Governor and the Legislature annually.

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 September in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-12

ESTABLISHING STATEWIDE POLICIES ON COMPUTER, THE INTERNET AND ELECTRONIC MAIL USAGE BY STATE EMPLOYEES REPEALING AND REPLACING EXECUTIVE ORDER NO. 98-05

WHEREAS, computers, the Internet and electronic mail are powerful research, communication, commerce and time-saving tools that are made available to state employees; and

WHEREAS, use of this efficient and effective communication tool is critical but, like any tools, computers, the Internet and electronic mail have the potential to be used for inappropriate purposes; and

WHEREAS, perceptions are important and state employees must constantly be aware of how their actions are perceived by the public.

NOW, THEREFORE, I, DIRK KEMPTHORNE, 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 state employees shall observe statewide policies on the computer, the Internet and electronic mail usage as follows:

1. Users of the Internet and electronic mail are to comply with all appropriate laws, regulations and generally accepted Internet etiquette.
2. Primary purpose of the Internet and electronic mail is to conduct official business. Occasionally, employees may use the Internet and electronic mail for individual, nonpolitical purposes on their personal time, if such use does not violate the terms and conditions of this policy. Use of the Internet and electronic mail offers employees an opportunity to develop research and communication skills valuable to the effectiveness and efficiency of our state government.
3. Users should identify themselves properly when using the Internet and electronic mail, conduct themselves professionally, as representatives of Idaho State Government, and be aware that their activities reflect on the reputation and integrity of all state employees.

4. Each user is individually responsible for the content of any communication sent over or placed on the Internet and electronic mail.
5. All employees have a responsibility to ensure a respectful workplace. State equipment must not be used to visit Internet sites that contain pornographic or sexually explicit information, pictures, or cartoons.
6. Exceptions to this executive order are only allowed when preapproved in writing by appointing authorities and deemed necessary for official state business, research or investigatory work.
7. THE FOLLOWING ACTIONS ARE PROHIBITED. IT IS UNACCEPTABLE FOR EMPLOYEES TO:
   a. Knowingly or intentionally publish, display, transmit, retrieve or store inappropriate or offensive material on any department computer system;
   b. Create or distribute defamatory, false, inaccurate, abusive, threatening, racially offensive or otherwise biased, discriminatory or illegal material;
   c. View or distribute obscene, pornographic, profane, or sexually oriented material;
   d. Violate laws, rules, and regulations prohibiting sexual harassment;
   e. Encourage the use of controlled substances for criminal or illegal purposes;
   f. Engage in any unauthorized activities for personal financial gain;
   g. Place advertisements for commercial enterprises including, but not limited to, goods, services or property;
   h. Download, disseminate, store or print materials including articles and software, in violation of copyright laws;
   i. Violate or infringe upon the rights of others;
   j. Conduct business unauthorized by the department;
   k. Restrict or inhibit other users from using the system or the efficiency of the computer systems;
   l. Cause congestion or disruption of networks or systems, including distribution of chain letters;
   m. Transmit incendiary statements, which might incite violence or describe or promote the use of weapons;
   n. Conduct political activity;
   o. Use the system for any illegal purpose.
8. Disregard for the policies or other improper use of the Internet may result in cancellation of a person's access and/or disciplinary action, up to and including dismissal.
9. Internet and electronic mail may be subject to monitoring.
10. The above policies are the minimum standards for usage of computers, the Internet and electronic mail. Individual state agencies may implement more restrictive policies as long as those policies are consistent with those developed by the Governor's Information Technology Resource Management Council (ITRMC).

This Executive Order shall cease to be effective four years after its effective date.

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 fourth day of September in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-13

STATE GOVERNMENT RESPONSIBILITIES FOR ANTI-TERRORISM SUPPORT REQUIREMENTS OF STATE GOVERNMENT AGENCIES PRIOR TO, DURING, AND AFTER TERRORIST ACTION

WHEREAS, on September 11, 2001, the United States was struck by acts of international and domestic terrorism; and

WHEREAS, the State of Idaho has existing legal infrastructure, plans and policies in effect, including the State Disaster Preparedness Act and Executive Order 2000-04, which serve as the basis for the State's initiatives to protect and defend against terrorist acts and the use of Weapons of Mass Destruction (WMD); and

WHEREAS, the events of September 11, 2001, have necessitated a heightened state of awareness and focus on terrorist activity and the State's commitment of resources to protect Idaho's citizens, property, infrastructure, commerce and continuity of state government; and

WHEREAS, in light of the events of September 11, 2001, there is an urgent need for the State of Idaho to cooperate and coordinate with cities, counties and private sector entities in addition to the federal government, should acts of terrorism or the use of WMD be planned or actually occur in Idaho; and

WHEREAS, it is essential that Idaho's existing disaster preparedness planning be assessed, evaluated, and, if necessary, realigned in order to ensure that the State is well equipped to anticipate and respond to acts of terrorism and the use of WMD.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the powers and authority vested in me as Governor and Commander-in-Chief by the Constitution and laws of this State, do hereby order:

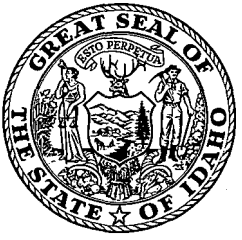
1. That the Adjutant General of the Idaho National Guard (Chief of the Bureau of Disaster Services and Commanding General) is the Governor's designated and authorized coordinator of this state's heightened terrorism initiative and will chair the State Domestic Preparedness Council.

2. That the Director of the Idaho State Police is the Governor's designated and authorized associate coordinator and will work in concert with the Adjutant General.
3. That the State Domestic Preparedness Council is the Governor's designated and authorized entity to implement and execute the provisions of this order. Any additions to the existing membership of the Council will be appointed by the Governor.
4. That each state department and agency review and assess their disaster preparedness obligations under the State Disaster Preparedness Act and Executive Order 2000-04 to ensure that their disaster planning includes specific contingencies for acts of terrorism and the use of WMD.
5. That each state department and agency review and assess their disaster preparedness obligations under the State Disaster Preparedness Act and Executive Order 2000-04 to ensure that there is adequate cooperation with the federal government, local government, and the private sector in the instance of acts of terrorism and the use of WMD.
6. That each state department and agency reviewing and assessing their disaster preparedness obligations pursuant to this Executive Order report within 45 days of the issuance of this order to the Office of the Adjutant General the results of their assessment and review, and, if appropriate, changes to their disaster management plans.

Elected state constitutional officials and officers of the legislative and judicial branches of Idaho State government are requested to participate and cooperate by reviewing their respective disaster preparedness obligations under the State Disaster Preparedness Act and Executive Order 2000-04 to ensure that their disaster planning includes specific contingencies for acts of terrorism and the use of WMD.

The head of each governmental agency is hereby authorized to delegate the functions assigned to him or her by this order.

This order shall take effect immediately upon its execution and 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-seventh day of September in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-14

SUPPORT REQUIREMENTS OF THE IDAHO NATIONAL GUARD FOR THE PURPOSE OF SECURING AIRPORTS AND FOR THE ADDED SECURITY OF THE AMERICAN TRAVELING PUBLIC WITHIN THE STATE OF IDAHO

WHEREAS, the United States has been struck by international and domestic terrorism; and

WHEREAS, acts of terrorism, the potential use of Weapons of Mass Destruction (WMD), or other human-caused catastrophes are an increasingly present possibility within the State; and

WHEREAS, Title 46, Section 46-1003, Idaho Code, requires the State to take action "to prevent and reduce damage, injury, and loss of life and property resulting from natural or manmade catastrophes, riots, or hostile military or paramilitary action"; and

WHEREAS, the President of the United States, on September 27, 2001, did request that the nation's Governors implement the use of each state's National Guard to help protect the lives of the American traveling public and the nation's air travel infrastructure.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the powers and authority vested in me as Governor and Commander-in-Chief by the Constitution and laws of this State, do hereby order the Adjutant General of the State of Idaho to

1. Provide Idaho National Guard assets to assist local law enforcement, airport security personnel and airport management with the security of the flying public and the security of the aviation infrastructure, including aircraft and facilities, in the following cities:
   a. Boise
   b. Hailey
   c. Idaho Falls
   d. Lewiston
   e. Pocatello
   f. Twin Falls

This order shall remain in effect until canceled at the request of the President of the United States and/or until revoked by the Governor 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 the Capitol in Boise on this twenty-seventh day of September in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-15

ESTABLISHING THE IDAHO COUNCIL ON CHILDREN'S MENTAL HEALTH REPEALING AND REPLACING EXECUTIVE ORDER 2001-05

WHEREAS, children with serious emotional disturbances have unique abilities, concerns and diverse needs; and

WHEREAS, serious emotional disturbances interfere with the vital development and maturation of our state's most important resource - its children; and

WHEREAS, the appropriate treatment of children and youth with serious emotional disturbances is cost-effective because it enhances productivity, reduces utilization of more costly and invasive service, lessens social dependence and family disruption; and

WHEREAS, the State of Idaho desires to establish a comprehensive, community-based system of care emphasizing the natural support that families and peers provide; and

WHEREAS, these families would benefit from individualized services which are acceptable and accountable to them and others in the communities where they live; and

WHEREAS, children and youth with serious emotional disturbances and their families have the right to, and responsibility for, ongoing participation in determining their destiny at the direct service level and at the policy and planning level; and

WHEREAS, the Idaho Legislature has set forth its policy for the provision of these services in the Idaho Children's Mental Health Services Act; and

WHEREAS, the implementation plan formulated from the recommendations of The Needs Assessment of Idaho's Children with Serious Emotional Disturbances and Their Families proposes that the Idaho Council on Children's Mental Health be established to provide state level leadership in the development of an integrated system of care for children with mental health needs.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby establish the Idaho Council on Children's Mental Health.

The Council's responsibilities shall be:

To oversee the implementation of the plan and the legislative policy for the provision of access to treatment, prevention, and rehabilitation services for children with serious emotional disturbances;

To serve as a vehicle for inter- and intra-agency policy and program development;

To establish local level councils according to resources, population, need and geographic considerations;

To define the specific key duties, powers, goals, and outcomes to be achieved by the local councils;

To provide leadership through the development of standards, provision of technical assistance, monitoring, evaluating and reporting on the progress of the local councils; and

To evaluate and make recommendations regarding the funding and delivery of children's mental health services statewide.

Council membership shall be composed of representatives from the following:

The Office of the Governor;
The Legislative branch;
The Judicial branch;
The Department of Health and Welfare;
The Department of Juvenile Corrections;
The Department of Education;
The State Planning Council on Mental Health;
A parent representative or advocate;
A representative of providers of children's mental health services; and
A County Commissioner.

This Executive Order shall cease to be in effect four years after its entry into force.

Council members shall serve a term of two (2) years. The members may serve additional terms. The Governor shall appoint the Lieutenant Governor to serve as the Chairman of the Council. Staff for the Council will be provided by the Department of Health and Welfare. The Council may establish subcommittees at its discretion.

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 October in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

EXECUTIVE ORDER NO. 2001-16

WITHDRAWN

EXECUTIVE ORDER NO. 2001-17

REDUCTION OF GENERAL FUND SPENDING AUTHORITY

WHEREAS, Article VII, Section 11, of the Idaho Constitution provides that except in extraordinary or emergency circumstances, expenditures of state government 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 to meet those authorized expenditures for the current fiscal year;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state, and 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, in addition to the amount addressed within Executive Order 2001-10, be reduced for all departments, offices and institutions of the state by one percent (1%) of their Fiscal Year 2002 General Fund Appropriation.
2. That each department, office and institution shall notify the Office of the State Controller and the Division of Financial Management of the Executive Office of the Governor of budget changes by November 26, 2001 according to the attachment made part of this Executive Order.
3. That elected State Constitutional officials are requested to reduce General Fund expenditures for Fiscal Year 2002 to reflect the realities of the projected revenue shortfall without impairing the discharge of their constitutional duties.
4. That officers of the legislative and judicial branches are requested to assess and evaluate a reduction in General Fund expenditures for Fiscal Year 2002 to reflect similar revenue shortfalls in the executive branch of state government.

This order shall take effect immediately upon its execution and shall continue in effect until January 31, 2002, 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 sixteenth day of November in the year of our Lord two thousand and one, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

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ABBREVIATIONS USED IN THIS INDEX

Approp = Appropriation
Assn = Association
Bd = Board
Com = Commission
Comm = Committee
Dept = Department
DEQ = Department of Environmental Quality
Dist = District
F&G = Fish and Game
H&W = Health and Welfare
PUC = Public Utilities Com
PERSI = Public Employee Retirement System of Idaho
UCC = Uniform Commercial Code

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Developer/Retired Agribusiness Wife - Robin
ASSISTANT MAJORITY LEADER
Agricultural Affairs, State Affairs, Transportation

Celia R. Gould (R), House Seat A . . . . . 8th 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 . . . . . 9th Term
3515 N. 2300 E., Filer 83328
Home 326-4181 FAX 326-3764 Bus 733-8458
E-mail: drjones@house.state.id.us
Farmer Wife - Mary Liz
CHAIR--Agricultural Affairs
Education, Resources/Conservation

23-TWIN FALLS COUNTY

Laird Noh (R), Senate . . . . . 11th Term
3442 Addison Ave. E., Kimberly 83341
Home 733-3617 FAX 734-6515
Sheep Producer Wife - Kathleen
CHAIR--Resources/Environment
Agricultural Affairs, Education

Leon Smith (R), House Seat A . . . . . 2nd Term
671 Monte Vista Dr., Twin Falls 83301
Home 733-0843 Bus 733-6684 FAX 733-6688
Attorney Wife - Janice Mittleider-Smith
Judiciary/Rules/Administration, Revenue/Taxation
Transportation/Defense

Sharon Block (R), House Seat B . . . . . 1st Term
1093 Lakewood Dr., Twin Falls 83301
Home 734-6360 FAX-736-7187
Property Mgr./Former Teacher Husband-D.W. "Bill"
Commerce/Human Resources, Health/Welfare.
State Affairs

24-JEROME & MINIDOKA COUNTIES

Dean L. Cameron (R), Senate . . . . . 6th Term
1101 Ruby Dr., Rupert 83350
Home 436-5624 FAX 436-3776 Bus 436-3584
Senate Line 436-4424
Self-employed Insurance Agent Wife - Linda
CHAIR - Finance
COCHAIR - JFAC
Resources/Environment

John A. "Bert" Stevenson (R), House Seat A. . 3rd Term
1099 N. 400 W., Rupert 83350
Home 532-4524 FAX 532-4720 Bus 532-4105
E-mail: berts@safelink.net
Farmer Wife - Elaine
VICE CHAIR--Agricultural Affairs
Resources/Conservation, State Affairs

Maxine T. Bell (R), House Seat B . . . . . 7th Term
194 S. 300 E., Jerome 83338
Home 324-4296
E-mail: mbell@magiclink.com
Farmer/Homemaker Husband - H. Jack
CHAIR--Appropriations
COCHAIR - JFAC
JLOC, Resources/Conservation

25-CASSIA, MINIDOKA & TWIN FALLS COUNTIES

Denton C. Darrington (R), Senate ..... 10th Term
302 S. Hwy. 77, Declo 83323
Home 654-2712
Farmer/Teacher Wife - Virgene
CHAIR--Judiciary/Rules/Administration
Health/Welfare, State Affairs

Scott Bedke (R), House Seat A ..... 1st Term
P.O. Box 89, Oakley 83346
Home 862-3619 FAX 862-3688
E-mail: bedke@pmt.org
Rancher Wife - Sarah
Education, Transportation/Defense

Bruce Newcomb (R), House Seat B ..... 8th Term
P.O. Box 757, Burley 83318
Legislative Office 332-1111
Farmer/Rancher Wife - Celia Gould
SPEAKER OF THE HOUSE
Legislative Council

26-CLARK, CUSTER, JEFFERSON & LEMHI COUNTIES

Don M. Burtenshaw (R), Senate ..... 3rd Term
1603 N. 1000 E., Terreton 83450-5033
Home 663-4493 FAX 663-4499 Bus 663-4492
Farmer/Rancher/Businessman Wife - Beverly
Agricultural Affairs, Finance/JFAC, Resources/Environment

JoAn E. Wood (R), House Seat A ..... 10th Term
3778 E. 500 N., Rigby 83442
Home 745-7846 FAX 745-8420
Partner-Ranch/Farm Husband - Thomas D.
CHAIR--Transportation/Defense
VICE CHAIR--Resources/Conservation
Revenue/Taxation

Lenore Hardy Barrett (R), House Seat B ... 5th Term
143 W. Pleasant, P.O. Box 347, Challis 83226
Home 879-2797 FAX 879-4257
Mining/Investments Husband - Robert
Local Govermnent, Resources/Conservation
Revenue/Taxation

27-FREMONT & MADISON COUNTIES

Brent Hill (R), Senate ..... 1st Term
1010 S. 2nd E., Rexburg 83440
Home 356-7495 Bus 356-3677
E-mail: bhill@ruddco.com
Accounting Firm CEO Wife - Julie
Commerce/Human Resource, Education

Todd M. Hammond (R), House Seat A .... 2nd Term
985 Hillview Dr., Rexburg 83440
Home 359-2517 Bus 356-1437
E-mail: thammond@house.state.id.us
College Professor/Attorney Wife - Noelle
VICE CHAIR - Education
Environmental Affairs, Judiciary/Rules/Admin.

Dell Raybould (R), House Seat B ..... 1st Term
3215 N. 2000 W., Rexburg 83440
Home/Bus 356-6837
Farmer/Businessman Wife - Vera
Health/Welfare, Resources/Conservation, Revenue/Taxation

28-BONNEVILLE, FREMONT & TETON COUNTIES

Stan Hawkins (R), Senate ..... 6th Term
(Served 3 terms House, 1984-90)
P.O. Box 367, Ucon 83454 Bus 523-2880
Agribusiness Wife - Linn
VICE CHAIR - Finance/JFAC
Local Government, Resources/Environment

Max C. Mortensen (R), House Seat A ..... 5th Term
120 N. 7th E., St. Anthony 83445
Home/FAX 624-3379
Self-employed Wife - Bonnie
VICE CHAIR--Commerce/Human Resources
Agricultural Affairs, Education

Cameron Wheeler (R), House Seat B ..... 3rd Term
700 W. Birch Creek Rd., P.O. Box 335, Ririe 83443
Home 538-7355 FAX/Bus 538-6018
E-mail: cameronw@if.rmci.net
Farmer/Real Estate Broker Wife - Beverly
CHAIR - Resources/Conservation
Environmental Affairs, Revenue/Taxation

29-BONNEVILLE COUNTY

Bart M. Davis (R), Senate ..... 2nd Term
696 S. Bellin Rd., Idaho Falls 83402
Home 529-4993 FAX 522-1334 Bus 522-8100
E-mail: bmdlaw@ida.net
Attorney Wife - Marion
MAJORITY CAUCUS CHAIR
Commerce/Human Resources, Judiciary/Rules/Admin., State Affairs

Jack T. Barraclough (R), House Seat A .... 5th Term
3018 Westmoreland Circle, Idaho Falls 83402
Home 523-4463
E-mail: barracloughjt@cs.com
Certified Professional Hydrologist Wife - Elaine
CHAIR--Environmental Affairs
Resources/Conservation

Kent A. Higgins (R), House Seat B ..... 1st Term
1257 Cameron, Idaho Falls 83402
Home 524-2257 FAX 529-5401 Bus 529-5400
E-mail: khiggins@house.state.id.us
Attorney Wife - Heidi
Business, Education, Local Government

30-BONNEVILLE COUNTY

Melvin M. "Mel" Richardson (R), Senate ... 5th Term
(Served 2 terms, House 1989-92)
3725 Brookfield Ln., Idaho Falls 83406
Home 522-0772 FAX 522-3230
E-mail: chair@micron.net
Public Relations - Broadcaster Wife - Dixie
VICE CHAIR--State Affairs
Finance/JFAC, Judiciary/Rules/Admin.

Lee Gagner (R), House Seat A ..... 3rd Term
2555 Fieldstream Ln., Idaho Falls 83404
Home 522-4580 FAX 529-3283 Bus 529-5600
E-mail: lgagner@aol.com
Multiple Businesses-Real Estate Wife - Linda
VICE CHAIR--Business
Appropriations/JFAC

Thomas F. Loertscher (R), House Seat B ... 8th Term
1357 Bone Rd., Iona 83427
Home 522-3072 FAX 522-1141
Farmer Wife - Linda
CHAIR - Health/Welfare
State Affairs

31-BINGHAM & BUTTE COUNTIES

J. Stanley Williams (R), Senate . . . . . 2nd Term
(Served 1 term, House 1996-98)
1286 W. 200 S., Pingree 83262
Home 684-4932 FAX 684-9211
Farmer/Rancher Wife - Nancy
CHAIR--Agricultural Affairs
Education, Resources/Environment

Dennis M. Lake (R), House Seat A . . . . . 3rd Term
830 Taber Rd., Blackfoot 83221
Home 684-4967 FAX 684-9336
Agribusiness Wife - Luann
Agricultural Affairs, Appropriations/JFAC
Commerce/Human Resources

Janet Aikele (R), House Seat B . . . . . 1st Term
3533 W. 2500 N. Moore 83255
Home 527-3410 Bus 527-8235 FAX 527-8950
E-mail: aikelejanet@hotmail.com
Superintendent of Schools Husband - Eric
Education, Health/Welfare,
Judiciary/Rules/Administration

32-BANNOCK, BEAR LAKE, CARIBOU FRANKLIN & ONEIDA COUNTIES

Robert L. Geddes (R), Senate . . . . . 4th Term
370 Mt. View Ave., Soda Springs 83276
Home 547-2423 Bus 547-4300 x234
Sen. Office: State Capitol, Rm. 351, 83720-0081
Sen. Office: 332-1300 Sen. FAX 334-2320
E-mail: geddes32@gemstar.net
Environmental Engineer Wife - Tammy
PRESIDENT PRO TEM
State Affairs, Transportation

Larry C. Bradford (R), House Seat A . . . . . 1st Term
3208 E. Cub River Rd., Franklin 83237
Home 646-2409
Retired Mink Rancher Wife - Larene
Commerce/Human Resources, Education
Health/Welfare

Eulalie Teichert Langford (R), House Seat B...1st Term
P.O. Box 386, Montpelier, 83254
Home 847-1732 FAX 847-3299
E-mail: eulalie7@juno.com
Retired Business Owner Husband - Duane
Agricultural Affairs, State Affairs

33-BANNOCK COUNTY

Bert C. Marley (D), Senate . . . . . 1st Term
(Served 1 ½ terms, House 1998-01)
8806 S. Old Hwy. 91, McCammon 83250
Home 254-3586 Bus 254-3711 FAX 254-3898
Teacher/Farmer Wife - Michelle
MINORITY CAUCUS CHAIR
Finance/JFAC, JLOC, Local Government/Taxation
Transportation

Elmer Martinez (D), House Seat A . . . . . 1st Term
8209 W. Portneuf, Pocatello 83204
Home 232-4532
Firefighter/Paramedic Wife - DeeAnn
Commerce/Human Resources, Education,
Health/Welfare

Elaine Smith (D), House Seat B . . . . . 1st Term
3759 Heron Ave., Pocatello 83201
Home 237-1462
Volunteer Services Director Husband - Rich
Agricultural Affairs, Business
State Affairs

34-BANNOCK COUNTY

Evan S. Frasure (R), Senate . . . . . 5th Term
(Served 1 term, House 1990-92)
2950 Trevor, Pocatello 83201
Home/Bus 238-8800 FAX 238-8802
E-mail:esfrasure@cableone.net
Marketing Executive Wife - Analyn
CHAIR--Transportation
Local Government/Taxation

Donna H. Boe (D), House Seat A . . . . . 3rd Term
226 S. 16th Ave., Pocatello 83201
Home 233-5651 FAX 234-4223
E-mail: donnaboe@ida.net
ESL Tutor Husband - Roger
ASST. MINORITY LEADER
Education, Environmental Affairs, JLOC
Judiciary/Rules/Administration, Ways/Means

Kent S. Kunz (R), House Seat B . . . . . 3rd Term
128 Fairway Circle, Pocatello 83201
Home 237-0900 FAX 237-1064
E-mail: kskunz@poky.srv.net
UPRR Locomotive Engineer Wife - Kitty
CHAIR--Ways/Means
State Affairs, Transportation/Defense

35-BANNOCK, BINGHAM & POWER COUNTIES

Ralph "Moon" Wheeler (R), Senate . . . . . 4th Term
(Served 2 terms, House 1973-76)
659 Gifford Ave., American Falls 83211
Home 226-2409 FAX 226-7551
Retired Pharmacist Wife - Ann
VICE CHAIR--Local Government/Taxation
Health/Welfare

J. Steven Hadley (R), House Seat A . . . . . 3rd Term
4877 Freedom Ave., Chubbuck 83202
Home 237-9094 Bus 233-5466
Small Business Wife - Colleen
Appropriations/JFAC, Transportation/Defense

Wayne Kendell (R), House Seat B . . . . . 3rd Term
2652 W. 1200 S., Aberdeen 83210
Home 397-4884 Bus 251-7774 FAX 397-7090
Farmer/Rancher Wife - Shirley T.
Agricultural Affairs, Education
Resources/Conservation