

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 2
WASTE AND WILFUL TRESPASS ON REAL PROPERTY

6-201. ACTIONS FOR WASTE. If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

[(6-201) C.C.P. 1881, sec. 472; R.S., R.C., & C.L., sec. 4530; C.S., sec. 6957; I.C.A., sec. 9-201.]

6-202. ACTIONS FOR CIVIL TRESPASS. (1) Definitions. As used in this section:

- (a) "Crops" means field crops including, but not limited to, grains, feed crops, legumes, fruits and vegetables.
- (b) "Cultivated land" means:
 - (i) Land whose soil is loosened or broken up for the raising of crops;
 - (ii) Land used for the raising of crops; or
 - (iii) Pasturage that is artificially irrigated.
- (c) "Damage" means any injury or damage to real or personal property and includes, but is not limited to, any of the following actions, when conducted without lawful authority, the consent of the landowner or his agent, or a valid license:
 - (i) Cutting down or carrying off any wood, underbrush, tree or timber, or girdling or otherwise injuring any tree or timber on the land of another;
 - (ii) Severing from the property of another anything attached thereto, or the produce thereof;
 - (iii) Digging, taking or carrying away any earth, soil or stone from the property of another;
 - (iv) Tearing down or otherwise damaging any fence on the land of another, or opening any gate, bar or fence of another and leaving it open, or using the corral or corrals of another;
 - (v) Dumping trash or covering up in any manner the property of another;
 - (vi) The unprovoked, intentional killing or injuring of a domestic animal of another on his property;
 - (vii) Removing, mutilating, damaging or destroying any "no trespassing" signs or markers of similar meaning;
 - (viii) Going through or driving a motor vehicle, as defined in sections 49-114 and 49-123, Idaho Code, into, upon, over or through any cultivated lands; or
 - (ix) Injuring or killing livestock.
- (d) "Enter" or "enters" means going upon or over real property either in person or by causing any object, substance or force to go upon or over real property.
- (e) "Navigable streams" shall have the meaning set forth in section 36-1601, Idaho Code.
- (f) "Permission" means written authorization from the owner or his agent to enter upon private land, which shall include the signature of

the owner or his agent, the name of the person being given permission, the appropriate dates that the permission is valid and a general description of the property; or another form of permission or invitation recognized by law.

(g) "Remains" means to fail to depart from the real property of another immediately when notified to do so by the owner or his agent.

(2) (a) Acts constituting civil trespass. Any person who enters or remains upon the real property of another person without permission commits a civil trespass.

(b) Acts constituting civil trespass with damage. A person commits a civil trespass with damage when he enters or remains on the real property of another without permission, knowing or with reason to know that his presence is not permitted, and causes damage to real or personal property in excess of one thousand dollars (\$1,000). A person has reason to know that his presence is not permitted on real property that meets any of the following descriptions:

(i) The property is reasonably associated with a residence or place of business;

(ii) The property is cultivated;

(iii) The property is fenced or otherwise enclosed in a manner that a reasonable person would recognize as delineating a private property boundary. Provided, however, if the property adjoins or is contained within public lands, the fence line adjacent to public land is posted with conspicuous "no trespassing" signs or bright orange or fluorescent paint at the corners of the fence adjoining public land and at all navigable streams, roads, gates and rights-of-way entering the private land from the public land, and is posted in a manner that a reasonable person would be put on notice that it is private land; or

(iv) The property is unfenced and uncultivated but is posted with conspicuous "no trespassing" signs or bright orange or fluorescent paint at all property corners and boundaries where the property intersects navigable streams, roads, gates and rights-of-way entering the land, and is posted in a manner that a reasonable person would be put on notice that it is private land.

(3) Remedies.

(a) Civil trespass. Any person found liable for a civil trespass pursuant to subsection (2) (a) of this section shall be liable for the following damages:

(i) The greater of:

1. A damage award of five hundred dollars (\$500); or

2. The amount of actual damages caused by the trespass;

(ii) Reasonable attorney's fees, which shall be taxed as costs in any civil action brought to enforce the provisions of this section, if the plaintiff prevails; and

(iii) Reasonable costs associated with investigating any trespass, as approved by the court, which shall be taxed as costs in any civil action brought to enforce the provisions of this section, if the plaintiff prevails.

(b) Civil trespass with damage. Any person found liable for a civil trespass with damage pursuant to subsection (2) (b) of this section shall be liable for the following damages and penalties:

(i) Treble the amount of actual damages caused by the trespass;

(ii) Reasonable attorney's fees, which shall be taxed as costs in any civil action brought to enforce the provisions of this section, if the plaintiff prevails; and

(iii) Reasonable costs associated with investigating any trespass, as approved by the court, which shall be taxed as costs in any civil action brought to enforce the provisions of this section, if the plaintiff prevails.

(c) If an action for civil trespass or civil trespass with damage is brought without foundation and the defendant prevails, the defendant may be awarded reasonable attorney's fees, which shall be taxed as costs.

Provided however, the owner or operator of any right-of-way or easement for any ditch, canal or other conduit governed by the provisions of chapter 11 or chapter 12, title 42, Idaho Code, or any rail carrier or aircraft who is found in violation of this section shall be liable only for actual damages and not for any treble damages, attorney's fees or investigation costs otherwise provided for under this subsection.

(4) All damages and penalties awarded pursuant to this section shall be remitted to the damaged party.

(5) Posting of navigable streams shall not prohibit access to navigable streams below the high-water mark pursuant to section 36-1601, Idaho Code.

(6) Subject to any rights or authorities described in subsection (7) of this section, a landowner or his agent may revoke permission granted under this section to another to enter or remain upon his property at any time, for any reason, orally, in writing, or by any other form of notice reasonably apparent to the permitted person or persons.

(7) A person has not committed the act of civil trespass under this section for entering or remaining upon real property if the person entered or remained on the property pursuant to any of the following rights or authorities:

(a) An established right of entry or occupancy of the real property in question, including, but not limited to:

(i) An invitation, whether express or implied, to enter or remain on real property including, but not limited to, the right to enter property that is, at the time, open to the public, if the person is in compliance with lawful conditions imposed on access;

(ii) A license to enter or remain on real property; or

(iii) A lease, easement, contract, privilege or other legal right to enter, remain upon, possess or use the real property;

(b) A lawful authority to enter onto or remain upon the real property in question, including, but not limited to:

(i) Any law enforcement officer during the course and scope of fulfilling his lawful duties;

(ii) Any paramedic, firefighter or other emergency personnel during the course and scope of fulfilling his lawful duties; or

(iii) Any licensed professional otherwise authorized to enter or remain on the real property during the course and scope of fulfilling his lawful duties; or

(c) Any other person with a legally prescribed right to enter or remain upon the real property in question.

(8) Examples of the exclusions in subsection (7) of this section include, but are not limited to, a customer entering and remaining in a store during business hours who has not been asked to depart by the property owner

or his agent; a person knocking on a front door of a property that is not posted; a meter reader in the scope and course of his employment; a postal employee delivering mail or packages; power company personnel fixing downed power lines; a bail bondsman arresting a person who is in violation of a bail contract; a tenant in compliance with a valid lease; and the owner or operator of any right-of-way or easement for any ditch, canal or other conduit, acting pursuant to the provisions of chapter 11 or chapter 12, title 42, Idaho Code.

(9) The exclusions set forth in this section shall not relieve any person of civil or criminal liability pursuant to other applicable law for causing damage while entering or remaining on the property in question.

[(6-202) C.C.P. 1881, sec. 473; R.S., R.C., & C.L., sec. 4531; C.S., sec. 6958; I.C.A., sec. 9-202; am. 1976, ch. 155, sec. 1, p. 553; am. 2013, ch. 62, sec. 2, p. 138; am. 2015, ch. 298, sec. 1, p. 1178; am. 2018, ch. 350, sec. 2, p. 825.]

6-210. RECOVERY OF DAMAGES FOR ECONOMIC LOSS WILLFULLY CAUSED BY A MINOR. (1) Any person shall be entitled to recover damages in an amount not to exceed two thousand five hundred dollars (\$2,500) in a court of competent jurisdiction from the parents of any minor, under the age of eighteen (18) years, living with the parents, who shall willfully cause economic loss to such person, except as otherwise provided in section 49-310, Idaho Code. "Person" means any municipal corporation, county, city school district, or any individual, partnership, corporation or association, or any religious organization, whether incorporated or unincorporated.

(2) Economic loss shall include, but not be limited to, the value of property, as that term is defined in section 18-2402(8), Idaho Code, taken, destroyed, broken or otherwise harmed, lost wages and direct out-of-pocket losses or expenses such as medical expenses resulting from the minor's willful conduct, but shall not include less tangible damage such as pain and suffering, wrongful death or emotional distress.

(3) As used in this section, "parents" shall mean any persons or entities who have legal custody of the minor, or any persons or entities who are licensed to accept children for child care under chapter 12, title 39, Idaho Code. "Legal custody" shall be as that term is defined in section 16-2002, Idaho Code.

(4) In the event the parents are providing foster care for the minor at the time of the minor's willful act, and the parents are licensed pursuant to section 39-1211, Idaho Code, and the minor is in the legal custody of the department of health and welfare, any person is entitled to recover damages in a court of competent jurisdiction within the above stated limits. Such recovery shall be insured by the state of Idaho.

[6-210, added 1957, ch. 32, sec. 1, p. 51; am. 1977, ch. 55, sec. 1, p. 106; am. 1987, ch. 257, sec. 1, p. 522; am. 1990, ch. 81, sec. 1, p. 163; am. 1991, ch. 168, sec. 1, p. 408; am. 2005, ch. 391, sec. 1, p. 1263.]

6-211. TRESPASS ON STATE LANDS -- DAMAGE ACTIONS. Any person who cuts down or carries off any wood, trees, or timber or removes top soil from, or dumps trash or debris on, any land belonging to the State of Idaho without lawful authority is liable to the State of Idaho for treble the amount of damages, which amount may be recovered in a civil action therefor.

[6-211, added 1949, ch. 105, sec. 1, p. 194.]

6-212. DAMAGES RECOVERED DEPOSITED INTO ENDOWMENT FUND. Any moneys so recovered shall in each instance be deposited in the endowment fund in which would be deposited the proceeds of the sale of the lands damaged were such lands sold by the State of Idaho.

[6-212, added 1949, ch. 105, sec. 2, p. 194.]